

CITY OF LOS ANGELES
CALIFORNIA

CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
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September 12, 2008

Via Facsimile and U.S. Mail

Francine Oschin
Oschin Partners, Inc.
16060 Ventura Boulevard
Suite 150-329
Encino CA 91436

Re: CEC Advice No. 2008-06

Dear Ms. Oschin:

This letter is a response to your August 7, 2008, request for advice regarding your possible involvement in a transportation project for Council District 12. Your question and the Commission's advice are based on the facts that you provided.

Section 705 of the Los Angeles City Charter (Charter) authorizes the Ethics Commission to provide formal advice regarding the City's campaign finance, ethics, and lobbying laws. When applicable, and with the concurrence of the City Attorney's office, the Commission's written advice may also include an analysis of related provisions of the California Political Reform Act of 1974 (PRA), when terms used in City law are defined there. The Commission does not advise about other City, state, or federal laws, however, because those laws do not fall within the Commission's jurisdiction.

Formal written advice provides the requestor with the immunity in Charter § 705(b). However, the immunity does not address or apply to any past actions by the requestor. Under Los Angeles Administrative Code (LAAC) § 24.1.1(f)(2)(K), immunity is limited to the requestor and to the specific facts contained in this advice.

QUESTION

May a registered City lobbyist contract with the City to administer a transportation management association when at least one of the lobbyist's clients is a transportation entity?

CONCLUSION

The City's ethics laws do not prohibit a lobbyist from contracting with the City, even when the lobbyist has a client who could be affected by the lobbyist's contract work. However,



there may be conflict-of-interests concerns for both the lobbyist and the City, which should be addressed to the City Attorney's office.

RELEVANT FACTS

You have provided the following facts, which we have determined are relevant to your request:

1. You are currently registered as a lobbyist with the City. You have recently taken on a new client, which is a taxi company franchised in the City.
2. To respond to the Los Angeles Metropolitan Transportation Authority's (Metro's) extension of the Orange Line and the anticipated increase in rail ridership, Councilmember Smith has asked you to create and administer a transportation management association to coordinate transit options from the Chatsworth Depot and Metrolink Station to employment areas within Council District 12.
3. In that capacity, you would form a committee or board of business leaders in Council District 12, establish a central database of transportation resources, solicit funding from large area businesses, and advocate for commuter transit options between the rail station and an individual's place of employment. Those transportation options may include vans, shuttles, taxis, and shared vehicles.
4. Councilmember Smith has informed you that he envisions funding your services with money in the City's portion of Metro's next "call for projects" or from a portion of the funding for the Orange Line project.

APPLICABLE LAWS

The Los Angeles City Charter (Charter) places three sets of laws within the jurisdiction of the City Ethics Commission: campaign finance laws, governmental ethics laws, and lobbying laws. The Municipal Lobbying Ordinance (MLO) provides the bulk of the regulations regarding lobbying activity within the City. Los Angeles Municipal Code (LAMC) §§ 48.01 *et seq.*

The MLO requires lobbyists and lobbying firms to register with the Ethics Commission. LAMC § 48.07. In addition, lobbyists, lobbying firms, and lobbyist employers are required to submit quarterly reports regarding their lobbying activities in the City, as well as other City-related activities. LAMC § 48.08. Among the items that must be disclosed in a quarterly report is information regarding a contract that a lobbyist or lobbying firm has with the City, including the services provided and the amount of compensation received. LAMC §§ 48.08(B)(11) and (C)(14).

In LAMC § 48.04, the MLO also places specific prohibitions on the conduct of lobbyists and lobbying firms. Those entities are prohibited from doing any of the following:

1. Committing an act with the intent to place a City official under personal obligation to the lobbyist, the lobbying firm, or an employer or client of the lobbyist or lobbying firm.
2. Fraudulently deceiving or attempting to deceive a City official regarding a material fact that is pertinent to pending or proposed municipal legislation.
3. Causing or influencing the introduction of municipal legislation for the purpose of thereafter being employed or retained to secure its passage or defeat.
4. Causing a communication to be sent to a City official in the name of a nonexistent person—or in the name of an existing person without that person's consent.
5. Making, arranging for, or acting as an intermediary in a payment to a City official, if the arrangement or the payment violates the Governmental Ethics Ordinance.

