

October 17, 2002

**Via Facsimile and U.S. Mail**

CEC Advice No. 2002-13

Mr. Steven Cannistraci

**Re: Your Request for Advice Dated September 10, 2002**

Dear Mr. Cannistraci:

This letter is in response to your letter to the City Ethics Commission of September 10, 2002. In that letter you requested formal advice<sup>1</sup> regarding possible restrictions on post-City service employment. Your question and the Commission's response, based on the information you provided in your letter and conversations with Chelsea Cochrane on September 18 and 26, 2002, and conversations with Department of Transportation employees on October 7 and 10, 2002, are detailed below.

#### **QUESTION**

*As a former City employee, what restrictions apply to your working for a sub-contractor to a company with a contract with the City?*

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<sup>1</sup> Los Angeles Admin. Code § 24.1.1(f)(2)(K) provides that formal written advice provides the requestor with the immunity set forth in Los Angeles City Charter § 705. This formal advice does not address or apply to any past actions by the requestor(s).

## **RELEVANT FACTS**

We have determined that the following facts are relevant to your inquiry:

1. You were employed by the City of Los Angeles as Senior Heavy Duty Equipment Mechanic, Transit Bureau, Department of Transportation (“the Department”) until June 2002. Your position is not designated on the Department’s Conflict of Interest Code as one that made or participated in making governmental decisions within the meaning of the state Political Reform Act. You therefore were not required to file a Statement of Economic Interests and, consequently, you were not a “City official” within the meaning of the City’s Governmental Ethics Ordinance.
2. As Senior Heavy Duty Equipment Mechanic, you were responsible for managing the Mechanical Support and Development Section, preparing and managing vehicle procurement contracts, developing and administering vehicle maintenance programs for contractors, and inspecting City-owned buses upon their being returned to the City following the contract period. Your duties also included technical reviews of responses to Requests for Proposals published by the Department and the management of contracts. You evaluated proposals and gave technical advice to non-technical personnel regarding mechanical matters as described in these proposals. You also inspected assembly line vehicles built for City purchase and made technical decisions regarding maintenance requirements and vehicle specifications. Further responsibilities included making on site visits to contractor maintenance facilities to inspect their work.
3. A contract exists between Coach USA and the Department of Transportation regarding the operation and maintenance of buses for the City’s Commuter Express and Community DASH services. The current contract was negotiated in 1997, during your employ with the Department of Transportation. However, you did not participate in any aspect of the contract negotiations or proposal review. You did, however, engage in work under that contract while an employee with the City, which included rendering advice about and making recommendations regarding Coach USA’s performance pursuant to their bus operations contract with the City. This contract is scheduled to end on October 31, 2002, but it is likely to be extended on a month-to-month basis until the end of 2002.
4. You would like to enter the employment of a private company, Triple C Consulting, Inc., owned by your daughter, Bernice Cannistraci, to provide third-party consulting services related to City-owned buses that are currently maintained and operated by Coach USA, pursuant to its contract with the Department. In that capacity, you would be working under the employ of Coach USA, and would be working with City of Los Angeles personnel to perform independent, third-party inspections of City-owned buses for Coach USA. City employees would execute a separate assessment of the maintenance status of the buses.

5. The City employees with whom you would be working are the City employees that you formerly supervised in the Mechanical Support and Development Section. Your work may also entail the negotiation of a contract between the subcontractor and the Department of Transportation.

### **APPLICABLE CITY LAW**

The City's Governmental Ethics Ordinance (Los Angeles Municipal Code § 49.5.1 *et seq.*) establishes certain "revolving door" limits on the kinds of activities former City officials and employees may engage in to prevent them from exercising or appearing to exercise improper influence over City decision-making. Included among these provisions are post-employment restrictions on former City officials and employees when they are receiving compensation on behalf of a new employer to attempt to influence a City decision. There are two types of post-City service employment restrictions: a one-year prohibition on attempting to influence decisions of one's former agency (LAMC § 49.5.11 E) and a permanent prohibition on attempting to influence any matter, either directly or through an agent, that remains pending and is one in which the former City official or employee had "personal and substantial involvement" during his or her tenure with the City of Los Angeles (LAMC § 49.5.11 A, B.).

