

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

August 7, 2001

OPINION 01-006

TO: Hickory Hurie, CDBG

FROM: Eunice Gibson, City Attorney

SUBJECT: **APPLICATION OF STATE AND LOCAL CONFLICT OF INTEREST LAWS
TO ALDERMAN TODD JARRELL'S EMPLOYMENT WITH
TRANSITIONAL HOUSING, INC.**

You have asked my opinion as to whether state or local laws would be violated in the following fact situation: Alderman Todd Jarrell was elected to the Common Council in April of this year. Mr. Jarrell is a part-time employee of Transitional Housing, Inc. ("THI"), which applied for Emergency Shelter Grant (ESG) funds through the City's Community Development Block Grant (CDBG) office before his election to the Common Council. The funds are to be used for case management costs and utilities. The City's CDBG program does not fund the THI program, called Safe Haven, where Mr. Jarrell works. The CDBG Commission approved the application, and a resolution authorizing the allocation was adopted by the Common Council prior to Mr. Jarrell's taking office. It is expected that THI will apply for ESG funds through the City's CDBG office in 2002.

Such a situation may violate U.S. Department of Housing and Urban Development Conflict of Interest Regulations for the ESG program, at 24 CFR 576.57. I understand that you have requested HUD to grant an exception, as provided in Secs. 576.57(d) and 570.611(d) and (e) of the Regulations. This exception cannot be granted if the situation described above would constitute a violation of Wisconsin law or Madison Ordinance.

Section 946.13, Wis. Stats., entitled "Private Interest in Public Contracts Prohibited" forbids public

In his role at THI, Mr. Jarrell will avoid taking any part in any future application for the ESG funding. He is not a member of the Board of Directors of THI and does not vote on matters coming before the Board. He will fully disclose the conflict of interest to the Board of Directors of THI, and will leave the room and abstain from discussion of any CDBG application whenever that topic comes before the Board. He will not be involved in the administration of any CDBG funds which may be received pursuant to a future grant. Since Mr. Jarrell did not participate in the negotiation for the CDBG funds and since he will not perform any function under the current contract or under future contracts which govern the use and distribution of the funds, Sec. 946.13, Wis. Stats., is not violated in this situation. In the case of future applications by the THI for ESG funds, Ald. Jarrell can avoid a violation of Sec. 946.13, Wis. Stats., if he has no involvement in THI's application for the funds and, further, refrains from taking part in any portion of the City's negotiating or decision-making on the application.

Section 3.47, Madison General Ordinances (MGO), contains the City of Madison's Code of Ethics. A member of the Common Council is an incumbent within the meaning of Sec. 3.47, MGO.

Section 3.47(5), MGO, provides in part as follows:

(5) Standards of Conduct.

- (a) 1. Use of Office or Position. No incumbent may use or attempt to use her or his position or office to obtain financial gain or anything of value or any advantage, privilege or treatment for the private benefit of herself or himself or her or his immediate family, or for an organization with which she or he is associated.

* * *

3. Limitations on Actions. Except as otherwise provided in paragraph 4, no incumbent may:
- a. Take any official action affecting, directly or indirectly, a matter in which she or he, a member of her or his immediate family, or an organization with which she or he is associated has a financial or personal interest;
 - b. Use her or his office or position in a way that produces or assists in the production of a benefit, direct or indirect, for her or