

MEH

August 23, 1990

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C O N F I D E N T I A L

**ADVISORY OPINION
CASE NO. 90033.A**

[REDACTED]

Since the beginning of April, 1990, the Board of Ethics has received several requests from individuals seeking advisory opinions as to the propriety of their continued participation in the Urban Homestead Program and the Section 312 Rehabilitation Loan Program. On May 17, 1990, the Board received a request from **INDIVIDUAL A**. Until April the Board of Ethics was neither familiar with these programs nor had it reviewed these programs in light of the Governmental Ethics Ordinance. Once brought to the Board's attention, an investigation was initiated and extensive research was conducted in each of these cases.

These requests raised two distinct issues: (1) Whether City employees can receive property from the City through its Urban Homestead Program; and (2) Whether City employees can receive loans from programs administered or funded by the City, including funds from the Section 312 Loan Program.

On August 10, 1990 the board concluded that, as a general matter, the Governmental Ethics Ordinance prohibits City employees from participating in the Urban Homestead Program. However, based on the totality of the circumstances in this particular case, it is the Board's opinion that equity and justice require it to conclude that **INDIVIDUAL A** should be allowed to continue to participate in the Program. With regard to the issue of related loan programs, the board concluded that **INDIVIDUAL A** may not receive loans for \$5,000 or more from loan programs administered by the City, including Section 312 Rehabilitation loans.

The Board of Ethics is the agency charged with the responsibility of faithfully interpreting the Governmental Ethics Ordinance. It renders advisory opinions which are consistent with the language, purpose and goals of the Ordinance. When appropriate, the Board makes recommendations



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for further action. Recommendations reflecting the Board's opinion in this case shall be forwarded to DEPT. X

In coming to its decisions, the Board made a thorough review of the Urban Homestead Program and the Section 312 Rehabilitation Loan Program and conducted extensive research of the facts surrounding INDIVIDUAL A's particular situation. Our review of the Urban Homestead Program indicates it was designed to provide homes to low and moderate income families that reside in the City of Chicago. The Program is administered by the City's Department of Housing. Homes needing substantial rehabilitation are made available to qualified winners of a random public drawing (the Housing Lottery). Eligible winners purchase their selected property for \$1.00 and they promise to fulfill obligations stipulated in the Homesteader's Purchase Agreement, which among other things requires the Homesteader to bring the property into City code compliance. Prior to the conveyance of conditional title, the property involved belongs to the City.

The Board's review of INDIVIDUAL A'S circumstances revealed the following:

INDIVIDUAL A won the lottery in [redacted] and was notified until June of 1988 that she was a winner. One month prior to receiving notice that she had won the lottery, INDIVIDUAL A became employed by the City of Chicago. Her application to the Urban Homestead Program was received on [redacted]. On that application, INDIVIDUAL A stated that she was employed by the City of Chicago. As a lottery winner she was given the opportunity to fulfill the necessary eligibility requirements under the program. On two separate occasions [redacted] the Department of Housing requested and received verification of her employment with the City of Chicago. On these occasions her eligibility in the Urban Homestead Program was not questioned.

[redacted] after fulfilling all eligibility requirements under the program, INDIVIDUAL A and her husband, INDIVIDUAL B entered into the Homesteader's Purchase Agreement with the City. On [redacted] a quit claim deed from the City was recorded granting INDIVIDUALS A & B conditional title to the property awarded under the program. Subsequent to this, City inspectors determined the work to be done and accepted bids from contractors. Moreover, INDIVIDUAL A was required to pay approximately \$125.00 for an appraisal on the property they were to be awarded. INDIVIDUAL A applied for a Section 312 loan for \$20,500. Shortly thereafter, plans were made for them to receive smaller loans of approximately \$4,000 each from the Chicago Energy Savers Fund and the Neighborhood

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Home Improvement Loan Program. The Department of Housing assisted INDIVIDUALS A and B in finding and applying for these loan programs.

