

Community redevelopment agency

Number: INFORMAL

Date: December 05, 2002

Mr. Patrick E. Geraghty
The Courtney Building, Suite 100
2069 First Street
Post Office Box 1605
Fort Myers, Florida 33902-1605

Dear Mr. Geraghty:

On behalf of the City Council of the City of Fort Myers, sitting as the Commission for the Fort Myers Community Redevelopment Agency,[1] you ask whether a member of the redevelopment agency board who is also a property owner in the area encompassed within a redevelopment agency program can apply for and receive reimbursement under the program if the board member meets all eligibility requirements. Attorney General Doran has asked me to respond to your letter.

Part III, Chapter 163, Florida Statutes, the "Community Redevelopment Act of 1969," represents the state's response to the threat to the public health, safety, morals, and welfare from the development or spread of slums and urban blight. The act encourages community redevelopment and provides for the redevelopment of slums and blighted areas. Section 163.367, Florida Statutes, provides that the officers, commissioners, and employees of a community redevelopment agency "shall be subject to the provisions and requirements of part III of chapter 112,"[2] the Code of Ethics for Public Officers and Employees. Subsection (2) of section 163.367 provides:

"If any such official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding 2 years, any interest, direct or indirect, in any property he or she knows is included or planned to be included in a community redevelopment area, he or she shall immediately disclose this fact in the manner provided in part III of chapter 112. Any disclosure required to be made by this section shall be made prior to taking any official action pursuant to this section."

Prior to 1983, section 163.367, Florida Statutes (1981), prohibited the acquisition of any personal interest, direct or indirect, in any property included or planned to be included within any community redevelopment project by a public official or employee of a county or municipality, or a board or commission thereof or by a commissioner or employee of a community redevelopment agency. In the event of involuntary acquisition of an interest in such property or when any such official or employee currently (or within the preceding two years) owned or controlled any interest in property which he or she knew was to be included in a community redevelopment project, the statute required that the official or employee immediately disclose this fact in writing to the governing body. The disclosure was to be entered upon the minutes of the governing body and any such official or employee was forbidden to participate in any action

by the municipality or the community redevelopment agency affecting the property.[3]

As amended, however, section 163.367, Florida Statutes, no longer prohibits a commissioner from owning or controlling property included or planned to be included in a community redevelopment area although the statute does require that such interests be disclosed in accordance with the provisions of Part III, Chapter 112, Florida Statutes.[4] Section 163.367(1), Florida Statutes, however, makes the actions of the commissioners of a community redevelopment agency subject to the provisions of the Code of Ethics for Public Officers and Employees. Accordingly, the provisions of the Code of Ethics must be considered.

The Florida Commission on Ethics is statutorily authorized to render advisory opinions regarding the application of the provisions of Part III of Chapter 112, Florida Statutes, or section 8, Article II of the Florida Constitution.[5] I would therefore suggest that the city contact the commission on this matter. Ms. Bonnie Williams is the executive director for the commission and may be reached at: Post Office Drawer 15709, Tallahassee, Florida 32317-5709; or 2822 Remington Green Circle, Suite 101, Tallahassee, Florida 32308; telephone: 850/488-7864; fax: 850/488-3077.

I trust that the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See s. 163.357, Fla. Stat., authorizing the governing body of the municipality or county creating the community redevelopment agency to serve as the agency's governing body.

[2] Section 163.367(1), Fla. Stat.

[3] See s. 163.367(2), Fla. Stat. (1981). *And see* Ops. Att'y Gen. Fla. 81-10 (1981) and 82-86 (1982).

[4] *Cf.* Commission on Ethics Op. 86-13 (community redevelopment agency commissioner having an interest required to be disclosed under s. 163.367[2], Fla. Stat., should immediately file memorandum of voting conflict disclosing nature of interest and should announce interest at meeting of agency in accordance with s. 112.3143[3], Fla. Stat.; if commissioner is subsequently faced with a voting conflict under s. 112.3143[3], he or she is not required to abstain but should publicly state his or her interest at the meeting and file a memorandum of voting conflict).

[5] Section 112.322(3), Fla. Stat.