

May 14, 2004

VIA FACSIMILE AND U.S. MAIL

CEC Advice No. 2004-07

Mark S. Siegel
American Federation of State, County
and Municipal Employees
Los Angeles, CA 90020

Re: Your Request for Advice Dated April 22, 2004

Dear Mr. Siegel:

This letter is in response to your request for formal advice¹ dated April 22, 2004, regarding possible restrictions that may apply to your post-City service employment. This letter provides confirmation of the informal advice provided to you by Nora Pollock on May 4, 2004, but does not apply to activity that may have taken place prior to your receipt of this letter. Your question and the Commission's response, based on your letter and telephone conversation with Nora Pollock on April 28, and May 13, 2004, are detailed below.

QUESTION

As a former LA STAT Analyst in the Office of the Mayor, what, if any, restrictions apply to my post-City service employment with the American Federation of State, County and Municipal Employees (AFSCME) in lobbying the City Council with regard to the City budget?

¹ Los Angeles Admin. Code § 24.1.1(f)(2)(K) provides that formal written advice provides the requestor with the immunity set forth in Los Angeles City Charter § 705. This formal advice does not address or apply to any past actions by the requestor(s).

RELEVANT FACTS

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

1. You served as an Analyst for the LA STAT program administered by the Office of the Mayor until April 2, 2004. As an LA STAT Analyst, you were a “City official,” but not a “high level official” within the meaning of the City’s Governmental Ethics Ordinance (Los Angeles Municipal Code (LAMC) Sec. 49.5.1 *et seq.*), and filed Statements of Economic Interests pursuant to the Conflict of Interest Code for the Office of the Mayor.
2. LA STAT is a computer tracking system that collects and provides comprehensive performance indicators on a per-Department and a per-community basis to assess City service delivery. As an Analyst for LA STAT, your primary responsibility was to review spreadsheets, graphs, and other data provided by City departments to generate questions for the LA STAT project team to ask City departments about their services and performance. You did not work with the City Council during your tenure with LA STAT, and were not involved in any decision-making with regard to the LA STAT budget or any other aspect of the City budget process or personnel matters.
3. You are now Communications Coordinator for AFSCME. In this capacity, you wish to lobby City Councilmembers and their staffs on behalf of AFSCME members in regard to the proposed 2004-05 City budget. AFSCME represents doctors, nurses, clerical staff, executive secretaries, library staff, and Recreation and Parks staff employed by the City, all of whom could be affected by proposed cuts in the City’s budget for the 2004-05 fiscal year. You wish to urge the City Council to allocate budgetary resources to maintain City positions held by AFSCME members.
4. You are not registered as a lobbyist with the City. AFSCME is not registered as a lobbyist employer with the City.
5. You began negotiating your employment with AFSCME before you left City service. When you were negotiating your employment, AFSCME did not have a matter pending before you.

APPLICABLE LAWS

To prevent former City officials from exercising, or appearing to exercise, improper influence over City decisions, the Governmental Ethics Ordinance 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 Sec. 49.5.2 as a person who files Statements of Economic Interests pursuant to a City agency’s Conflict of Interest Code.

Two types of post-City service lobbying restrictions apply to former City officials: a ban on attempting to influence any matter on behalf of any person other than an agency, either directly or through an agent, that remains pending and in which you had “personal and substantial involvement” (LAMC Sec. 49.5.11(A) and (B)), and a one-year restriction against attempting to influence decisions for compensation (LAMC Sec. 49.5.11(D) and (E)) on behalf of any person other than an agency.

The City’s “personal and substantial” ban restricts all former City officials and employees who personally and substantially participated in a decision, proceeding, claim, contract, legislation or other specific matter during their tenure with the City from engaging in compensated attempts on behalf of any person other than an agency to influence any action on that matter if it is still pending with the City, or if the City is a party to or has a direct or substantial interest in the matter. In addition, former City officials or employees may not, for compensation, advise or assist others that are attempting to influence action on those matters. A City official “personally and substantially” participates in a matter by, for example, making a decision, making a recommendation, conducting research or rendering advice on that matter.

Former high level City officials may not engage in compensated communications, either personally or through an agent, with any City agency for the purpose of attempting to influence an action or decision on *any* matter pending before that agency or on behalf of anyone (other than the agency) for one year after the date the official left City service. In the case of other former City officials, the one-year restriction applies only to their former agency

For purposes of the City’s “revolving door” provisions, the Governmental Ethics Ordinance defines “attempting to influence” as “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 Sec. 49.5.2). “Municipal legislation,” which is defined in the City’s Municipal Lobbying Ordinance (LAMC Sec. 48.01 *et seq.*), in pertinent part means “any legislative or administrative matter proposed or pending before any agency, including but not limited to those involving the granting, denial, revocation, restriction or modification of a license, permit, or entitlement for use (including all land use permits) if the Mayor, the City Council, any of its committees, any agency board, commission, committee, or general manager, or any agency officer or employee charged by law with holding a hearing and making a decision, is charged by law with making a final decision on the matter” (LAMC Sec. 48.02).

