

## Advisory Opinion 09-02

### Question Presented

What starts the clock for the post-employment restrictions, an employee's last day in the office or the employee's last day on the City's payroll?

### Short Answer

Under the Ethics Code, an employee's first day as a former City employee is the day after he or she stops providing services to the City and there is no expectation that the employee will return to work. This is the case regardless of whether the employee remains on the payroll until his or her accrued leave time runs out.

### Facts

A former City employee left the City at the start of the year, but used two months of accrued leave to extend his time on the City's payroll and continue his City benefits. The former employee has asked when the post-employment restrictions will expire – January or March of next year.

### Discussion

SMC 4.16.075.B provides that “[n]o former officer or employee shall, during the period of one (1) year after leaving City Office or employment...” assist others with proceedings involving the employee's former department or with matters in which the employee participated while with the City, or compete for a contract the employee assisted the City in crafting.

The Commission finds that the phrase “leaving City office or employment” is ambiguous, and therefore we look to the underlying rationale for such a “revolving door” prohibition. In *Advisory Opinion 2006-2*, the Commission wrote that “[t]he City's post-employment restrictions are intended to prevent former City employees from exploiting or appearing to exploit their time at the City for personal gain, or from using or appearing to use confidential information for private gain.” The restrictions prevent City officers and employees from making official judgments with an eye toward their personal future interests, and from profiting by their participation in specific matters after they leave City service. In addition, the restrictions are intended to keep former officers and employees from misusing the friendships and associations they establish while with the City to derive an unfair advantage for themselves or others.

With these principles in mind, the Commission opines that the post-employment restrictions expire one year after the employee stopped providing services to the City with no expectation of returning to the office; in this case, January of 2010. The friendships and associations that the employee made while with the City began the process of “cooling off” when the employee cleaned out his office, not when he was officially removed from the City's payroll. The opportunities for the employee to take official actions with an eye toward his future employment ended when he stopped providing services to the City, not when he was officially removed from the City's payroll.

## **Conclusion**

The Commission finds no persuasive rationale for applying SMC 4.16.075 to cover that period of time between when an employee stops providing services to the City with no expectation of returning to work and the date of their last paycheck. For that reason, we opine that an employee “leaves City...employment” when he or she stops providing services to the City and there is no expectation that the employee will return to work.

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