

CITY OF LOS ANGELES
CALIFORNIA

CITY ETHICS COMMISSION

CITY ETHICS COMMISSION
200 N. SPRING STREET
CITY HALL - 24TH FLOOR
LOS ANGELES, CA 90012

(213) 978-1960
(213) 978-1988 FAX
<http://ethics.lacity.org>



October 23, 2009

Mr. Richard Benbow III

Re: CEC Advice No. 2009-05

Dear Mr. Benbow:

This letter is a response to your request for formal advice dated October 5, 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 actions that predate this letter. 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 post-City-service restrictions apply to me, a former telecommunications regulatory officer with the City's Information Technology Agency (ITA), when working as a senior director for government relations with a local cable service provider?

CONCLUSION

You may not receive compensation to attempt to influence ITA until August 14, 2010. You are subject to a permanent ban on receiving compensation to lobby any City agency regarding matters in which you were personally and substantially involved. You are also subject to a permanent ban on receiving compensation to assist or advise a person who is attempting to



influence action on those matters. Finally, you are prohibited from disclosing any confidential information that you acquired during City service for personal gain.

RELEVANT FACTS

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

1. You were a telecommunications regulatory officer with ITA. That position is designated in ITA's conflict of interests code as one that must file statements of economic interests.
2. From July 2002 to December 2008, you served as the manager of customer service for the Cable Franchise Division. In this role, you monitored customer complaints logged by City residents against cable television providers operating in the City and facilitated resolutions to those complaints. You also monitored cable operator compliance with federal, state, and local customer service standards.
3. In December 2008, you were transferred within ITA to the communications department. In that role, you administered telephone access codes, pagers, and cellular phones for ITA employees. You also verified the use and operation of City telephone land lines and monitored cell phone usage by ITA employees. You held this position until August 14, 2009.
4. On August 17, 2009, you began working for Time Warner Cable as a senior director of government relations. In that position, you respond to customer complaints about service quality and respond to requests for information from the City. You also ensure Time Warner's compliance with federal and state laws related to providing cable television in Southern California.

APPLICABLE LAWS

To prevent former City officials from exercising or appearing to exercise improper influence over City decisions, the Governmental Ethics Ordinance (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

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.

attempting to influence, for compensation, a matter in which the City official was personally and substantially involved. LAMC § 49.5.11.

For a former City official who was not an elected officer or a high level official³, the first restriction prohibits direct communications with the City official's former 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 the 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(E). The ban applies to any agency in which the City official served in the 12 months prior to leaving City service and lasts for 12 months 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;
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).

³ High level officials are identified in LAMC § 49.5.2. The term includes elected officials, some departmental executives, and other officials who have "significant decision-making responsibilities relative to governmental policy." LAMC § 49.5.2.

“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 to file statements of economic interests under ITA’s conflict of interests code, you were a City official. You were not a high-level official, because the position you held is not identified in LAMC § 49.5.2.

City law does not restrict the type of employment in which you engage in after leaving City service. However, your status as a former City official does restrict your compensated attempts to influence action or decisions on matters pending before City officials under certain circumstances.

One-Year Ban

You worked for ITA from July 2002 to August 14, 2009. For one year following your separation from City service, you may not receive compensation to communicate (either directly or through an agent) with ITA on behalf of another person for the purpose of promoting, supporting, opposing, or seeking to modify or delay action on a matter that is pending before ITA. The ban does not prohibit you from communicating with other City agencies. Additionally, you may represent yourself or a member of your immediate family in connection with a matter pending before any City agency.

Beginning August 14, 2010 (one year after the date you left City service), you may engage in compensated attempts to influence and communicate with ITA on behalf of others. However, those attempts remain subject to the “personal and substantial” ban discussed below.

"Personal and Substantial" Ban

City officials are prohibited from receiving compensation to influence matters in which they were personally and substantially involved while in City service. In addition, they may not receive compensation to assist or advise another person who is attempting to influence 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, except for a few narrow circumstances in which the ban does not apply.

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. It is likely that, in performing your duties for the City, you engaged in such activities. For example, facilitating resolutions to customer complaints and helping to ensure cable operator compliance with federal, state, and local customer service standards can both involve research, advice, or recommendations.

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.

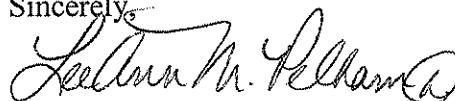
This ban lasts as long as the matter is pending with the City or the City is a party to or has a substantial interest in the matter. However, the ban would not apply if you were an uncompensated witness making a statement based on your own special knowledge; if a court or agency made written findings 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 August 14, 2014, that the public interest would not be harmed by your communication in a proceeding before a court or agency.

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 any current or future business endeavors.

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