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CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
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November 4, 2008

Via Facsimile

Douglas L. Barry, Fire Chief
Los Angeles Fire Department
200 North Main Street
Los Angeles CA 90012

Re: CEC Advice No. 2008-10

Dear Chief Barry:

This letter is in response to your request for formal advice dated October 29, 2008, regarding whether attending a conference paid for by an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code would violate ethics laws. 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. However, the Commission does not advise about other City, state, or federal laws, 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. Additionally, only written advice from the Fair Political Practices Commission (FPPC) provides immunity under the Political Reform Act.

QUESTION

May a City official attend a conference that is entirely paid for by an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code without violating any ethics laws?



CONCLUSION

Under City law, a City official may accept payments for travel expenses, as long as the source is not a restricted source, which could include a lobbying entity, and the payments are not intended to influence an official act. State law does not prohibit or limit a City official's ability to accept payments for travel expenses (including transportation, lodging, and subsistence) from a 501(c)(3) organization, as long as the travel is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy. However, the gift must be disclosed on the official's next statement of economic interests.

RELEVANT FACTS

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

1. You are the fire chief for the Los Angeles Fire Department (LAFD).
2. The American Israel Education Foundation (AIEF) have invited you to attend a "Mission to Israel" sponsored by AIEF and the International Association of Fire Chiefs. The conference is scheduled for November 9-16, 2008, and AIEF will pay for all trip-related expenses.
3. The conference is designed to expose participants to Israel's experience in responding to terrorist threats, to allow participants to explore increased cooperation between their departments and Israel in the area of emergency response, and to explore foreign policy and national security issues affecting Israel and the United States. Participants will receive briefings on continuing threats to the United States and Israel; presentations by Israeli first responders, including fire and rescue, bomb disposal units, and police; tours of trauma centers and presentations on responses to mass casualty incidents; demonstrations of Israeli technologies in homeland security and emergency response; and a tour of the security barrier erected between Israel and the West Bank.
4. AIEF is a nonprofit organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. Its mission is to provide educational programming about the relationship between the United States and Israel.
5. AIEF is not a City lobbying entity and is not seeking or doing business with the LAFD. In the last year, AIEF has not attempted to influence you in any legislative or administrative action that would have a direct material financial effect on AIEF. AIEF is not a party to a proceeding involving a license, permit, or other entitlement for use that is currently pending before you or that was pending before you in the previous nine months.

APPLICABLE LAWS

To protect governmental integrity and promote the public's confidence in City decisions, both state and City laws apply to gifts of travel made to City officials. The Governmental Ethics Ordinance (GEO) defines a City official as an individual who is an officer, employee, member, commissioner, or consultant of a City agency required to adopt a conflict of interests code subject to City Council approval and who is required to file statements of economic interests under that conflict of interests code. Los Angeles Municipal Code (LAMC) § 49.5.2.

The GEO places limits on gifts made to City officials, including travel advances and reimbursements. For example, a City official may not solicit or accept (and no person may offer or make) an advance or reimbursement for travel expenses with the intent that the City official will be influenced by the gift in performing an official act. LAMC § 49.5.10(B)(1). In addition, a City official may not knowingly solicit or accept from a restricted source (and a restricted source may not offer or make) an advance or reimbursement for travel expenses. LAMC § 49.5.10(B)(2). In both of these provisions, "travel expenses" include related lodging and reasonable subsistence expenses.

The GEO defines a restricted source for City officials who are not high level filers or high level officials as any of the following (LAMC § 49.5.2):

1. A lobbying entity seeking to influence decisions made by the official's agency;
2. A person doing or seeking to do business with the official's agency;
3. A person who, in the previous year, knowingly attempted to influence the official in a legislative or administrative action that would have a direct material financial effect on the person; or
4. A person who is a party to a proceeding involving a license, permit, or other entitlement for use that is or in the previous nine months was pending before the official or a body of which the official is a voting member.

In addition, City lobbyists and lobbying firms are prohibited from acting as agents or intermediaries in another party's gift to a City official. LAMC § 49.5.10(A)(5). As a result, they may not make or arrange for a gift of any kind, including travel, from a third person to a City official.

