

ADVISORY OPINION
CASE NO. 02022.A
Financial Interest in City Business

To: [John]
Assistant Commissioner

Date: September 18, 2002

On July 10, 2002, the Board received your request for an advisory opinion concerning the participation of [Mary], a city employee since December 1999, in a Department [A] loan program. In 1998 the Department [A] approved a \$40,535 forgivable [] loan to [Mary]. Prior to her entry into City service, approximately \$30,000 worth of repairs were performed to [Mary's] home. Pursuant to that loan agreement, the Department paid the contractors directly for the repairs performed. No rehabilitation work has been performed since [Mary] entered City service. Approximately \$10,000 worth of repairs remain to be performed to the roof and porch, as per the original rehabilitation specifications. The Department [A] asks the following question: if the remaining repairs are performed, and the contractor(s) are paid by the Department from City funds for those repairs, would that give [Mary] a prohibited financial interest in City business?

After careful consideration of the facts, the purpose of the Ordinance, and prior Board opinion, the Board determines that [Mary] should be permitted to receive the remaining \$10,000 worth of repairs to her home, as per her 1998 loan agreement with the Department [A].

FACTS

In 1997 [Mary] applied for a Department [A] [F] Loan. This program, which was discontinued in 2001, provided loans to qualified homeowners for home improvement projects. Under this program, following an inspection of the property and a review of the proposed repairs by Department [A] staff, the homeowner would select a contractor to perform the rehabilitation work. After the work was completed, Department [A] staff would inspect the work, confirm that the homeowner was satisfied, and issue a check to the contractor. If the homeowner lives in the property for 15 years from the date the loan agreement is signed, the loan is forgiven. If the homeowner sells the property, the homeowner must pay back a portion of the loan; the amount they must pay is determined by pro-rating the number of years they have lived in the property by the amount of the loan. At the time she applied for the loan, [Mary] was not a City employee. On June 19, 1998, [Mary] closed on the loan for a total of \$40,535, and

signed the agreement with the City. Construction permits were issued on July 14, 1998, and a contractor was selected. However, this contractor did not prove satisfactory, and the construction contract was terminated on July 30, 1998.

A second contractor was selected, and work commenced but was not completed to [Mary's] satisfaction. She refused to sign the document authorizing the Department [A] to release the check. In 1999, that contractor, alleging that [Mary's] issues with his work were frivolous, placed a lien against her home. In June of 1999 the Department [A] arranged an arbitration hearing; subsequently the contractor completed the work to her satisfaction, and [Mary] agreed to authorize the release of the portion of the loan funds due the contractor.

In December 1999 [Mary] was hired by [Department B]. In late 2001, she contacted the Department [A] regarding the loan funds for repairs to her roof and porch contemplated in the specifications accompanying her 1998 loan agreement. The Department has conducted an inspection and verified the need for the repairs, the cost of which would be approximately \$10,000. The Department [A] has asked if the repairs are performed, and the contractor(s) paid by the Department, would [Mary] thereby have a prohibited financial interest in City business?

LAW, ANALYSIS, AND CONCLUSION

The main Ordinance Provision at issue in this case is Sec. 2-156-110 (Interest in City Business), which states in relevant part that:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of the City, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance.

“Financial interest” is defined in the Ordinance as “...any interest as a result of which the owner currently receives or is entitled to receive in the future more than \$2,500.00 per year or any interest with a cost or present value of \$5,000.00 or more.”

It is well settled that the receipt by a City employee of \$5,000 or more in loan funds, belonging to or administered by the City, would constitute a prohibited financial interest in City business. In Case No. 89121.A, the Board determined that Sec. 2-156-110 prohibits City employees from having a financial interest in loans administered by the City, as well as loans funded by the City.

Nevertheless, on occasion, based upon principles of equity, the Board has permitted City employees to receive loans of \$5,000 or more from the City. In Case No. 92002.A, the Board addressed the case of a City employee who, in 1986, prior to enactment of the Ethics Ordinance, applied to the

City's Department [A] ([A]) for a loan¹ to rehabilitate an abandoned two-flat which she had purchased from the City for one dollar under [a City program]. After inspecting the property, the [A] approved a \$42,000 rehabilitation loan, which the City employee subsequently spent on the property. In 1988, structural defects were discovered. The defects were unable to be remedied and, in 1991, the property was declared unfit for occupancy. HUD agreed to the demolition of the property but refused to forgive the outstanding loan. The [A] was unable to find another suitable Homestead property but found a comparable two-flat in the City with a purchase price of \$80,000. To assist the employee in the purchase, the [A] proposed an agreement under which the City would pay off the outstanding \$38,000 balance to HUD, the City would extend a 20 year loan in the same amount to the employee, and the City would extend a conditional grant for the \$80,000 purchase price. The employee accepted the [A]'s proposal and was ready to enter into the agreement when the concern was raised that the agreement would violate the Ethics Ordinance. The Board determined that the employee should not be prohibited from entering into the proposed loan and grant agreements with the City. In reaching its decision, the Board noted that the subject had never concealed her City employment, and that since 1986, under the supervision of the City, she had expended considerable time and money rehabilitating a house subsequently set for demolition. In its opinion the Board stated, "Under these circumstances, ...the law must be considered in light of the principles of equity and justice. *Id.* at pg.3. *See also* Case No. 90062.A., wherein the Board determined, based upon principles of equity, that a City employee could receive an additional \$28,000 in home rehabilitation loans from the City's [A], as the original rehabilitation work was poorly performed and additional funds were needed to complete the work to specification.

In the instant case, the facts show that [Mary] entered into the loan agreement with the City in 1998, prior to entering City service. Due to a dispute between [Mary] and both the original and second contractors, the rehabilitation of her home has been delayed. The remaining repairs—approximately \$10,000 in all—to her roof and porch are contemplated in the specifications accompanying her 1998 loan agreement.

Under these circumstances, therefore, and consistent with the Board's rationale in Case Nos. 92002.A and 90062.A, the Board determines that, as a matter of equity, [Mary] should be permitted to receive the remaining \$10,000 worth of repairs to her home, as per her 1998 loan agreement with the [A].

Our determination is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. Other laws or rules also may apply to this situation. Be advised

¹Although the loans were funded by the federal government through the Department [A] and Urban development, the City granted the loans and administered the funds.

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that City departments have the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance.

RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

[Signature]

Darryl L. DePriest
Chair

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