

CITY OF LOS ANGELES  
CALIFORNIA

CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION  
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LOS ANGELES, CA 90012

June 22, 2005

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

**CEC Advice No. 2005-04**

Valerie Lynne Shaw, President  
Board of Public Works  
City of Los Angeles

**RE: Your Request for Formal Advice Dated May 3, 2005**

Dear Ms. Shaw:

This letter is a response to your May 3, 2005, request for formal advice<sup>1</sup> regarding possible restrictions on your fundraising activities for the Black Family Initiatives. Your questions and the Commission's responses, based on information provided in your letter and in conversations with Rebecca Ronquillo through May 31, 2005, are detailed below.

**QUESTION**

*As a member of the City Board of Public Works, what restrictions apply to my involvement in fundraising for the Black Family Initiatives, a program implemented by African-American leaders in City government to improve conditions in South Los Angeles?*

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<sup>1</sup> Los Angeles Administrative 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(b). This formal advice does not address or apply to any past actions by the requestor(s). The Los Angeles City Charter authorizes the City Ethics Commission to provide formal advice regarding the City's campaign finance, ethics, and lobbying laws. When applicable and with the concurrence of the Office of the City Attorney, the Commission's written advice may also include an analysis of related provisions of the California Political Reform Act of 1974, as amended, when terms used in City law are defined in that Act. The Commission, however, does not advise about any other city, state, or federal laws that also may apply as those laws are not under the Commission's jurisdiction.



## RELEVANT FACTS

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

1. You are President of the City of Los Angeles Board of Public Works. You are a "City official" within the meaning of the Governmental Ethics Ordinance (Los Angeles Municipal Code (LAMC) Section 49.7.1 *et seq.*).
2. The Black Family Initiatives ("Initiatives") is a series of programs implemented by a group of approximately 45 African-American leaders in Los Angeles City government that seeks to improve conditions in South Los Angeles through studies and special programs such as informal community workshops, summer youth employment and mentoring programs, and assistance with access to public services.
3. Although Mayor Hahn publicly endorsed the Initiatives, none of the Initiatives' activities to date were official City-sponsored events, nor were they funded wholly or in part by City general fund dollars.
4. The network of African-American leaders involved in organizing and bringing to bear these Initiatives has identified Community Partnerships, a non-profit 501(c)(3) located in South Los Angeles, to serve as the fiscal agent for the Initiatives. Any money contributed to the Initiatives will be held by this entity and drawn as needed for costs associated with sponsored programs.
5. You would like to assist the Initiatives with fundraising to support their on-going programming and have identified a preliminary list of individuals and entities to approach for donations. To your knowledge, none of the individuals or entities on the list currently has or previously had business before the Board of Public Works or the City of Los Angeles during the past twelve months. Additionally, you expressed interest in soliciting funds from fellow City commissioners, board members and general managers who are members of the informal network that is implementing these Initiatives, as well as entities that are current contractors, bidders, or past contractors of the Board of Public Works.

## RELEVANT LAW

The City's Governmental Ethics Ordinance prohibits a City official from using his or her position, or the authority of his or her office or position, in any manner intended to induce or coerce any person to provide, directly or indirectly, anything of value to the private advantage, benefit, or economic gain of the City official or employee, or of any other person. City officials and employee are also prohibited from engaging in activities other than the lawful and proper performance of the person's City duties (LAMC Section 49.5.5(A)). The Governmental Ethics Ordinance defines "person" as an

individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, or any other organization or group of persons acting in concert (LAMC Section 49.5.2).

The City's Campaign Finance Ordinance (LAMC Section 49.7.1 *et seq.*) prohibits members of City boards and commissions from soliciting, directing, or receiving a contribution from any person, or his or her agent, who has a proceeding involving any legislative or administrative action pending before the official or has had such a matter pending during the preceding 12 months (LAMC Section 49.7.8(B)). The Ordinance also prohibits any person from receiving or personally delivering or attempting to deliver a contribution in City Hall, or other City office building, or in any office for which the City pays the majority of the rent (LAMC Section 49.7.8(D)). These provisions of City law apply the meaning of "contribution" as defined in state law. California Government Code Section 82015(a) defines contribution to mean, in pertinent part, a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. In pertinent part, 2 California Code of Regulations (CCR) Section 18215(a)(1) provides that a payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure.