For purposes of the City's "revolving door" provisions, the Governmental Ethics Ordinance defines "attempting to influence" as "promoting, supporting, opposing or seeking to modify or delay any action on municipal legislation by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies." (LAMC § 49.5.2.) "Municipal legislation," which is defined in the City's Municipal Lobbying Ordinance (LAMC § 48.01 *et seq.*), in pertinent part means "any legislative or administrative matter proposed or pending before any agency, including but not limited to those involving the granting, denial, revocation, restriction or modification of a license, permit, or entitlement for use (including all land use permits) if the Mayor, the City Council, any of its committees, any agency board, commission, committee, or general manager, or any agency officer or employee charged by law with holding a hearing and making a decision, is charged by law with making a final decision on the matter."

### **ANALYSIS & CONCLUSION**

While City law does not restrict the type of employment that you may engage in after leaving City service it does restrict your compensated attempts to influence action or decision on certain matters pending before City officials under certain circumstances. In pertinent part, LAMC § 49.5.2 defines a "City official" as "any...employee... of any agency required to adopt a conflict of interest code subject to City Council approval, and who is required to file statements of economic interests pursuant to the conflict of interest code of his or her agency." Because your former position was not designated on your department's Conflict of Interest Code as a City official required to file a Statement of Economic Interests, the one-year ban on communicating with your former agency does not apply to you. However, as discussed below, City law does

prohibit you from attempting to influence any action or decision on any pending matter in which you were “personally and substantially” involved while employed with the Department of Transportation.

*“Personal & Substantial” Participation Ban*

City law permanently bans former City employees who *personally and substantially* participated in a decision, proceeding, claim, contract, legislation or other specific matter during their tenure with the City from engaging in compensated attempts to influence any action on that matter if it is still pending with the City, or if the City is a party to or has a direct or substantial interest in the matter. In addition, former City employees may not, for compensation, advise or assist others that are attempting to influence action on any matter in which he or she had personal and substantial involvement. A City employee “personally and substantially” participates in a matter by, for example, making a decision, making a recommendation, conducting research or rendering advice on a matter.

You state that while employed by the City you managed vehicle procurement contracts, developed and administrated vehicle maintenance programs, and inspected City-owned buses upon their being returned to the City following the contract period. You evaluated proposals and gave technical advice to non-technical personnel regarding mechanical matters as described in these proposals. You also inspected vehicles built for City purchase, and made technical decisions regarding maintenance requirements and vehicle specifications. Other responsibilities included observing the vehicle maintenance carried out by Coach USA on City-owned buses and reporting your assessment of their work.

Although you did not have any involvement in evaluating or reviewing the Coach USA contract, you did engage in work pursuant to that contract while an employee with the City. In your former capacity, your work related to the Coach USA contract included rendering advice about or making recommendations regarding that firm’s performance pursuant to their bus operations contract. Based on this information, therefore, we conclude that your involvement in the current bus operation contract held by Coach USA was “personal and substantial” within the meaning of the Governmental Ethics Ordinance.

While you are not restricted from accepting employment with Triple C Consulting, you are prohibited from engaging in compensated attempts to influence any City decision regarding the current bus operation agreement between the City and Coach USA for the duration of the contract. You may not participate in any aspect of the City’s contract with Coach USA that would constitute an attempt to influence any City official with regard to any matter relating to the buses or operations currently under contract. “Attempting to influence” would include, for example, promoting or supporting a City decision or action through the use of persuasion or information. Because your proposed work on behalf of Triple C Consulting would be for Coach USA, and would consist of performing inspections for the purpose of rendering advice and making recommendations relating to Coach USA’s compliance to its contract with the City, that work would constitute attempting to influence the City or assisting others in their attempts to

influence the City regarding Coach USA's performance of the terms of the contract. Therefore, you are precluded from performing work on behalf of Triple C Consulting for Coach USA for the term of the Coach USA's contract with the City. Furthermore, you are also precluded from engaging in any attempt or assisting others in their attempts to influence Coach USA's contract with the City for the term of the contract.

Finally, we note that as a former City employee, you must not disclose any confidential information acquired in the course of your employment with the City for pecuniary or personal gain or advantage. (LAMC § 49.5.3).

Thank you for contacting the City Ethics Commission about this matter. If you have any questions regarding this letter, please do not hesitate to contact Chelsea Cochrane or me at (213) 978-1960.

Sincerely,

LeeAnn M. Pelham  
Executive Director

Attachment

## ATTACHMENT

**Los Angeles Municipal Code (LAMC) § 49.5.2 Definitions**, defines the following terms:

**“Agency”** means the City of Los Angeles or any department, bureau, office, board, commission, other agency of the City, or any other government agency, required to adopt a conflict of interest code subject to City Council approval.

**“Attempting to influence”** means promoting, supporting, opposing or seeking to modify or delay any action on municipal legislation (as defined in Section 48.02 of this Code) by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies.

