Housing Authority, conflict of interest

Number: INFORMAL

Date: April 15, 2010

Ms. Eve A. Boutsis
Figueredo & Boutsis, P.A.
18001 Old Cutler Road, Suite 533
Miami, Florida 33157-6416

Dear Ms. Boutsis:

As general counsel to the Housing Authority of the City of Miami Beach (HACMB), you have asked for our assistance in determining whether a federal official's waiver of a conflict of interest under 24 C.F.R. s. 982.161 would preclude a determination of conflict of interest pursuant to Part III, Chapter 112, Florida Statutes, Florida's Code of Ethics for Public Officers and Employees. Because this office is not authorized to comment on federal law, the following informal comments will be general in nature. (*See* s. 16.01(3), Fla. Stat., limiting the scope of authority of the Florida Attorney General to issuing opinions on questions of state law.) Further, I must advise you that no comment will be expressed herein as to whether the conduct you have identified would constitute a conflict of interest under Part III, Chapter 112, Florida Statutes. Questions relating to the Code of Conduct for Public Officers and Employees should be directed to the Florida Commission on Ethics.

Florida's Housing Authorities Law, Part I of Chapter 421, Florida Statutes, provides for the creation of housing authorities by municipalities.[1] A housing authority may be created if the governing body of a city, by proper resolution, declares that there is a need for such an authority.[2] As required by statute, the governing body may adopt a resolution declaring that there is a need for a housing authority in the city if it finds that:

"(a) Insanitary or unsafe inhabited dwelling accommodations exist in such city; or
(b) There is a shortage of safe or sanitary dwelling accommodations in such city available to persons of low income at rentals they can afford. In determining whether dwelling accommodations are unsafe or insanitary said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes."[3]

Following adoption of a resolution declaring the need for creation of a housing authority, a board of commissioners shall be appointed. The board must consist of between five and seven persons who are appointed by the mayor with the approval of the municipal governing body.[4] Commissioners serve a four-year term of office and any vacancy is to be filled for the unexpired term by an appointment by the mayor with the approval of the governing body within 60 days after that vacancy occurs.

Section 421.06, Florida Statutes, prohibits commissioners or employees from acquiring interests in housing projects. The statute provides:

"Except for the leasehold interest held by a tenant-commissioner in the housing project in which he or she is a tenant, no commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he or she 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 housing project. If a commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he or she shall immediately disclose the same in writing to the authority. Such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest constitutes misconduct in office."

Thus, regardless of any other provision which may apply, Florida law prohibits a public housing authority commissioner from acquiring any interest, either direct or indirect, in any housing project. If a commissioner currently owns property included in any housing project he or she must disclose that ownership interest to the housing authority or risk removal from office for misconduct in office.[5]

You have cited 24 C.F.R. s. 982.161 and are apparently concerned that the waiver contemplated by this section may affect conflict of interest provisions of Florida law. While this office cannot provide you with any interpretation of these federal provisions,[6] I would note that the specific language of the federal regulation is limited. Section 982.161 specifically provides that "[t]he conflict of interest prohibition *under this section* may be waived by the HUD field office for good cause." (e.s.) Thus, the provision by its own terms appears to limit its scope to conflicts of interest under section 982.161.

I trust that these informal comments will be helpful to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 421.03(3), Fla. Stat., providing that a "[g]overning body" is "the city council, the commission, or other legislative body charged with governing the city" and s. 421.04(1), Fla. Stat.

[2] Section 421.04(1), Fla. Stat.
[3] Section 421.04(2), Fla. Stat.
[4] Section 421.05(1), Fla. Stat.

[5] *See* s. 421.07, Fla. Stat., providing for removal of commissioners.

[6] *See* s. 16.01(3), Florida Statutes, limiting the scope of authority of the Florida Attorney General to issuing opinions on questions of state law.