In addition to the MLO's regulations regarding conduct by City lobbyists, the Governmental Ethics Ordinances places some restrictions on the conduct of City officials who interact with lobbyists. For example, an elective City officer is required to disclose in writing whenever the officer participates in making or attempts to influence a City decision on a matter regarding which a lobbying entity has attempted to influence the officer, if the lobbying entity has made contributions valued at \$7,000 or more to the City officer in the prior 12 months. LAMC § 49.5.16(A)(1).

That same disclosure is also required of the City officer if the lobbying entity has raised a threshold amount of funds for the City officer or has had a business relationship with the City officer in the prior 12 months. LAMC §§ 49.5.16(A)(2) and (3). A business relationship exists when the City officer or one of his controlled committees pays the lobbying entity to provide professional campaign services for the City officer, pays the lobbying entity more than \$1,000 in a calendar quarter to provide other professional services related to the City officer's status or activities, or receives from the lobbying entity gifts or services, such as free legal services, valued at more than \$1,000. LAMC §§ 48.02 and 49.5.16(A)(3).

There are also City laws outside the Ethics Commission's jurisdiction that apply to conflicts of interests among City officials. For example, the Charter requires the City Attorney to provide, when requested, written opinions regarding whether a City official's participation in a City decision violates state law or is not in the public interest. Charter § 222(a).

Finally, state law also sets standards related to a government official's potential conflicts of interests. For example, a government official (a term that includes some City consultants; *see, e.g.*, LAMC § 49.5.2) may not participate in making or use his official position to attempt to influence a governmental decision, including a decision regarding a government contract, in which the official has or has reason to know he has a financial interest. Cal. Gov't Code §§ 1090 and 87100. In addition, aside from some very narrow exceptions, a government agency body or board may not be a party to a contract in which one of its members has a financial interest. Cal. Gov't Code § 1090.

ANALYSIS

In general, the MLO requires specific conduct of persons who qualify as lobbying entities. In contrast, aside from LAMC § 48.04, the MLO does not generally prohibit conduct on the part of a lobbying entity. The broader governmental ethics regulations that apply to City officials do not apply to lobbying entities.

Based on the facts you have provided, it does not appear that contracting with the City to administer a transportation management association for Council District 12 would involve conduct that is prohibited by LAMC § 48.04. Accordingly, the City's lobbying and ethics laws do not prevent you from entering into such a contract. You would be required, however, to identify the contract in your quarterly lobbying reports and specify the services you provided and the amount of compensation you received under the contract during the reporting period. LAMC §§ 48.08(B)(11) and (C)(14).

Although the laws within the Ethics Commission's jurisdiction do not prohibit you from entering into the proposed contract, there may be a question regarding the propriety of doing so. Because one of your clients (a source of income to you) could be affected by the actions of the transportation management association, the state's conflict-of-interests laws might apply to you in your capacity as a City consultant. We urge you to contact the City Attorney's office for further advice regarding the proposed contract, including the proposed scope of services, and any additional restrictions that might apply to you if you were to enter into it.

Finally, City and state laws could also apply to the City and the City officials who would be involved in the proposed contract. For example, an elected City officer might be required to disclose her participation in the making of the contract if you had a business relationship with, made contributions to, or engaged in fundraising for her. LAMC § 49.5.16(A). As a side note, the proposed contract would not create a business relationship between you and Councilmember Smith, unless he or one of his controlled political committees paid for your services to the transportation management association. LAMC § 49.5.16(A)(3)(b). City officials may request formal or informal advice from the Ethics Commission and may also request advice from the City Attorney's office regarding their participation in this matter.

Thank you for contacting us with this request. If you have any questions, please do not hesitate to contact me or Heather Holt, our Director of Policy & Legislation, at (213) 978-1960.

Sincerely,



LeeAnn M. Pelham
Executive Director