

CITY OF LOS ANGELES
CALIFORNIA

CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
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LOS ANGELES, CA 90012

November 14, 2007

Via Electronic and U. S. Mail

Mr. Peter Gutierrez
2658 Monogram Avenue
Long Beach, CA 90815

Re: CEC Advice No. 2007-05

Dear Mr. Gutierrez:

This letter is in response to your request for formal advice dated October 29, 2007, regarding possible restrictions that may apply to your post-City service at the law firm of Latham & Watkins LLP. Your question and the Commission's response, based on the facts you provided in your letter, are detailed below.

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 post-City-service restrictions apply to me as a former Senior Assistant City Attorney who supervised the Los Angeles City Attorney's Real Estate and Economic Development Practice Group?

CONCLUSION

We have made the following conclusions based on the application of relevant City laws to the facts that you have provided:



1. You are subject to a one-year ban on receiving compensation to lobby any City agency.
2. 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, as long as those matters are pending with any City agency.
3. You may not receive financial gain or personal advantage through any confidential information acquired during your official duties with the City.

RELEVANT FACTS

You have informed us of the following facts, which we have determined are relevant to your request:

1. You served as a Senior Assistant City Attorney with the Los Angeles City Attorney's Real Estate and Economic Development Practice Group for two years and seven months prior to October 31, 2007, which is the date you left City service.
2. You filed statements of economic interests, pursuant to the conflict of interest code for the City Attorney's Office.
3. You will begin working as an attorney at the law firm of Latham & Watkins LLP starting November 1, 2007. The firm represents clients in matters currently pending before the City.
4. During your tenure with the City, you represented the City in matters in which Latham & Watkins represented opposing parties.
5. Upon joining Latham & Watkins, you and the firm will institute the following measures to comply with the City's governmental ethics laws:
 - a. You will not represent clients before any City agency or department regarding matters in which you previously represented the City. You will not advise or counsel anyone else regarding those matters, and you will not conduct any work on behalf of Latham & Watkins's clients regarding those matters.
 - b. For a one-year period beginning November 1, 2007, you will not directly communicate with any City agency or department for the purpose of attempting to influence a City decision on behalf of a client.
 - c. You will not disclose any confidential information acquired during the course of your employment with the City to Latham & Watkins or its clients.

SUMMARY OF APPLICABLE LAWS

To prevent former City officials from exercising, or appearing to exercise, improper influence over City decisions, the Governmental Ethics Ordinance [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 by LAMC § 49.5.2 as a person who is required to file statements of economic interests¹ pursuant to a City agency’s conflict of interest code. The term “high level official” includes elected officials and other officials who have “significant decision-making responsibilities relative to governmental policy”, including each Senior Counsel. LAMC § 49.5.2. A City “agency” is an office that is required to adopt a conflict of interest code² subject to City Council approval.

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 a former high level City official who was not an elected officer, the first restriction prohibits direct communications with any City agency for one year after leaving City service 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(D). 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

¹ The California Political Reform Act (Gov. Code Sections 81000-91014) requires certain local public officials and employees to file public, personal financial disclosure reports known as “Statements of Economic Interests – FPPC California Form 700.”

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

receiving compensation to advise or assist others who are attempting to influence action on those matters. LAMC § 49.5.11(B).

“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 a 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

You were required to file statements of economic interests under the conflict of interest code for the City Attorney’s office; therefore, you were a City official. Furthermore, as a Senior Assistant City Attorney, you were a high level official who had significant decision-making responsibilities regarding governmental policy. Your former status as a high level City official restricts your compensated attempts to influence action or decisions on matters pending before City officials under certain circumstances.

One-Year Ban

As a former high level City official, you may not receive compensation to communicate (either directly or through an agent) with any City agency 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. The ban does not prohibit you from representing yourself or a member of your immediate family, as individuals, in connection with a matter pending before any City agency.

Beginning November 1, 2008 (one year after the date you left City service), you may engage in compensated attempts to influence City agencies on behalf of clients, but those attempts remain subject to the “personal and substantial” ban.

"Personal and Substantial" Ban

During your service in the City Attorney's office, you represented the City in legal matters. During the course of that representation, you made decisions and recommendations, conducted research and investigations, and rendered advice. Whenever you engaged in one or more of those activities, you "personally and substantially" participated in that matter.

You are prohibited from receiving compensation to lobby any City agency regarding a matter in which you personally and substantially participated—even after the one-year ban expires—as long as 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. You are also prohibited from receiving compensation to advise or assist anyone else who is attempting to influence action on those matters.

Additional Requirements

In addition to the lobbying prohibitions discussed above, you may not disclose any confidential information that you acquired in the course of your City employment for financial gain or personal advantage. This is a permanent prohibition and applies to any current or future business endeavors.

Finally, as a reminder, City officials who leave City service are required to file a "Leaving Office" statement of economic interests. Your statement must be filed through the City Attorney's office within 30 days of October 31, 2007. If you have questions or would like assistance in completing that statement, please feel free to contact Shannon Prior in our office.

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