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CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
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February 10, 2009

Stacey G. Jones
Senior Vice President
Halcrow, Inc.
6700 East Pacific Coast Highway, Suite 180
Long Beach, CA 90803

Re: CEC Advice No. 2009-01

Dear. Ms. Jones:

This letter is in response to your request for formal advice dated January 8, 2009, regarding restrictions that may apply to you as a former City official. 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, when terms used in City law are defined there. 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.

QUESTION

What restrictions apply to me, as a former Chief Harbor Engineer for the Port of Los Angeles (the Port) who left City service in April 2006, when pursuing requests for proposals (RFPs) with the Port?



CONCLUSION

You are subject to a permanent ban on receiving compensation to attempt to influence the City regarding matters in which you were personally and substantially involved. You are also prohibited from disclosing any confidential information that you acquired during City service for personal gain.

RELEVANT FACTS

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

1. You worked for the Port from June 1981 to April 30, 2006. The last position you held with the Port was Director of Engineering Development (Chief Harbor Engineer). You held that position for approximately two years prior to your departure.

2. As Chief Harbor Engineer for the Port, your job duties and responsibilities included the following:

- a. Overseeing the Engineering and Construction Management Divisions responsible for implementing the Port's capital improvement program, as approved by the Executive Director and the Los Angeles Board of Harbor Commissioners;
- b. Assisting in the development of the capital improvement program budget, in consultation with other Port directors;
- c. Overseeing the development of the operations budget for the Engineering and Construction Divisions, including staffing, consultant services, and implementation of the capital improvement program;
- d. Overseeing the design and construction of Port facilities; and
- e. Overseeing federal and state grant applications for the Engineering and Construction Divisions and implementing associated programs.

3. You have been employed by Halcrow, Inc. as West Coast Regional Director, North America since September 5, 2006. Halcrow is a firm that provides planning, design, and management services for marine infrastructure development projects.

4. Halcrow routinely responds to RFPs issued by the Port for marine development projects. You would like to respond to those RFPs on behalf of Halcrow, serve as project director, participate in presentations of proposals to the Port, and subsequently oversee projects awarded by the Port to Halcrow. Currently, you do not participate in Halcrow's RFP process with the Port.

5. In responding to RFPs by the Port, you would not participate in any RFP where, during your employment with the Port, you may have provided direction for the development of

that RFP, or where you may have participated in the development of the annual budget approval for any project that is the subject of that RFP.

APPLICABLE LAWS

To prevent former City officials from exercising or appearing to exercise improper influence over City decisions, the Governmental Ethics Ordinance (GEO, Los Angeles Municipal Code (LAMC) §§ 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 as a person who is required to file statements of economic interests¹ pursuant to a City agency’s conflict of interests code. LAMC § 49.5.2. A City “agency” is defined as an office that is required to adopt a conflict of interests code² subject to City Council approval. *Id.*

There are two types of restrictions that apply to former City officials: 1) a time-based ban on attempting to influence decisions for compensation; and 2) a permanent ban on attempting to influence, for compensation, a matter in which the City official was personally and substantially involved. LAMC § 49.5.11.

For City officials who were not high-level officials³, the first restriction prohibits direct communications with an agency if all of the following apply:

1. The purpose of the communication is to attempt to influence an action or decision on a matter pending before that agency;
2. The communication is made on behalf of a person other than an agency; and
3. The communication is compensated.

LAMC § 49.5.11(D). The ban applies to any agency in which the official served in the 12 months prior to leaving City service and lasts for one year afterward. *Id.*

The second restriction applies to all former City officials who personally and substantially participated during their City tenures in a decision, proceeding, claim, piece of legislation, or other specific matter. It prohibits them from attempting to influence any action on that matter if all of the following apply:

1. The matter is still pending with the City, the City is a party to the matter, or the City has a direct or substantial interest in the matter;

¹ The California Political Reform Act (Government Code §§ 81000 *et seq.*) requires certain local public officials to file personal financial disclosure reports known as statements of economic interests (also known as the California Form 700). See also LAMC §§ 49.5.6 and 49.5.7.

² The Political Reform Act also requires agencies to adopt and implement conflict of interests codes, to identify which officials must file statements of economic interests.

³ High-level officials are identified in LAMC § 49.5.2. The term includes elected officials, certain members of their staffs, and some enumerated departmental executives.

2. The attempt is made on behalf of a person other than an agency; and
3. The attempt is compensated.

LAMC § 49.5.11(A). A City official “personally and substantially” participates in a matter by, among other things, making a decision, making a recommendation, conducting research, investigating, or rendering advice. *Id.* In addition, former City officials are prohibited from receiving compensation to advise or assist others who are attempting to influence action on those matters for compensation. LAMC § 49.5.11(B).