**“City Official”** means any elective City officer, member, officer, employee, commissioner or consultant of any agency required to adopt a conflict of interest code subject to City Council approval, and who is required to file statements of economic interests pursuant to the conflict of interest code of his or her agency.

**“Direct Communication”** means appearing as a witness before, talking to (either by telephone or in person), corresponding with (including sending electronic mail to), or answering questions or inquiries from, any City official or employee, either personally or through an agent.

### **LAMC § 49.5.3 Confidential Information**

No current or former officer or employee of the City shall use or disclose to any other person for pecuniary gain or personal advantage or privilege, confidential information acquired by him or her in the course of his or her official duties.

**LAMC § 49.5.6. Disclosure of Economic Interests**, in pertinent part, states:

#### **A. Persons Required to File.**

The Mayor, City Attorney, Controller, members of the City Council, each chief administrative officer of a City department or office, and each member of a board or commission who is a designated employee pursuant to the conflict of interest Code of his or her agency shall file a statement of economic interests pursuant to the Political Reform Act of 1974, as amended, and shall additionally file a financial disclosure statement pursuant to the provisions of this section. There shall be two classes of filers, (1) “high level filers,” and “other filers,” who shall include all filers other than “high level filers.”

**LAMC § 49.5.11. Lobbying Activities of Former Officials and Employees**, in pertinent part, states:

- A. No former City official or employee of an agency (as defined in Section 49.5.2.) who personally and substantially participated in a decision, proceeding, claim, contract, legislation or other specific matter during his or her City service, shall, for compensation, attempt to influence any action on that specific matter on behalf of any person other than an agency. This prohibition applies only if the specific matter is still pending before an agency or if an agency is a party to or has a direct or substantial interest in the specific matter. For purposes of this provision, “personal and substantial” participation includes, but is not limited to, making or voting on a decision or making a recommendation, rendering advice, investigation or conducting research.
- B. No former City official or agency employee shall, for compensation, knowingly counsel, or assist any other person other than an agency (as defined in Section 49.5.2.) in connection with an appearance or communication in which the former official or employee is prohibited from engaging pursuant to Subsection A.
- E. For one year after leaving City service, no former City official shall for a compensation, engage in direct communication with any agency in which he or she served during the twelve month period preceding his or her departure from City service, for the purpose of attempting to influence any action or decision on any matter pending before that agency on behalf of any person other than an agency. For purposes of this subsection, the agency of a City Council office employee means his or her former Council office and the Councilmember of that district.

**LAMC § 49.5.12. Future Employment of City Officials**, in pertinent part, states:

- B. No other City official shall, directly or indirectly, knowingly or willfully negotiate the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee.
- C. No person who has a matter pending before a City official, or before any body of which the official is a voting member shall, directly or indirectly, knowingly or willfully negotiate the possibility of future employment of that City official.
- D. No City official shall make, participate in making or use his or her official position to influence a decision involving the interests of a person with whom he or she has an agreement concerning future employment.

**Los Angeles Municipal Code (LAMC) § 48.02 Definitions**, defines the following term:

**“Municipal legislation”** means any legislative or administrative matter proposed or pending before any agency (as defined in this Article), including but not limited to those involving the granting, denial, revocation, restriction or modification of a license, permit or entitlement for use (including all land use permits) if the Mayor, the City Council, any of its committees, any agency board, commission, committee, or general manager, or any agency officer or employee charged by law with holding a hearing and making a decision, is charged by law with making a final decision on the matter. However, "municipal legislation" does not include any of the following:

(1) A request for advice or for an interpretation of laws, regulations, City approvals or policies, or a direct response to an enforcement proceeding with the City Ethics Commission.

(2) Any ministerial action. An action is ministerial if it does not require the City official or employees involved to exercise discretion concerning any outcome or course of action.

(3) Any action relating to the establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or memorandum of understanding between an agency and a recognized employee organization, or a proceeding before the Civil Service Commission or the Employee Relations Board. Further, it does not include management decisions as to the working conditions of represented employees that clearly relate to the terms of such collective bargaining agreement or memorandum of understanding. Nevertheless, A municipal legislation does include any action relating to collective bargaining taken by the City Council, any of its committees or members (including the staffs of such members), or by the Mayor or his or her office.

(4) Preparation or compilation of any radius map, vicinity map, plot plan, site plan, property owners or tenants list, abutting property owners list, photographs of property, proof of ownership or copy of lease, or neighbor signatures required to be submitted to the City Planning Department.