

Housing Finance Authority--conflict of interest

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Mr. Richard R. Ellington
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Authority of Palm Beach County
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RE: HOUSING FINANCE AUTHORITY--COUNTIES--CONFLICT OF INTEREST--procedure for declaring conflict by housing finance authority member. s. 159.606, Fla. Stat.

Dear Mr. Ellington:

Thank you for contacting this office regarding the procedure for declaring a conflict of interest by a housing finance authority member under section 159.606, Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Section 159.606, Florida Statutes, provides:

"No member or employee of a housing finance authority shall acquire any interest, direct or indirect, in any qualifying housing development or in any property included or planned to be included in such a development, nor shall a member have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any qualifying housing development. If any member or employee of a housing finance authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any qualifying housing project, the member or employee shall immediately disclose the same in writing to the housing finance authority. Such disclosure shall be entered upon the minutes of the housing finance authority. Failure so to disclose such interest shall constitute misconduct in office."

The statute recognizes and proscribes two separate activities: the acquisition of an interest in property and the existence of an interest in any contract for materials or services. However, a disclosure requirement is only prescribed for the first situation. Your question is how a member or employee should disclose the fact that he or she has an interest in a contract or proposed contract for materials or services to be furnished or used in connection with a housing project.

Nothing in the statute or in the title to the 1978 enabling legislation explains this apparent oversight.[1] In the absence of any legislative directive, this office may not supply a disclosure requirement where the Legislature has mandated none.[2] Nor does it appear that any court has extended the disclosure provision to cover the contractual interest issue.

The statute appears to express an absolute prohibition against an employee or member "hav[ing] any interest, direct or indirect, in any contract or proposed contract for materials or

services to be furnished or used in connection with any qualifying housing development." However, a more practical approach to such a possible voting conflict would be to follow the course which you have taken with your client in the past, that is, to be guided by the provisions of the Code of Ethics for Public Officers and Employees.

In the absence of any direction in this regard, it would be appropriate for the Housing Finance Authority of Palm Beach County to contact its legislative delegation to request that this matter be revisited and addressed. Alternatively, the Housing Finance Authority may wish to consider requesting a declaratory judgment pursuant to Chapter 86, Florida Statutes, delineating the responsibilities of authority board members under section 159.606, Florida Statutes.

I trust that these informal advisory comments will assist you in advising the housing finance authority.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See Ch. 78-89, Laws of Florida.

[2] *Cf. Chaffee v. Miami Transfer Company, Inc.*, 288 So. 2d 209 (Fla. 1974), and Ops. Att'y Gen. Fla. 87-43 (1987), 86-32 (1986), and 82-20 (1982).