In anticipation of receiving the property chosen, INDIVIDUALS A and B purchased furniture for their new home. The total purchase was in the amount of approximately \$4,000. It was purchased on a lay-a-way requiring monthly payments. There is approximately \$800.00 still owed on it. Because INDIVIDUALS A and B live in an apartment, they are now faced with the dilemma of what they will do with this additional furniture once payments are completed.

INDIVIDUALS A and B were notified that their 312 loan had been approved and a settlement date was scheduled. However, in November they were notified that this loan was put on hold because of INDIVIDUAL A's status as a City employee. Thereafter, INDIVIDUALS A and B began to receive billing statements for the loan in question, so they signed a form requesting the cancellation of the previously approved 312 loan. Subsequently, INDIVIDUAL A's receipt of property itself under the Homestead Program was called into question. Since that time all further action regarding the property they were to receive has ceased. In late April the Housing Department directed INDIVIDUAL A to contact the Board of Ethics.

In a telephone conversation with a Board of Ethics staff person, INDIVIDUAL A also indicated that, in addition to investing considerable time in the whole process, she regularly deferred signing a lease on her present apartment with the expectation that her situation in the Homestead Program would be resolved in the near future.

ISSUE I: Whether City employees can receive property from the City through its Urban Homestead Program.

The Board has concluded that City employees are prohibited by the Governmental Ethics Ordinance from receiving property through the Urban Homestead Program. The Board, in coming to this determination, looked to Section 26.2-11 of the Ordinance. This section contains two provisions which prohibit City employees from receiving property under the Urban Homestead Program. The first provision that the Board reviewed prohibits an employee from having a financial interest in a contract of the City when the consideration of the contract is paid with funds which belong to or are administered by the City or when the consideration of the contract is authorized by ordinance. The exact language of Section 26.2-11 is as follows:

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. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

One definition of financial interest in the Ethics Ordinance is: "any interest with a cost or present value of \$5,000.00 or more." Section 26.2-1(i)(ii). Our research indicates that the property which one would receive under the Homesteader's Purchase Agreement will have a value of more than \$5,000.00.

The term "consideration" of a contract is defined as the benefit which one gives up in exchange for some other benefit. The City's consideration of the contract in this case is the Homestead property, and the contract in question is the Homesteader's Purchase Agreement. Moreover, the transfer of the property to the Homesteader is made pursuant to City Council ordinance. Consequently, the Board was compelled to conclude that any employee who enters into the Homesteader's Purchase Agreement with the City would have a financial interest in a contract, the consideration of which is authorized by ordinance. This conduct is clearly prohibited by the Ethics Ordinance.

Additionally, on this same issue, the Board looked to the provision of Section 26.2-11 which prohibits an employee from having a financial interest in the purchase of property which belongs to the City. Our research shows the Homestead Program involves a purchase of City property because the Homesteader receives property by quit claim deed from the City in exchange for \$1 and the promise to fulfill obligations stipulated in the Homesteader's Purchase Agreement. An exception to this part of the provision exists for property sold by the City pursuant to a process of competitive bidding. However, since the Homestead Program does not involve competitive bidding at any point of the process, this exception does not apply. The Board's analysis of this provision required it to conclude that an employee would have a financial interest in the purchase of property which

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belongs to the City if they entered into the Homesteader's Purchase Agreement with the City. Accordingly, it is the opinion of the Board that Section 26.2-11 of the Ordinance prohibits City employees from receiving property through the Homestead Program.

Our investigation reveals that **INDIVIDUAL A** entered into the Homesteader's Agreement on [REDACTED]. Under Section 26.2-41, penalties may be imposed on employees for a violation of the Ethics Ordinance. Based on the opinion stated above, the question with which the Board was necessarily confronted was whether **INDIVIDUAL A** and [REDACTED] should be allowed to continue to participate in the Urban Homestead Program.

