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June 27, 2008

Stuart Sunshine
Parsons Brinckerhoff
303 Second Street, Suite 700 North
San Francisco, CA 94107

Dear Mr. Sunshine:

You have requested advice from the Ethics Commission regarding the City's post-employment restrictions.

The Ethics Commission provides two kinds of advice: written formal opinions and informal advice. *S.F. Charter Section C3.699-12*. Written formal opinions are available to individuals who request advice about their responsibilities under local laws. 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.* Because you seek general advice on post-employment restrictions, the Commission is treating your request as a request for informal advice.

Brief Statements of Facts

You state that you were employed as the Deputy Executive Director of the Municipal Transportation Agency ("MTA") and were detailed to the Mayor's Office to serve in the role of one of three Deputy Chiefs of Staff. In March 2008, you left the City to work for Parsons Brinckerhoff ("PB"), which provides strategic consulting, planning, engineering, and program and construction management services to both public and private sector clients. PB's clients include CalTrans, BART, Golden Gate Transit and SamTrans. You were hired as part of PB's national strategic consulting practice.

You informed the Commission that PB has one active contract with the San Francisco Municipal Transportation Agency for preliminary engineering work on the Central Subway Project.¹ You did not participate in any aspect in the award of this contract, which was awarded in 2003, while you were employed with the City. The contract is handled at a separate project office at PB and managed by a separate manager. As a

¹ You also informed the Commission that PB is also a pre-approved consultant for work through the Controller's Office, but PB has not been assigned any tasks to date. You stated that you will not be involved in providing any such consulting work should PB be assigned. In addition, the City has a contract with PB Power, which is a separate division over which you have no responsibilities.

condition of your hire at PB, you have had no responsibilities related to the project; nor will you have any such responsibilities during the one-year period after you left City employment.

Now PB, which has approximately 120 employees in its San Francisco office, is considering a promotional opportunity for you to manage its San Francisco Bay Area Office as the Local Business Executive. You describe the basic functions of the local business executive as: maintain a business presence; manage client relations; oversee business development activities; recruit and retain staff; represent PB at industry and professional functions; support staff in career and professional development; oversee production management and project delivery; oversee financial performance; support regional and national PB practices; and oversee administrative functions in support of all business and production activities in the Bay Area. You explain that the focus of your work will be to ensure product delivery to PB's clients in the Bay Area, such as CalTrans and BART. For example, if BART needed additional civil engineers, you would see to it that the engineers are procured. But because of the one-year post-employment ban, you will not work on any matters that may involve communications with any employee, officer or representative of the City of San Francisco until at least one year has elapsed from the date you left City employment. For example, if MUNI asked PB for additional engineers, you will not be involved in their procurement. While you may attend a private gathering in the City – for example, a SPUR forum on infrastructure – you will not seek to influence any City decisions during conversations with City employees and officers at those gatherings. You will also not attend meetings with any City departments, boards or commissions for the one year period after you left City employment. (This does not include meetings open to and attended by the general public which you may attend but may not attempt to influence any governmental decision.)

Summary of Advice

As a general rule, the City's post-employment restrictions do not bar you from accepting an employment opportunity with any person or entity. The restrictions apply only to activities, not to employment. The one-year post-employment restriction that applies to a Mayor's former deputy chief of staff bars you from communicating with any board, department, commission, agency, officer, employee, appointee or representative of the City on behalf of any other person with the intent to influence a government decision for one year after your termination of employment with the City. In addition, you are permanently barred from representing a person or entity other than yourself or the City before any court or any state, federal or local agency to influence a decision in connection with a particular matter in which you personally and substantially participated as a City employee in which the City has a direct and substantial interest. You are also prohibited from accepting employment or otherwise receiving compensation from any person or entity that has a contract with the City where you personally and substantially participated in the award of the contract.

Relevant Law and Discussion

There are three general post-employment restrictions under local law. *See* San Francisco Campaign and Governmental Conduct ("C&GC") Code § 3.234. First, former City officers and employees are permanently prohibited from switching sides on particular matters in which they

participated personally and substantially while with the City. See C&GC Code § 3.234(a)(1)(A) and (B). Second, former City officers and employees are prohibited from communicating with the officers and employees of their former department for a period of one year after they leave City service. See C&GC Code § 3.234(a)(1)(D). For the Mayor, the Board of Supervisors and their senior staff members, this ban extends to communications with any City officer, employee, or representative. See G&GC Code § 3.234(b). Third, former City officers and employees are prohibited, for a period of one year after termination of City service or employment, from being employed by or otherwise receiving compensation from a person or entity that has entered into a contract with the City within the officer or employee's last 12 months in City service where the officer or employee personally and substantially participated in the award of the contract. See C&GC Code § 3.234(a)(2)(A).² The application of each of these restrictions to your set of facts is discussed below.