The City's Campaign Finance Ordinance also prohibits members of City boards and commissions from engaging in "prohibited fundraising activity" that is conducted on behalf of an elective City officer, candidate for elective City office, or any of his or her controlled committees (LAMC Section 49.7.8(C)). For purposes of this prohibition, a "controlled committee" means any committee controlled by an elective City officer or candidate for elective City office, including any City campaign, officeholder, legal defense fund, or ballot measure committee (LAMC Section 49.7.8(C)(1)).

## ANALYSIS & CONCLUSION

The Governmental Ethics Ordinance does not prohibit you from fundraising on behalf of the Black Family Initiatives. However, as described below, several provisions of City law may limit your involvement should you choose to participate in the Initiatives' fundraising efforts.

You stated that the Initiatives fundraising efforts will serve a charitable purpose and that its identified fiscal agent, Community Partnerships, operates as a non-profit organization. Individuals involved in the Initiatives or Community Partnerships will neither solicit contributions nor contribute funds for political purposes, and will not engage in political activities. In addition, you indicated that the individuals who would be solicited for donations to the Initiatives may include foundations, entertainment industry officials, fellow City commissioners, board members and general managers who

are members of the Initiatives network. You also indicated that, in the future, you may solicit entities that are current City contractors, bidders, or past contractors.

Because the Initiatives was not formed as a committee controlled by an elective City officer or candidate for elective City office, the fundraising prohibition for City board and commission members established in LAMC Section 49.7.8(C) does not apply. In addition, because the funds solicited will be used to improve conditions in South Los Angeles through studies and special programs, they would not be used for political purposes as state law defines that term. Monies resulting from your fundraising activities, therefore, would not be "contributions" pursuant to California Government Code Section 82015(a) and 2 California Code of Regulations Section 18215(a)(1). As a result, those solicitations would not be prohibited by LAMC Section 49.7.8(B). As discussed more fully below, however, we do encourage you to take all possible steps to help assure that any permissible fundraising you do engage in as a City commissioner will not be misperceived as having any relationship to your official duties or governmental decision-making.

To insure that all governmental decisions of City officials are, and are perceived to be, made only on the merits of the issues, the City's Governmental Ethics Ordinance establishes certain provisions regarding a City official's use of his or her position and authority. Specifically, LAMC Section 49.5.5(A) provides that no official may use his or her public position for personal gain or for the benefit of any other person. Moreover, they may not use their position or authority to coerce or induce any person to provide anything of value to another person.

Pursuant to LAMC Section 49.5.5(A), for example, no City resources should be used for fundraising on behalf of the Initiatives, as it is not a City sponsored event or part of your official duties. While City law does not prohibit you from identifying yourself in your fundraising efforts on behalf of the Black Family Initiatives as a commissioner or President of the Board of Public Works, to help avoid any misperception that you are using your City position or authority for the benefit of the Initiatives or Community Partnerships, it should, for example, be made clear in any solicitation for funds that you are not acting on behalf of the Board or the City.

Because those solicited by public officials for funds may feel pressure to make a donation in response to that request, or may believe that their responsiveness to that request could influence the outcome of a matter pending with that individual or his or her office, our office has consistently advised City officials to include a broad range of sources in any fundraising solicitation efforts in which they may choose to engage. Sources who are located or do business both inside and outside the City, for example, should be considered. In addition, while City law does not prohibit the solicitation of charitable donations from current City contractors, or from those contractors with matters before the official's agency or board within the past twelve months, we strongly discourage officials from doing so to help avoid any perception that one's ability or

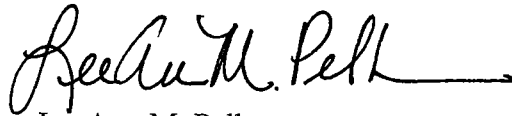
inclination to make a donation has any bearing on the governmental decision making process.

Finally, if a matter were to come before the Board of Public Works involving one of the individuals or entities you solicited, we request that you notify the Office of the City Attorney before taking action on that matter. The City Attorney will advise you on whether you should recuse yourself from acting in that instance.

Please note that should the nature or purpose of the Initiative's fundraising activities change in the future, depending on the nature of those changes, your involvement in that fundraising may be restricted by provisions addressed above. Should that occur, we would encourage you to seek our advice based on those circumstances at that time.

Thank you for contacting the City Ethics Commission about this matter. We apologize for any inconvenience that may have resulted from our delay in responding to you and we appreciate your request for formal advice. If you have any further questions regarding this matter, please do not hesitate to contact me or Senior Policy Analyst Julie Silvers at (213) 978-1960.

