

November 13, 2003

VIA FACSIMILE AND U.S. MAIL

CEC Advice No. 2003-08

Mr. Morrie Goldman
Public Strategies, Inc.
Los Angeles, CA 90017

RE: Your Request for Advice Dated June 11, 2003

Dear Mr. Goldman:

This letter withdraws and supercedes the written advice we provided to you in City Ethics Commission advice letter 2003-07, dated November 7, 2003. That letter responded to your request for formal advice¹ regarding possible restrictions that may apply to your post-City service employment. Please note that in our previous letter we mistakenly concluded that the one-year post-employment lobbying ban applied to you more broadly than it should have because we inadvertently analyzed that provision as it applies to a “high level” City official rather than a “City official”, as is the case in your situation. Your question and our corrected advice are detailed below. I apologize for any confusion that may have resulted from this mistake.

QUESTIONS

- 1. How does the City's one-year prohibition on lobbying apply to you, the former Acting Chief of Staff for Council District 12, if you only worked for that office for six months?*

¹ 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).

2. *If Councilmember Bernson did not designate you as a high level City official, what City agencies can you lobby for compensation if the one-year prohibition applies to you? Specifically, are you prohibited from directly communicating with all City agencies, or only your former Council office, when you attempt to influence municipal legislation?*

RELEVANT FACTS

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

1. In November 2002, you were hired by Councilmember Bernson to serve as the Acting Chief of Staff for Council District 12 during the leave of absence of the Chief of Staff.
2. You served as Acting Chief of Staff from November 25, 2002, to May 30, 2003.
3. While you were Acting Chief of Staff, you filed Statements of Economic Interests on November 25, 2002, and March 25, 2003.
4. Councilmember Bernson did not designate you in writing as a high level official while you served as Acting Chief of Staff.
5. During your tenure as Acting Chief of Staff for Council District 12, you “facilitated the scheduling” of meetings between community organizations and City departments as a follow-up to meetings originally scheduled by the former Chief of Staff on the following projects: the master traffic plan for the California State University at Northridge; the Sunshine Canyon Landfill project; traffic concerns regarding projects at Deer Lake and Las Lomas; and, an Ad Hoc Committee studying traffic issues on Balboa Boulevard. You indicated that you did not participate in these meetings.
6. You indicated that you did not make a decision or recommendation, conduct research or an investigation, or render advice to Councilmember Bernson or the staff of Council District 12, or take any administrative or legislative actions during your tenure as Acting Chief of Staff.
7. You have been an employee of Public Strategies, Inc., since June 1, 2003, and plan to lobby City agencies on that firm’s behalf. Although you were offered this position with Public Strategies prior to leaving Council District 12, to your knowledge, that company did not have any business, or pending business, with the City or Council District 12 when you were negotiating the possibility of employment in your current position.

APPLICABLE CITY LAW

City law does not restrict the type of employment that a former City official may engage in after leaving City service. However, to prevent former City officials from exercising, or appearing to exercise, improper influence over City decisions, the City's Governmental Ethics Ordinance (Los Angeles Municipal Code (LAMC) Sec. 49.5.1 *et seq.*) establishes certain "revolving door" limits on their attempts to influence City decisions for compensation after they leave City service.

A "City official" is defined by Los Angeles Municipal Code (LAMC) Section 49.5.2 as a person who files Statements of Economic Interests pursuant to a City agency's Conflict of Interest Code. In addition, a "high level City official" includes two members of the staff of each City Council Office possessing the most decision-making responsibilities relative to governmental policy as designated by each member of the Council, or any other member of the staff of an elected City officer possessing significant decision-making responsibilities relative to governmental policy that is designated by the elected City officer. (LAMC Sec. 49.5.2)

Two types of post-City service lobbying restrictions apply to former City officials: a ban on attempting to influence any matter, either directly or through an agent, that remains pending and in which you had "personal and substantial involvement" (LAMC Sec. 49.5.11 A, B); and, a one-year restriction against attempting to influence decisions for compensation (LAMC Sec. 49.5.11 D, E).