Los Angeles Municipal Code Sec. 49.5.12 forbids a City official from directly or indirectly, knowingly or willfully negotiating the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee.

Los Angeles Municipal Code Sec. 49.5.3 states that no current or former officer or employee of the City shall use or disclose to any other person for pecuniary gain or personal advantage or privilege, confidential information acquired by him or her in the course of his or her official duties.

ANALYSIS & CONCLUSION

City law does not restrict the type of employment that you, as a former City official, may engage in after leaving City service. City law does, however, restrict your compensated attempts to influence action or decisions on matters pending before City officials under certain circumstances. Specifically, as discussed below, you are prohibited from lobbying the Office of the Mayor on behalf of AFSCME until after April 2, 2005. However, you are not prohibited under City law from lobbying City Councilmembers and their staffs on behalf of AFSCME in connection with the 2004-05 proposed City budget.

Ban on Negotiating Future Employment

The Governmental Ethics Ordinance forbids a City official from directly, indirectly, knowingly, or willfully negotiating the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency *currently pending before that officer or employee* (LAMC Sec. 49.5.12).

You stated that you began negotiating your employment with AFSCME before you left City service. At the time you were negotiating your future employment, however, AFSCME did not have a matter pending before you or LA STAT. Although it does not appear that the negotiation of your future employment with AFSCME violated LAMC Sec. 49.5.12 based on the facts that you have provided, because the City Ethics Commission does not advise on past activity, we cannot provide you with advice in this area.

One-Year Ban

As a former City official, the one-year post-City service lobbying restriction enumerated in LAMC Sec. 49.5.11 (D) prohibits you from communicating, for compensation, with the Office of the Mayor, including programs administered by that office (such as LA STAT), for the purpose of attempting to influence any City matter until after April 2, 2005. After that date, you may lobby the Office of the Mayor or any other City agency or official on behalf of AFSCME, subject to the "personal and substantial" participation ban discussed below.

"Personal and Substantial" Ban

You stated that as an LA STAT Analyst, you reviewed spreadsheets, graphs, and other data provided by City departments to generate questions for the LA STAT project team to ask City departments about their services for the purposes of evaluating departmental performance. You stated that you were not involved in any decision-making with regard to the LA STAT budget or any other aspect of the City budget process or personnel matters. Based on the information you provided, it appears that you did not have "personal and substantial"

involvement in City budget and personnel-related matters, on which you now wish to lobby. Therefore, you are not prevented under the “personal and substantial” ban enumerated in LAMC Sec. 49.5.11(A) and (B) from representing AFSCME with regard to the City’s allocation of budgetary resources to maintain City positions held by AFSCME members before City Councilmembers, their staffs, or any City department or commission.

We encourage you to contact our Policy staff for further advice before you undertake any action related to any other matter in which you may have had personal and substantial involvement while you were an LA STAT Analyst.

Confidential Information

Finally, we note that as a former City employee, you must not disclose any confidential information acquired in the course of your tenure with LA STAT for pecuniary or personal gain or advantage (LAMC Sec. 49.5.3).

We have enclosed for your information a brochure that explains the requirements of the City’s lobbyist registration and reporting requirements. Please feel free to contact us if you have any questions or would like additional information about how these requirements apply to you.

Thank you for contacting the City Ethics Commission about this matter. If you have any questions regarding this letter, please do not hesitate to contact me or Nora Pollock at (213) 978-1960.

Sincerely,

LeeAnn M. Pelham
Executive Director

Attachment

ATTACHMENT

Los Angeles Municipal Code (LAMC) Sec. 48.02. Definitions, defines the following term:

“Municipal Legislation” means any legislative or administrative matter proposed or pending before any agency (as defined in this Article), including but not limited to those involving the granting, denial, revocation, restriction or modification of a license, permit or entitlement for use (including all land use permits) if the Mayor, the City Council, any of its committees, any agency board, commission, committee, or general manager, or any agency officer or employee charged by law with holding a hearing and making a decision, is charged by law with making a final decision on the matter. However, "municipal legislation" does not include any of the following:

(1) A request for advice or for an interpretation of laws, regulations, City approvals or policies, or a direct response to an enforcement proceeding with the City Ethics Commission.

(2) Any ministerial action. An action is ministerial if it does not require the City official or employees involved to exercise discretion concerning any outcome or course of action.

(3) Any action relating to the establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or memorandum of understanding between an agency and a recognized employee organization, or a proceeding before the Civil Service Commission or the Employee Relations Board. Further, it does not include management decisions as to the working conditions of represented employees that clearly relate to the terms of such collective bargaining agreement or memorandum of understanding. Nevertheless, A municipal legislation does include any action relating to collective bargaining taken by the City Council, any of its committees or members (including the staffs of such members), or by the Mayor or his or her office.

(4) Preparation or compilation of any radius map, vicinity map, plot plan, site plan, property owners or tenants list, abutting property owners list, photographs of property, proof of ownership or copy of lease, or neighbor signatures required to be submitted to the City Planning Department.