The “personal and substantial” ban does not apply in limited circumstances. For example, it does not prohibit a former City official from making a statement based on the official’s own special knowledge, as long as the official does not receive compensation other than what is required by law or regulation for witnesses. LAMC § 49.5.11(C)(1). It also does not apply if a court or agency makes written findings that the former City official has “outstanding and otherwise unavailable qualifications” necessary in a particular matter and that the public interest would be served by the former official’s participation. LAMC § 49.5.11(C)(2). Finally, the ban does not apply to a former official’s communication in a proceeding before a court or agency when at least five years have passed since the former official left City service and the former agency determines that the public interest would not be harmed. LAMC § 49.5.11(C)(3).

“Attempting to influence” means “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. “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.” *Id.* “Municipal legislation” is any legislative or administrative matter pending before an agency but does not include a request for advice, a direct response to an enforcement proceeding with the Ethics Commission, a ministerial action, an action relating to a collective bargaining agreement or memorandum of understanding, a proceeding before the Civil Service Commission, or the preparation of items that must be submitted to the City’s planning department. LAMC § 48.02.

Neither the time-based ban nor the “personal and substantial” ban applies to former City officials who represent themselves or their immediate family members, in their individual capacities, in connection with any matter pending before a City agency. LAMC § 49.5.11(H).

All current and former City officials are prohibited from receiving “pecuniary gain or personal advantage or privilege” by using or disclosing confidential information that they acquire in the course of their official duties with the City. LAMC § 49.5.3.

ANALYSIS & CONCLUSION

Because you were required, as the Chief Harbor Engineer, to file statements of economic interests under the Port’s conflict of interests code, you were a City official. You were not a

high-level official, because your position and duties are not identified in LAMC § 49.5.2.

The GEO does not restrict the type of employment in which you may engage after leaving City service. However, the GEO does restrict your compensated attempts to influence action or decisions on matters that are pending before certain agencies.

One-Year Ban

You worked for the Port from June 1981 to April 30, 2006. Under the GEO, you were prohibited from receiving compensation to communicate (either directly or through an agent) with the Port on behalf of another person for the purpose of promoting, supporting, opposing, or seeking to modify or delay any action on any City matter for one year following your separation from City service. LAMC § 49.5.11(D).

Starting April 30, 2007 (one year after the date you resigned from City service), you have been permitted to engage in compensated attempts to influence and communicate with the Port on behalf of clients, but those attempts remain subject to the “personal and substantial” ban, below.

“Personal and Substantial” Ban

Since September 5, 2006, you have been employed by Halcrow, Inc., which provides planning, design, and management services for marine infrastructure development projects. Halcrow routinely responds to RFPs issued by the Port for marine development projects. Currently, you do not participate in Halcrow’s RFP process with the Port. However, you would like to respond to Port RFPs on behalf of Halcrow, serve as project director, participate in presentations of proposals to the Port, and subsequently oversee projects awarded by the Port to Halcrow.

As the Port’s Chief Harbor Engineer, you oversaw the divisions responsible for implementing the Port’s capital improvement program, assisted in developing the capital improvement program budget, oversaw the design and construction of Port facilities, oversaw federal and state grant applications, and implemented programs associated with federal and state grants. In performing these functions, you made key decisions and recommendations on a variety of issues.

By engaging in these activities, you “personally and substantially” participated in substantive matters during your City tenure. Accordingly, you are prohibited from receiving compensation for the purpose of promoting, supporting, opposing, or seeking to modify or delay, on behalf of another person, any matter in which you made a decision or recommendation, conducted research, investigated, or rendered advice. Furthermore, you may not receive compensation to assist or advise another person who is attempting to influence City action on those matters.

This ban lasts as long as the matter is pending with the City or the City is a party to or has a substantial interest in the matter. However, the ban would not apply if you were an uncompensated witness making a statement based on your own special knowledge; if a court or agency made written findings that you have "outstanding and otherwise unavailable qualifications" that are necessary to the matter and the public interest would be served by your participation; or if the City determines, after April 30, 2011, that the public interest would not be harmed by your communication in a proceeding before a court or agency.

You have noted that, in your work with Halcrow, you will not participate in an RFP if, during your service to the City, you provided direction for the development of the RFP or participated in the development of the annual budget for the project. The "personal and substantial" ban applies to those matters and activities; but it also applies more broadly, to any matter regarding which you made a decision or recommendation, conducted research, investigated, or rendered advice. If you have a question about whether you may represent or advise Halcrow in a specific matter given your prior responsibilities with the City, please contact our office so that we may provide further guidance.

As an additional note, if the matter at issue involves a contract in which you participated while working for the City, other laws could also apply, including state laws. For example, California Government Code § 1090 relates to a public official's financial interest in government contracts. The City Attorney's office can provide additional advice regarding the laws that may apply in this situation.

Confidential Information

Finally, as a reminder, you may not disclose any confidential information that you acquired in the course of your City employment for pecuniary or personal gain or advantage. This applies to all current and future business endeavors.

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

Sincerely,



LeeAnn M. Pelham
Executive Director