The City's "personal and substantial" ban restricts former City officials and 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 officials or employees may not, for compensation, advise or assist others that are attempting to influence action on those matters. A City official "personally and substantially" participates in a matter by, for example, making a decision, making a recommendation, conducting research or rendering advice on a matter.

Former high level City officials may not engage in compensated communications, either personally or through an agent, with any City agency for the purpose of attempting to influence an action or decision on *any* matter pending before that agency or on behalf of anyone (other than the agency) for one year after the date the official left City service. In the case of other former City officials, the one-year restriction applies only to their former agency, which, in the case of a City Council office employee, means his or her former Council office and the Councilmember of that district. (LAMC Sec. 49.5.11 D, E)

ANALYSIS & CONCLUSION

The following analysis and conclusion addresses both of your questions based on the information you provided. Pursuant to the Governmental Ethics Ordinance, the one-year and “personal and substantial” bans apply to all former City officials. Even though you only served as Acting Chief of Staff for six months, you qualified as a City official because you were required to file Statements of Economic Interests while you were employed in that position. Therefore, because you were employed as a City official during that time, you are subject to the provisions of the one-year ban and the “personal and substantial” ban.

You were hired to act in place of a designated high level official when you assumed the position of Acting Chief of Staff. However, although you assumed the position of a high level City official, you did not assume all of the regular responsibilities of that position according to the facts you provided. You described your duties as Acting Chief of Staff to consist primarily of “general management” of the Council District 12 office in City Hall and the coordination and scheduling of meetings regarding ongoing projects affecting the Council district. You also indicated that you did not exercise any governmental decision-making authority on City matters while you served in this position. Because Councilmember Bernson did not designate you in writing as a high level official, and you did not exercise significant decision making authority while serving as Acting Chief of Staff, we therefore conclude that the “City official” post-City service lobbying restrictions apply to your situation, rather than those of a “high level City official.”

The One-Year Lobbying Restriction

As a former City official, the one-year post-City service lobbying restriction prohibits you from communicating, for compensation, with Council District 12 for the purpose of attempting to influence any City matter until after May 30, 2004. During this period, you may assist and advise others at Public Strategies, Inc., about their communications with City agencies and/or City officials, provided that you are not advising about a matter in which you had “personal and substantial” involvement while you were a City official (see below). You may not, however, direct others to appear before the Council member or staff of Council District 12 acting as *your* agent. For example, you may not advise a colleague to represent him or herself as an intermediary acting on your behalf when meeting with a City official employed by Council District 12. After the one-year post-City service restriction has concluded, you may lobby the Council member and staff of Council District 12 or any other City agency or official on behalf of the clients of Public Strategies, Inc., subject to the “personal and substantial” participation ban discussed below.

“Personal and Substantial” Ban

You stated that you facilitated the scheduling of meetings between community organizations and City departments as a follow-up to meetings originally scheduled by the

former Chief of Staff. In addition, you indicated that you did not make a decision or recommendation, conduct research or an investigation, or render advice to Councilmember Bernson or the staff of Council District 12, during your tenure as Acting Chief of Staff. Based on the information you provided, your participation in these matters does not appear to have been “personal and substantial.” However, we encourage you to consult with the City Ethics Commission before you undertake any action related to a matter with which you were involved while you were employed by Council District 12.

A former City official is not restricted or prohibited from representing himself or herself, or his or her immediate family, in their individual capacities in connection with any matter pending before an agency. (LAMC Sec. 49.5.11H) As a private individual, you may contact a City agency or official to express your opinion or to attempt to influence an action on a matter. Please exercise caution, however, to not informally or indirectly represent Public Strategies, Inc. or its interests during any such discussions with a City agency.

Confidential Information

Finally, we note that as a former City employee, you must not disclose any confidential information acquired in the course of your employment with Council District 12 for pecuniary or personal gain or advantage. (LAMC Sec. 49.5.3) We have also enclosed for your information a brochure that explains the requirements of the City’s lobbyist registration and reporting requirements should your activities in the future involve attempts to influence City officials. Please feel free to contact us if you have any questions or would like additional information.

