

April 5, 2007

The Honorable Ted Martin Vick  
Member, House of Representatives  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Representative Vick:

We received your letter requesting an opinion as to whether your service as a state legislator prohibits you from acting as a landlord to tenants seeking section 8 housing assistance. In your letter, you informed us that:

My wife Melissa and I co-own MTV Properties, LLC, a company that owns and manages more than 20 residential, commercial and recreational properties in North and South Carolina. One of my tenants initially qualified for housing assistance under the federal Housing Assistance Program known as Section 8. We were told by the state Housing Authority that the tenant would be eligible for the Section 8 assistance, but the U.S. Department of Housing and Urban Development disagreed.

You add, that the United States Department of Housing and Urban Development (“HUD”) based its decision on a 2004 memo authored by Larry Knightner, Director of the Public Housing Program at the Columbia field office for HUD. You included a copy of this memo with your request.

#### **Law/Analysis**

Mr. Knightner’s memo “outline[s] . . . the provisions of the Annual Contribution Contract (ACC) and South Carolina State Law that deal directly with conflicts of interests” in order to clarify conflicts of interests involving various housing authorities. With regard to state law, the memo refers to section 31-3-360 of the South Carolina Code. This provision, contained in the portion of the South Carolina Code pertaining to city housing authorities, states:

No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any project or in any property included

or planned to be included in any project, nor shall he 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 project. If any member or employee of any authority owns or controls an interest, direct or indirect, in any property included in any project, which was acquired prior to his appointment or employment, he shall disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority.

S.C. Code Ann. § 31-3-360 (2007).

In two opinions issued in the late 1980's, we examined whether a conflict of interest arises under this provision or any other provision of state law when a local housing authority rents property owned by the legislator under section 8 of the Federal Housing Act. The first opinion, issued in 1988, involved a representative from Charleston who owned property rented by the Sumter County Housing Authority. Op. S.C. Atty. Gen., October 11, 1988. The author of this opinion concluded:

I am unaware of any duties you as a state legislator would have that involve decision making with regard to the referenced federal housing program. Moreover, upon review of State provisions concerning county housing authorities, Sections 31-3-710 et seq. of the Code, I am unaware of prohibitions in the housing laws against such a rental of a house owned by you, a state legislator from Charleston, who presumably would not have any control over actions by the Sumter County Housing Authority. As stated in a prior opinion of this Office dated February 20, 1986, there is a limitation upon municipal housing commissioners, and thus upon county housing commissioners, pursuant to the provisions of Section 31-3-360 . . .

However, upon review of the definitions set forth in Section 31-3-20 of the Code, it does not appear that a state legislator from a county other than the county of the housing authority involved in a particular arrangement would be included in such prohibition.

Id. Thus, we opined that the representative may participate in the section 8 housing program. Id. But, we cautioned the representative as follows:

While not presenting any direct prohibition to the housing arrangement set forth above, you should be aware of the requirements of the State Ethics Act, Sections 8-13-10 et seq. of the Code which

prohibit a public official from using his official position for financial gain. See: Section 8-13-410. Also, pursuant to Section 8-13-460, if a public official is faced with a situation in the discharge of his official duties which would require him to take action or make a decision which would substantially affect directly his personal financial interests or those of a member of his household or those of a business with which he is associated, the public official must comply with the disclosure provisions of Section 8-13-460. Additionally, pursuant to Section 8-13-440, a public official cannot use or disclose any confidential information gained by him in the course of or by reason of his official activities or position in a way that would result in financial gain for himself or for any other individual. Again, I do not intend to imply any violation of the Ethics Act in the proposed housing arrangement involving the Sumter County Housing Authority but am merely bringing your attention to provisions of the Act which control the actions of public officials generally.

Id.