A. The Permanent Prohibition

Section 3.234(a)(1)(A) provides:

No former officer or employee of the City and County, after the termination of his or her service or employment with the City, shall, with the intent to influence, act as agent or attorney, or otherwise represent, any other person (except the City and County) before any court, or before any state, federal, or local agency, or any officer or employee thereof, by making any formal or informal appearance or by making any oral, written, or other communication in connection with a particular matter:

- (i) in which the City and County is a party or has a direct and substantial interest;
- (ii) in which the former officer or employee participated personally and substantially as a City officer or employee;
- (iii) which involved a specific party or parties at the time of such participation; and
- (iv) which is the same matter in which the officer or employee participated as a City officer or employee.

Section 3.234(a)(1)(B) prohibits former officers and employees from assisting others on matters in which they would be prohibited from personally participating under subsection (a)(1)(A). You have not provided us with any facts to suggest that you plan to participate, on behalf of PB or any other person, in any matters in which you participated personally and substantially while employed with the City. If facts arise where you are presented with a matter in which you participated personally and substantially while with the City, you should contact the Commission before participating in the matter.

B. The One-Year Restriction

Section 3.234(a)(1)(D) provides:

² You would also be subject to other laws of general applicability. Section 3.228 of the C&GC Code, for example, prohibits you from disclosing any confidential or privileged information that you obtained during your employment with the City.

No former officer or employee of the City and County, for one year after termination of his or her service or employment with the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

Under section 3.234(b), the one year ban on communicating with City departments extends to communications with

- (A) a board, department, commission or agency of the City and County;
- (B) an officer or employee of the City and County;
- (C) an appointee of a board, department, commission, agency, officer, or employee of the City and County; or
- (D) a representative of the City and County

The express language of sections 3.234(a)(1)(D) and 3.234(b) precludes you from communicating, with the intent to influence a government decision, on behalf of any other person or entity, with any officer, employee or representative of the City for one year after you leave your employment with the City. A former employee acts with an intent to influence when he “communicates for the purpose of supporting, promoting, influencing, modifying, opposing, delaying or advancing a governmental decision.” *See* Ethics Reg. 3.234-5(c)(1).

In previous letters, the Commission advised that the submission of a report prepared and signed by a former City employee constitutes a prohibited appearance within the meaning of the post-employment ban, which at that time prohibited former employees from “appearing” rather than “communicating.” *See* September 20, 2001 Ethics Advice Letter to H. William Brown. The Commission similarly advised that when it is clear from the totality of circumstances that an associate of a former City employee is acting as an agent for the former City employee, the communications of the associate are attributable to the former City employee for purposes of the ban. *See* April 25, 2002 Ethics Advice Letter to H. William Brown. While these advice letters addressed the former Charter section C8.105(e), which has been amended and re-codified at section 3.234(a)(1)(D), they are helpful in clarifying that the purpose of the one-year post employment ban is to prevent undue influence over City processes by a former City employee representing a private interest. You have not provided information that suggests that you would be communicating with any City officer, employee or representative for the purposes of influencing a governmental decision during the one-year prohibition period. Should you have questions, we encourage you to contact us again to seek further clarification.

Please note, however, if a communication with the City involves only routine requests for information such as a request for publicly available documents; or if you participate as a panelist or speaker at a conference or similar public event for educational purposes; or if you attend a general informational meeting, seminar, or similar event; or if you seek to influence an action that is solely ministerial, secretarial, manual or clerical, you would not be deemed to be acting with an intent to influence for the purposes of the ban. *See* Ethics Reg. 3.234-5(c)(2).

C. Employment with City Contractors

Section 3.234(a)(2)(A) provides:

No officer or employee of the City shall, for a period of one year after termination of City service or employment, be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the 12 months prior to the officer or employee leaving City service where the officer or employee personally and substantially participated in the award of the contract.

You have not provided information to indicate that you personally and substantially participated in the development or award of any contract between the City and PB within the last year of your employment with MTA or the Mayor's Office. Accordingly, section 3.234(a)(2)(4) does not appear to apply to your situation.

Conclusion

I hope you find this information helpful. If you have additional questions, please do not hesitate to contact us.

Sincerely,

John St. Croix
Executive Director

By: Mabel Ng
Deputy Executive Director

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