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 me or Chelsea Cochrane at (213) 978-1960.

Sincerely,

LeeAnn M. Pelham
Executive Director

ATTACHMENT

Los Angeles Municipal Code §49.5.2. Definitions, defines the following terms:

“Administrative action” means the proposal, drafting, development, consideration, amendment, enactment or defeat by any City agency of any matter, including any rule, regulation or other action in any regulatory proceeding or any proceeding involving a contract, license, permit, franchise, or entitlement for use, whether quasi-legislative or quasi-judicial. Administrative action does not include any action which is solely ministerial.

“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.

“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.

“High Level Official” means the Mayor, the City Attorney, the Controller, the members of the City Council, the Chief of Staff to the Mayor, the Assistant Chief of Staff to the Mayor, each Deputy Mayor, the Special Assistant to the Mayor for Legal Affairs, the Executive Assistant City Attorney, each Chief Assistant City Attorney, each Senior Counsel, the Chief Deputy Controller, the Administrative Coordinator to the Controller, two members of the staff of each City Council Office possessing the most decision-making responsibilities relative to governmental policy as designated by each member of the Council, the members of the City Ethics Commission, the members of the City Planning Commission, the Director of Planning, the members of the Board of Public Works, the Director of the Office of Administrative and Research Services, each Assistant Director of the Office of Administrative and Research Services, the Chief Legislative Analyst, each Assistant Chief Legislative Analyst, the Treasurer, and the City Clerk. In addition, “high level official” means any other member of the staff of an elected City officer possessing significant decision-making responsibilities relative to governmental policy as may be designated in writing to the City Ethics Commission by the elected City officer.

“Legislative action” means drafting, introduction, consideration, modification, enactment, or defeat of any ordinance, charter amendment, resolution, amendment, report, nomination or other matter by the City Council or by any committee, subcommittee thereof, or by a member or employee of the City Council acting in his or her official capacity. “Legislative action” also means the action of the Mayor in approving or vetoing any ordinance or resolution.

Los Angeles Municipal Code §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.

Los Angeles Municipal Code §49.5.11. Lobbying Activities of Former Officials, in pertinent part, states:

A. No former City official or employee of any 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.

C. The prohibitions contained in subsection A and B shall not apply:

1. To prevent a former agency officer or employee from making or providing a statement, based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses.

2. To communications made solely for the purpose of furnishing information by a former agency officer or employee if the court or agency to which the communication is directed makes written findings that:

(a) The former officer or employee has outstanding and otherwise unavailable qualifications;

(b) The former officer or employee is acting with respect to a particular matter which requires such qualifications; and

(c) The public interest would be served by the participation of the former officer or employee.

...

D. For one year after leaving City service, no former elected City officer, member of the city Ethics Commission or other former high level official shall, for compensation, engage in

direct communication with any agency for the purpose of attempting to influence any action or decision on any matter pending before an agency on behalf of any person other than an agency.

E. For one year after leaving City service, no former City official shall for compensation, engage in direct communication with any agency in which he or she served during the twelve month period preceding his or 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.

F. For purposes of this section, a decision does not include any ministerial action. A ministerial action is one that does not require a City official or employee to exercise discretion concerning any outcome or course of action.

G. Upon the petition of any interested person or party, a court or the presiding or other officer, including but not limited to any hearing officer, in any judicial, quasijudicial or other proceeding, may, after notice and an opportunity for a hearing, exclude any person found to be in violation of this section from further participation, or from assisting or counseling any other participant, in the proceeding then pending before such court or presiding or other officer.

H. No provision contained in Subsections D or E of this section shall prevent any former City official from representing himself or herself, or any member of his or her immediately family, in their individual capacities, in connection with any matter pending before an agency.

I. This section shall not apply to the activities of any former City official or employee who is an elected or appointed officer or employee of any city, county, district, multi-jurisdictional, state or federal government agency, when that former City official or employee is solely representing that agency in his or her official capacity as an officer or employee of the agency.