In 1989, we received a similar request from a representative in Sumter County regarding his ownership of property rented by the Sumter Housing Authority. Op. S.C. Atty. Gen., May 9, 1989. We examined the provisions contained in chapter 3 of title 31 of the South Carolina Code pertaining to city and county housing authorities. We considered whether given these provisions, a conflict of interest arises due to a representative's rental of housing to the housing authority in the county he or she represents. Id. We determined:

A review of Article 5 (City Housing Authorities) and Article 7 (County Housing Authorities) of Chapter 3 of Title 31, South Carolina Code of Laws (1976, as amended), reveals no actions to be taken by the county legislative delegation as to a city housing authority. A county legislative delegation is given certain powers as to a county housing authority, particularly in the creation of a county housing authority. The legislative delegation as an entity and the individual members do not appear, by virtue of state law, to have any control over the day-to-day operations and decision-making of either a city or a county housing authority, including rental decisions in the Section 8 rental program.

Id. Accordingly, we concluded no conflict of interest existed to preclude the representative's participation in the section 8 program. Id. However, we again alerted the representative to the provisions of the State Ethics Act concerning conflicts of interest and advised that he comply with these provisions. Id.

In finding no change in the law since the issuance of these opinions, we agree with our prior conclusion that the provisions governing city and county housing authorities do not prevent a representative from participating in a section 8 housing program. Moreover, in our research, we did not uncover any other provision contained within the South Carolina Code prohibiting such participation. However, as we did in our prior opinions, we draw your attention to the provisions of the State Ethics Act prohibiting a public official from using his office for financial gain and requiring a public official in certain instances to disclose any conflicts of interest that may arise. See S.C. Code Ann. 8-13-700 et. seq. (Supp. 2006).

Nonetheless, in addition to looking to state law to determine if legislators may participate in section 8 housing assistance programs, we must also look to the Federal Housing Act. While Mr. Knightner's memorandum refers to provisions of the Annual Contributions Contract containing provisions pertaining to conflicts of interest, we are not familiar with such contracts and do not have a copy of the contract from which these provisions originated. However, in our research we uncovered a portion of the Federal Code of Regulations pertaining to conflicts of interest with respect to section 8 housing. 24 C.F.R § 982.161. This regulation contains language similar to the language contained in the contract provision cited in Mr. Knightner's memorandum and provides as follows:

(a) Neither the PHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

(1) Any present or former member or officer of the PHA (except a participant commissioner);

(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;

(3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

(4) Any member of the Congress of the United States.

(b) Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to the PHA and HUD.

(c) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

Id.

Public housing agencies (“PHAs”) are state or local entities that administer the HUD Housing Choice Voucher Program (“Voucher Program”) and the HUD certificate program. 24 C.F.R. § 982.1. Under these programs, HUD pays rental subsidies to eligible families through the PHAs. Id. There are two types of assistance a PHA may provide, tenant-based assistance and project-based assistance. Id. Under project-based programs, “rental assistance is paid for families who live in specific housing developments or units,” whereas, tenant-based assistance programs allow families to select the unit meeting HUD criteria. Id. From the information provided in your letter, we presume you wish to rent to families receiving tenant-based assistance pursuant to these programs.

Section 982.161(a)(3) prohibits PHAs, its contractors, and its subcontractors from entering into contracts with a state legislator who “who exercises functions or responsibilities with respect to programs.” Thus, whether a PHA is prohibited from contracting with a state legislator to provide housing under HUD’s tenant-based programs depends on whether that legislator exercises functions or responsibilities with respect to tenant based programs.

As we explained in our prior opinions focusing on state law, we did not find that legislators have decision making authority with regard to federal housing programs. Thus, it is our opinion that South Carolina legislators do not exercise functions or responsibilities with respect to tenant-based housing programs. However, the Secretary of HUD promulgated section 982.161. Thus, while we may offer an opinion as to how this regulation may be interpreted by a court, we believe HUD is in a better position to render an interpretation of this regulation as it applies to state legislators. Therefore, whereas we do not find section 982.161 prohibits you from contracting with a PHA to provide housing to participants in HUD programs, we suggest you contract HUD for a more authoritative interpretation of regulation 982.161.

### **Conclusion**

In regard to state law, we do not believe you are prohibited from renting a unit or house owned by you to a tenant receiving tenant based housing assistance. With regard to the federal

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regulation concerning conflicts of interest in tenant based housing, while we do not believe regulation 982.161 prohibits you from contracting with a PHA to provide housing to an individual receiving tenant-based assistance, we defer to HUD for an interpretation of this provision.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General