This case presented a very unique and difficult situation to the Board. The uniqueness of the case in the first instance centers on the fact that considerable luck is required before one can become a Homesteader. Under this program, **INDIVIDUAL A'S** name had to be randomly chosen at the public drawing known as the Housing Lottery. This "luck of the draw" requirement distinguishes the Homestead Program from all other programs previously analyzed under Section 26.2-11 of the Ethics Ordinance. Additionally, the Board took notice of the fact that **INDIVIDUAL A** became a lottery winner prior to the time she became employed by the City. These unique features, when viewed in light of the totality of **INDIVIDUAL A'S** circumstances, gave the Board much to consider in coming to its decision.

In reviewing the facts, it became obvious to this Board that throughout her participation in the Program, **INDIVIDUAL A** acted in good faith and in reliance on the affirmative actions of others to her detriment. She did not conceal the fact that she was a City employee. The initial application filed on [REDACTED] clearly states her employer as the City of Chicago. Subsequent documents which she was required to produce also verify this fact. Yet, until recently **INDIVIDUAL A** was allowed to participate in the Program.

Moreover, since winning the Lottery both **INDIVIDUAL A** and the City have expended substantial sums of time, effort and money. The Board concluded that it would be a great loss to everyone concerned, should **INDIVIDUAL A** not be permitted to continue in the Program. Among other things, contracts have been entered into, title to the property transferred, credit checks run, inspections and appraisals completed, bids received, and a contractor selected. Under these circumstances, for the Board to negate what has already been done would be unconscionable. Therefore, in coming to our decision on this matter, we considered not just the letter of the Ordinance but the principles of equity, good conscience and justice.

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For the foregoing reasons the Board cannot in this case make the recommendation that INDIVIDUAL A be prohibited from further participation in the Program. We have concluded that to do so would be highly inequitable and unjust.

ISSUE II: Whether City employees can receive loans from programs administered or funded by the City, including funds from the Section 312 Loan Program.

The Board also reviewed Section 26.2-11 to determine whether City employees are eligible to participate in Section 312 and other loan programs. As previously discussed, no City employee may have a financial interest in any contract when the price or consideration of the contract is paid with funds administered by the City. It is our understanding, based upon our review of the Section 312 Loan Program, that HUD provides loan funds which the City Department of Housing administers. In past decisions of the Board, it has been determined that the Ethics Ordinance prohibits City employees from receiving loans of \$5,000 or more from programs administered by the Department of Housing (e.g. Case No. 89121.A). In that case, the Board of Ethics determined that the loans fell within Section 26.2-11 of the Ordinance because: (1) loan agreements are contracts; and (2) the loans in question were administered by the City. For these reasons, it is the Board's opinion in this case that City employees are prohibited from receiving loans of \$5,000 or more from loan programs administered by the City. This opinion allows INDIVIDUAL A to receive loan funds of less than \$5,000 through loan programs administered by the City. Loans for \$5,000 or more would constitute a violation of the Ordinance.


CONCLUSION:

The Board's determination and recommendations to the Housing Department based upon the totality of circumstances in this case are as follows: (1) that INDIVIDUAL A be allowed to continue her participation in the Urban Homestead Program, so long as she can meet the conditions of the Program; (2) that INDIVIDUAL A may not receive funds of \$5,000 or more from loan programs administered by the City.

RELIANCE:

An advisory opinion issued for one case is not a sufficient basis for inferring legal permissibility or impermissibility of conduct in other cases, even though cases may be similar in some respects. This advisory opinion is based on the specific set of circumstances described above. It should be relied upon for legal guidance only by the following persons: (1) persons involved in specific transaction or activity with respect to

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which an advisory opinion is rendered, or (2) persons involved in a specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which an advisory opinion is rendered.

cc: Michael Schubert, Commissioner
Department of Housing

Kelly Welsh, Corporation Counsel
Department of Law

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