Sincerely,

A handwritten signature in black ink, appearing to read "LeeAnn M. Pelham", with a horizontal line extending to the right.

LeeAnn M. Pelham  
Executive Director

Attachment

## ATTACHMENT

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

**“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.

**“Person”** means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

**LAMC Section 49.5.5. Misuse of City Position or Resources.**, in pertinent part, states:

A. No City official, employee of any agency, appointee awaiting confirmation by the Council, or candidate for elective City office shall use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide, directly or indirectly, anything of value which shall accrue to the private advantage, benefit, or economic gain, of the City official or employee, or of any other person. As used in this section, the term “private advantage, benefit, or economic gain” means any advantage, benefit or economic gain, distinct from that enjoyed by members of the public without regard to official status or not resulting naturally from lawful and proper performance of duties. A City official or employee engages in a prohibited use of his or her official position or prospective position when he or she engages in activities other than in the lawful and proper performance of the person's City duties.

**LAMC Section 49.7.8. Solicitation and Transmittal of Campaign Contributions.**, states:

A. No person, including but not limited to any City official, employee, or candidate for elective City office, shall, directly or indirectly, knowingly solicit campaign contributions from any City official or employee to support or oppose the candidacy of any person for elective City office or for the recall of any elective City officer, or for an officeholder expense account. Nothing in this subsection shall prohibit any of these persons from communicating through the mail or by other means requests for campaign funds or contributions to a significant segment of the public, which may include officers or employees of the City.

B. No member of a board or commission of the City, including a member of the Board of Public Works, or general manager of any City department shall solicit, direct or

receive any contribution from any person, or his or her agent, who has a proceeding involving any legislative or administrative action pending before the official or has had such a matter pending during the preceding 12 months.

C. No member of a City board or commission who is required to file a Statement of Economic Interests shall engage in prohibited fundraising activity on behalf of an elective City officer, candidate for elective City office, or any of his or her controlled committees.

1. For purposes of this subsection, a “controlled committee” means any City committee controlled by an elective City officer or candidate for elective City office, including any City campaign, officeholder, legal defense fund, or ballot measure committee.

2. For purposes of this subsection, “prohibited fundraising activity” means:

- (a) Requesting, either orally or in writing, that another person make a contribution;
- (b) Inviting a person to a fundraising event;
- (c) Supplying names to be used for invitations to a fundraising event;
- (d) Allowing his or her signature to appear on a solicitation for contributions or invitation to a fundraising event;
- (e) Allowing his or her official title to be used on a solicitation for contributions or invitation to a fundraising event;
- (f) Allowing his or her name to be used on a solicitation for contributions or invitation to a fundraising event;
- (g) Providing the use of his or her home or business to hold a fundraising event;
- (h) Paying for at least a majority of the costs of a fundraising event;
- (i) Hiring another person to conduct a fundraising event;
- (j) Delivering a contribution, other than his or her own, either in person or by mail in a manner in which he or she communicates his or her identity to the elective City officer, candidate for elective City office, or any of his or her agents; or

(k) Acting as an agent or intermediary in connection with the making of a contribution.

3. For purposes of this subsection, "fundraising event" means an event designed primarily for political fundraising at which contributions for an elective City officer, candidate for elective City office, or any of his or her controlled committees are solicited, delivered or made.

4. The provisions of this subsection shall not apply to a member of a City board or commission who is engaging in fundraising activity on behalf of his or her own candidacy or controlled committee for elective office.

D. No person shall receive or personally deliver or attempt to deliver a contribution in City Hall, or other City office building, or in any office for which the City pays the majority of the rent. Space in a City office building or other City property that is routinely made available for rent by the public and that is rented for a campaign related event is excluded from this prohibition.

1. For purposes of this subsection, "personally deliver" means to deliver a contribution in person or to cause a contribution to be delivered in person by an agent or intermediary;

2. For purposes of this subsection, "receive" includes the receipt of a campaign contribution delivered in person but does not include a campaign contribution received by mail if it is forwarded to the campaign treasurer of the candidate, or his or her controlled committee, within seven working days of its receipt.

**California Government Code Section 82015. Contribution.,** in pertinent part, states:

(a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

...

**2 California Code of Regulations Section 18215. Contribution.,** in pertinent part, states:

(a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

- (A) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure;

...