

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, C.C.B.
266-4511**

OPINION 99-016

December 28, 1999

TO: Barbara Constans, CDBG

FROM: Eunice Gibson, City Attorney

RE: **Application of State and Local Conflict of Interest Laws - Movin' Out, Inc.,
Board Member Dee Kruger**

You have asked my opinion as to whether state or local laws would be violated in the following fact situation: The City of Madison will loan HOME funds to Movin' Out, Inc. (MOI), a private nonprofit corporation, for land acquisition and development of a condominium project (Coachyard Square). Eleven of the Coachyard Square units shall be sold to low income, disabled individuals, with part of the acquisition cost funded by a pass-through of the City's HOME loan to the Coachyard Square unit buyers from MOI. MOI has received an application for a loan of HOME funds from Kate Kruger, who is the daughter of Dee Kruger, a MOI board member. Kate Kruger desires to purchase a Coachyard Square unit for herself; Dee Kruger would not reside there. A conflict of interest under the HUD regulations exists because Kate, a family member of a MOI board member, would obtain a financial interest and benefit from a HOME-assisted activity.

24 CFR 92.356 is the conflict of interest provision governing HOME funds. Subsection (b) provides, in part, that:

...no employee, officer, or official of a recipient of HOME funds may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

24 CFR 92.356(b). Subsection (f) prohibits officers of developers like MOI from occupying a HOME-assisted affordable housing unit. It does not prohibit a family member of an officer from doing so.

24 CFR Sec. 92.356(d) provides for an exception to the conflict of interest regulation under certain circumstances. No exception is available if state or local conflict of interest laws are violated. In this case, there would be no violation of state or local law.

Section 946.13, Wis. Stats., entitled Private Interest in Public Contract Prohibited, does not apply to these facts because Ms. Kruger, as a board member and secretary of MOI, is not a “public officer or public employee”. Subchapter III of Chapter 19, Wis. Stats., is the Code of Ethics for Public Officials and Employees. This Subchapter does not apply to these facts for the same reason.

Section 3.47, Madison General Ordinances, is the Code of Ethics for the City of Madison. It establishes guidelines for the ethical conduct of all City of Madison officials and employees. Since Ms. Kruger is not a City official or employee, Section 3.47, Madison General Ordinances, is also inapplicable to these facts.

The facts presented implicate no violation of state or local conflict of interest law by Dee Kruger.

Eunice Gibson
City Attorney

EG:AZ:sob

CAPTION: State and local laws are not violated when a family member of a Movin’ Out, Inc. board member receives a CDBG-funded HOME loan to purchase affordable housing through Movin’ Out, Inc.

cc: Mayor
City Clerk