The GEO does contain a number of exceptions to the prohibition on gifts of travel. Paying for a City official's travel is not prohibited if the payment is a gift to the City or one of its agencies, rather than a gift to the City official. LAMC § 49.5.10(B)(4). The prohibition does not apply to travel payments made by a campaign committee, a nonprofit organization of which the City official is a member, or an organization of which the City, a City agency, or the official is a member acting in an official City capacity. LAMC § 49.5.10(B)(6). Finally, the prohibition does not apply to travel paid for by a foreign or domestic government agency. LAMC § 49.5.10(B)(7).

In addition to City law, there are also state laws that apply to gifts of travel. For example, state law limits the total value of gifts that a government official may receive from a single source in a single year. Currently, the limit is \$390 per year. See, e.g., Cal. Gov't Code § 89503(a); 2 Cal. Code Regs. § 18940.2.

However, state law does not prohibit or limit payments, advances, and reimbursements for travel (transportation, lodging, and subsistence) if the travel is "reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy" and the travel meets one of the following criteria: a) it occurs in connection with a speech the traveling official gives; or b) it is provided by a government agency, a bona fide educational institution, a nonprofit organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, or a person domiciled outside the United States who substantially satisfies the requirements for 501(c)(3) tax-exempt status. Cal. Gov't Code § 89506(a); 2 Cal. Code Regs. § 18950.1. Travel that meets either of those criteria must be reported on the traveling official's statement of economic interests. Cal. Gov't Code § 89506(c).

ANALYSIS & CONCLUSION

As the City's fire chief, you are an employee of a City agency. You are also required to file statements of economic interests under the LAFD's conflict of interests code. Therefore, you are a City official who is subject to the provisions of the GEO. You may not accept gifts of travel with the intent that the gift will influence you in performing an official act, and you may not accept gifts of travel from a restricted source.

Your position is not identified in the GEO as a high level position (*see* LAMC § 49.5.2), so restricted sources for you are persons who lobby the LAFD, seek or do business with the LAFD, have knowingly attempted to influence you in the previous year regarding a matter that directly affects them financially, or are parties to entitlement proceedings pending before you either currently or in the previous nine months. You have indicated that AIEF does not fall within any of those categories. Accordingly, AIEF is not a restricted source to you; and the GEO does not prohibit you from accepting travel payments from AIEF.

State law does limit your ability to accept gifts of travel, except when the travel is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy and is either taken in connection with a speech you will be giving or provided by a government agency, an educational institution, a 501(c)(3) organization, or a person who substantially qualifies as a 501(c)(3) organization but is domiciled outside the United States. Because AIEF is a 501(c)(3) organization, state law does not prohibit or limit your ability to accept payments for transportation, lodging, and subsistence from AIEF for travel that is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy.

AIEF states that the purpose of the conference is to educate participants about issues such as homeland security, terrorist threats, and fire and rescue responses to incidents of mass

casualties. The conference is also designed to explore foreign policy and national security issues and to promote emergency response cooperation between Israel and participating agencies. These appear to be matters that are reasonably related to a governmental purpose or to an issue of state, national, or international public policy. See, e.g., *Federighi Advice Letter*, FPPC No. A-07-139; *Chang Advice Letter*, FPPC No. A-04-0158. As a result, state law does not prohibit or limit your ability to accept payment from AIEF for travel expenses, including transportation, lodging, and subsistence, that are related to the conference. You will, however, be required to disclose the payments you receive from AIEF on your next statement of economic interests (California Form 700).

If AIEF or another party provides you with other items, those gifts may be subject to gift limits and may be reportable. In addition, if the total value of the gifts you receive from AIEF is \$390 or more, you may be required to disqualify yourself from participating in a governmental decision that affects AIEF during the 12 months following your travel. If such a matter arises, you should seek further assistance from the City Attorney.

Thank you for requesting advice from the Ethics Commission. If you have any questions regarding this matter, please do not hesitate to contact our office.

Sincerely,



LeeAnn M. Pelham
Executive Director