



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

September 15, 2008

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COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Arnie Lerner, AIA
Principal
Lerner + Associates Architects
1108C Bryant Street
San Francisco, CA 94103

Dear Mr. Lerner:

You have requested informal advice regarding the waiver policies of the Ethics Commission as they relate to members of City commissions or boards who, by law, must be appointed to represent any profession, trade, business, union or association.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *S.F. Charter § C3.699-12*. Written formal opinions are available to individuals who request advice about their responsibilities under local law. Formal opinions provide the requester immunity from subsequent enforcement action if the material facts are as stated in the request for advice, and if the District Attorney and City Attorney concur in the advice. *See id.* **Informal advice does not provide similar protection.** *See id.*

Discussion

The compensated advocacy ban in section 3.224 of the San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) generally precludes City officers from representing private parties in communications with other City officers and employees. The compensated advocacy ban was designed to eliminate the undue influence that one City officer may have because of his or her position as a City officer over another City officer or employee.

Section 3.224 states,

PROHIBITION ON REPRESENTING PRIVATE PARTIES BEFORE OTHER CITY OFFICERS AND EMPLOYEES--COMPENSATED ADVOCACY.

(a) **Prohibition.** No officer of the City and County shall directly or indirectly receive any form of compensation to communicate orally, in writing, or in any other manner on behalf of any other person with any other officer or employee of the City and County with the intent to influence a government decision.

(b) **Exceptions.** This Section shall not apply to any communication by: (1) an officer of the City and County on behalf of the City and County; (2) an officer of the City and County on behalf of a business, union, or organization of which the officer is a member or full-time employee; (3) an associate, partner or employee of an officer of the City and County, unless it is clear from the totality of the circumstances that the associate, partner or employee is merely acting as an agent of the City and County officer; or (4) a City officer acting in his or her capacity as a licensed attorney

representing clients in communications with the City Attorney's Office, outside legal counsel hired by the City, or representatives of the City who are named in a pending litigation matter.

(c) **Waiver.** The Ethics Commission may waive the prohibitions in this Section for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association.

Ethics Commission Regulation 3.224-2 sets forth the process of seeking waivers under section 3.224. It states:

Regulation 3.224-2. Compensated Advocacy – Waivers for Members of Boards and Commissions Who by Law must be Appointed to Represent Certain Professions, Trades, Businesses, Unions or Associations

- (a) Waivers. The Ethics Commission may waive the prohibition in section 3.224(a) for any member of a board or commission who by law must be appointed to represent a profession, trade, business, union or association. Such waivers may be granted upon the request of the member; the request of the member's appointing authority; or on the Commission's own initiative.
- (b) Process for Granting Waivers. All waivers granted pursuant to subsection 3.224(c) must be made at a public meeting. Requests for waivers made by a City officer or by the officer's appointing authority must be in writing and state the reasons why the waiver should be granted. The Ethics Commission shall consider, at its next regularly scheduled meeting, any waiver request that meets the criteria of this regulation provided that such request is received at least two calendar weeks in advance of the meeting. In making a determination to grant a waiver under this subsection the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question if the waiver is not granted; the ability of the member to engage in his or her particular vocation if the waiver is not granted; and any other factors the Commission deems relevant.
- (c) Notice. The Commission shall maintain a list of waivers granted under subsection 3.224(c) and post the list on the Commission's web page.

Since 2005, the Ethics Commission has considered six requests for waivers from the compensated advocacy ban and has granted all of them at its public meetings.

I hope this information is helpful. Please let me know if you have any questions.

Sincerely,

John St. Croix
Executive Director