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CITY ETHICS COMMISSION

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February 12, 2009

Joel B. Miller  
Vice President/Principal  
Psomas  
555 South Flower Street, Suite 4400  
Los Angeles, CA 90071

**Re: CEC Advice No. 2009-02**

Dear Mr. Miller:

This letter is in response to your request for formal advice dated January 13, 2009, regarding gift restrictions that may apply to lobbying firms. 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**

*May a lobbying firm give manuals regarding environmental, planning, and zoning laws to City officials?*



## CONCLUSION

A lobbying firm may not give a gift of any value to a City official for whom the lobbying firm is a restricted source. However, informational materials that are exclusively for official use and are valued at less than \$250 are not considered gifts. You may provide the manuals because they qualify as informational materials and are valued at \$12 each.

## RELEVANT FACTS

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

1. The Consulting Engineers and Land Surveyors of California (CELSOC), a state professional organization, annually updates a series of manuals that are used by land use engineers and surveyors. The manuals include information about the California Environmental Quality Act, the Subdivision Map Act, and various planning and zoning laws. The manuals include recent state code amendments and are quick-reference guides to pertinent laws. Each manual costs \$12.00.
2. Psomas is a consulting engineering firm that specializes in land development, water, and transportation. Psomas is also a City lobbying firm, and its lobbyists are registered to lobby any City agency.
3. Psomas would like to offer the CELSOC manuals to a dozen or more City employees, principally in the Planning Department and the Bureau of Engineering.

## APPLICABLE LAWS

The state's Political Reform Act (PRA) and the City's Governmental Ethics Ordinance (GEO) regulate the receipt of gifts by City officials. As defined in the Los Angeles Municipal Code (LAMC), a "City official" is anyone who is required to file statements of economic interests pursuant to a City agency's conflict of interests code.<sup>1</sup> LAMC § 49.5.2. Both the state and the City define "gift" as a payment for which consideration of equal or greater value is not received. Cal. Gov't Code § 82028(a); LAMC § 49.5.2.

There are, however, exceptions to the definition of "gift". The GEO states that the term "gift" does not include the following:

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<sup>1</sup> The PRA (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. The PRA also requires agencies to adopt and implement conflict of interests codes, to identify which officials must file statements of economic interests.

1. Informational material, such as books, reports, pamphlets, calendars, periodicals, seminars, or informational conferences, if each of the following applies:
  - a. It is exclusively for official or office use;
  - b. It is valued at less than \$250 (except that informational material received from a government agency may be of any value); and
  - c. It is not a payment for travel or reimbursement of any expenses.
2. Items that are not used and, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.
3. Items received from certain of the recipient's family members or from the recipient's partner in a bona fide dating relationship, as long as the donor is not acting as an agent or intermediary for a person who does not qualify for this exception.
4. Campaign contributions that must be reported under the PRA.
5. A devise or inheritance.
6. Personalized plaques and trophies valued at less than \$250.
7. Food, beverages, and occasional lodging provided in an individual's home.
8. Items that are valued at \$100 or less and are given by an individual to a City official or to a member of the official's immediate family in connection with a non-recurring ceremonial occasion.

LAMC § 49.5.2. Similar exceptions also exist under state law, including an exception for informational material. *See, e.g.*, Cal. Gov't Code § 82028(b). State law defines informational material as "any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties . . ." 2 Cal. Code of Regs. § 18942.1. California's Fair Political Practices Commission has stressed that informational material must have a strong link between the informational value and the duties performed by the public official. *See, e.g.*, FPPC Advice to Gray and Warren, No. A-08-191 (December 17, 2008).

The GEO places restrictions on gifts that are given to City officials. For example, a person may not offer or make—and a City official may not solicit or accept—a gift with the intent that the gift will influence the City official in performing an official act. LAMC § 49.5.10(A)(1). In addition, a City official may not knowingly solicit a gift from a restricted source, and a restricted source may not give a City official more than \$100 worth of gifts in a calendar year. LAMC §§ 49.5.10(A)(2)–(3). Under LAMC § 49.5.2, a "restricted source" includes the following:

1. A lobbying entity seeking to influence decisions made by the official's agency (or any City agency, for high-level officials and high-level filers<sup>1</sup>);
2. A person seeking to do business with the official's agency (or any City agency, for high-level officials and high-level filers);
3. A person who knowingly attempted to influence the official in a matter that would have a direct material financial effect on the person; and
4. A person who is, or in the previous nine months was, a party to a proceeding involving a license, permit, or other entitlement for use before the official or a body of which the official is a voting member.

The GEO also includes gift restrictions that apply specifically to lobbyists and lobbying firms. They may not make a gift of any value to a City official for whom they are a restricted source—and a City official may not accept such a gift. LAMC § 49.5.10(A)(4). In addition, a lobbyist or lobbying firm may not act as an agent or intermediary in making or arranging for a gift from another person to any City official. LAMC § 49.5.10(A)(5).

There are exceptions to the GEO's restrictions on gifts to City officials. The restrictions do not apply to items that a City official turns over to the City within 30 days, meals at an event at which the City official speaks or participates, travel expenses and meals paid for by a government agency, items given to a City official by a union that represents the official, travel expenses paid for by a campaign committee, travel expenses paid for by a nonprofit organization to which the City official belongs, travel expenses paid for by an organization in which the City or the City official is a member acting in an official City capacity, and gifts to an appointed City official for legal expenses related to an enforcement action brought under state or City ethics laws. LAMC § 49.5.10(A)(7).

## ANALYSIS & CONCLUSION

Because Psomas is a lobbying firm, it is prohibited from giving a gift of any value to a City official for whom it is a restricted source. Because of the land use work that Psomas does, and the fact that its lobbyists are registered to lobby any City agency, Psomas is a restricted source for City officials in the Planning Department and the Bureau of Engineering and would be prohibited from directly giving them gifts of any value. As a lobbying firm, Psomas is also prohibited from acting as another person's agent or intermediary in the giving of a gift to any City official.

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<sup>1</sup> High-level officials and high-level filers are defined in LAMC § 49.5.2. The terms include elected officials, certain members of their staffs, the members of the City Ethics Commission, the commission's executive officer, and other specified departmental executives.

However, informational materials (books, reports, pamphlets, etc.) are not considered gifts under City law when they are given exclusively for official or office use and are valued at less than \$250. Informational material is not considered a gift under state law when the informational value of the item assists the recipient in the performance of official duties. The CELSOC manuals provide information regarding laws that pertain to the official work of the Planning Department and the Bureau of Engineering and are valued at \$12.00 each—well below the \$250 limit. Therefore, the CELSOC manuals qualify as informational materials that Psomas may give, up to the \$250 limit, to City officials in the Planning Department and the Bureau of Engineering who will use the books in the performance of their official duties.

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,

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

LeeAnn M. Pelham  
Executive Director