LAMC Sec. 49.5.2. Definitions, defines the following terms:

“Agency” means the City of Los Angeles or any department, bureau, office, board, commission, other agency of the City, or any other government agency, required to adopt a conflict of interest code subject to City Council approval.

“Attempting to influence” means promoting, supporting, opposing or seeking to modify or delay any action on municipal legislation (as defined in Section 48.02 of this Code) by any means, including but not limited to providing or using persuasion, information, statistics, analyses or studies.

“City Official” means any elective City officer, member, officer, employee, commissioner or consultant of any agency required to adopt a conflict of interest code subject to City Council approval, and who is required to file statements of economic interests pursuant to the conflict of interest code of his or her agency.

“Confidential information” means information to which all of the following apply:

(1) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the California Public Records Act.

(2) At the time of the use or disclosure of the information, the disclosure is prohibited by
(i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; or
(ii) any limitation placed on outside employment pursuant to Section 49.5.11 of this Code.

(3) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information or acquires within 90 days following the use or disclosure of the information.

“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.

“High Level Official” means the Mayor, the City Attorney, the Controller, the members of the City Council, the Chief of Staff to the Mayor, the Assistant Chief of Staff to the Mayor, each Deputy Mayor, the Special Assistant to the Mayor for Legal Affairs, the Executive Assistant City Attorney, each Chief Assistant City Attorney, each Senior Counsel, the Chief Deputy Controller, the Administrative Coordinator to the Controller, two members of the staff of each City Council Office possessing the most decision-making responsibilities relative to governmental policy as designated by each member of the Council, the members of the City Ethics Commission, the members of the City Planning Commission, the Director of Planning, the members of the Board of Public Works, the Director of the Office of Administrative and Research Services, each Assistant Director of the Office of Administrative and Research Services, the Chief Legislative Analyst, each Assistant Chief Legislative Analyst, the Treasurer, and the City Clerk. In addition, “high level official” means any other member of the staff of an elected City officer possessing significant decision-making responsibilities relative to governmental policy as may be designated in writing to the City Ethics Commission by the elected City officer.

“Legislative action” means drafting, introduction, consideration, modification, enactment, or defeat of any ordinance, charter amendment, resolution, amendment, report, nomination or other matter by the City Council or by any committee, subcommittee thereof, or by a member or employee of the City Council acting in his or her official capacity. “Legislative action” also means the action of the Mayor in approving or vetoing any ordinance or resolution.

LAMC Sec. 49.5.3. Confidential Information.

No current or former officer or employee of the City shall use or disclose to any other person for pecuniary gain or personal advantage or privilege, confidential information acquired by him or her in the course of his or her official duties.

LAMC Sec. 49.5.11. Lobbying Activities of Former Officials, in pertinent part, states:

A. No former City official or employee of any agency (as defined in Section 49.5.2) who personally and substantially participated in a decision, proceeding, claim, contract, legislation or other specific matter during his or her City service, shall, for compensation, attempt to influence any action on that specific matter on behalf of any person other than an agency. This prohibition applies only if the specific matter is still pending before an agency or if an agency is a party to or has a direct or substantial interest in the specific matter. For purposes of this provision, "personal and substantial" participation includes, but is not limited to, making or voting on a decision or making a recommendation, rendering advice, investigation or conducting research.

B. No former City official or agency employee shall, for compensation, knowingly counsel, or assist any other person other than an agency (as defined in Section 49.5.2) in connection with an appearance or communication in which the former official or employee is prohibited from engaging pursuant to Subsection A.

C. The prohibitions contained in subsection A and B shall not apply:

1. To prevent a former agency officer or employee from making or providing a statement, based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses.

2. To communications made solely for the purpose of furnishing information by a former agency officer or employee if the court or agency to which the communication is directed makes written findings that:

(a) The former officer or employee has outstanding and otherwise unavailable qualifications;

(b) The former officer or employee is acting with respect to a particular matter which requires such qualifications; and

(c) The public interest would be served by the participation of the former officer or employee.

D. For one year after leaving City service, no former elected City officer, member of the City Ethics Commission or other former high level official shall, for compensation, engage in direct communication with any agency for the purpose of attempting to influence any action or decision on any matter pending before an agency on behalf of any person other than an agency.

E. For one year after leaving City service, no former City official shall for compensation, engage in direct communication with any agency in which he or she served during the twelve month period preceding his or her departure from City service, for the purpose of attempting to influence any action or decision on any matter pending before that agency on behalf of any person other than an agency. For purposes of this subsection, the agency of a City Council office employee means his or her former Council office and the Councilmember of that district.

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LAMC Sec. 49.5.12. Future Employment of City Officials, in pertinent part, states:

A. No member of the City Council or member of any board, commission, committee or other such voting body of any agency who is required to file statements of economic interests pursuant to the California Political Reform Act, shall directly or indirectly, knowingly or willfully negotiate the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee or before any body of which he or she is a voting member.

B. No other City official shall, directly or indirectly, knowingly or willfully negotiate the possibility of future employment with any person (other than a government agency) who has a matter within the regulatory, proprietary, or contractual jurisdiction of his or her agency currently pending before that officer or employee.

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