



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

April 17, 1975

Opinion No. 75- 162

Mr. Donald E. Martin, City Attorney
Ninth Floor - Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Dear Mr. Martin:

We have your letter of April 3, 1975, requesting our opinion whether a conflict of interest exists based upon the facts set forth in your letter concerning Mr. John Mendez, an employee of the Community Development Division of the Planning Department of the City of Kansas City, Kansas.

You have set out with great clarity the applicable statutory and regulatory provisions, and we concur fully in your reasoning and your conclusion that no conflict exists based on the circumstances set out in your letter.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS/JM/HW/ksn

Enclosure

cc: Mr. John Mendez



LEGAL DEPARTMENT of KANSAS CITY, KANSAS

Ninth Floor — Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101
Phone (913) 371-2000

Donald E. Martin
City Attorney

Assistants:

William C. Karnaz
A. B. Howard
Daniel B. Denk
Bill D. Robinson, Jr.
Eldon L. Hagan
Rodney L. Turner

April 3, 1975

The Honorable Curt Schneider
Attorney General
State House
Topeka, Kansas 66612

Dear Sir:

It is respectfully requested that your office render an opinion as to whether a conflict of interest exists as to the following set of circumstances:

John Mendez, an employee of the Community Development Division of the Planning Department of the City of Kansas City, Kansas, presently owns property which is included within a specific Urban Renewal project area. Mr. Mendez acquired this property, located at 1328 South 27 Street, Kansas City, Kansas, in 1969, prior to April 26, 1973, when the area in which this property is located (Villa Argentina) was specifically designated as an Urban Renewal area. Since that time, Mr. Mendez has made the disclosure of his ownership to the local governing body and to the Urban Renewal Agency vested with urban renewal project powers by the municipality, as required by K.S.A. 17-4758.

As a result of the Housing and Community Development Act of 1974, and the termination of the Section 115 Rehabilitation Grant and Section 312 Rehabilitation Loan programs, the City of Kansas City will be assuming the responsibility for rehabilitation grants and loans which formerly resided with the Urban Renewal Agency. Mr. Mendez's job function is that of providing for a smooth transition of these responsibilities from the Urban Renewal Agency to the City. It is also his responsibility to see that a maximum effort is made by the Urban Renewal Agency to reach the property owners in Villa Argentina and that a full explanation is given the people in Villa Argentina regarding the rehabilitation program. When needed, Mr. Mendez serves as an interpreter as many of the people in Villa Argentina speak only Spanish. In all aspects of his job, Mr.

Mendez acts in a purely ministerial capacity. He neither designates property for rehabilitation nor approves or rejects loan applications. In no way is he involved in any final decision which affects the subject property or any other property included in or to be included in an Urban Renewal area.

The possible conflict of interest arises in that Mr. Mendez has applied for a Section 312 loan, such loan to be used to rehabilitate the property he owns which is now located within the specific Urban Renewal project area.

We are of the opinion that no conflict of interest exists which should either preclude Mr. Mendez from obtaining the rehabilitation loan or from remaining in his present position with the Community Development Division of the Planning Department. This decision rests first upon an interpretation of the applicable language in HUD Circular 7375.1 Rev./ Rehabilitation Financing Handbook and K.S.A. 17-4758. Chapter 13, Section 3(j-k)* of the HUD Rehabilitation Handbook provides that:

"Interest of Public. Allow no member of the governing body of the Public Body who exercises any function or responsibility in connection with the administration of the Urban Renewal project or code enforcement project, and no other officer or employee of the Public Body who exercises such functions or responsibilities to have any interest, direct or indirect, in the proceeds of the loan, or in any contract entered into by the applicant for the performance of work financed, in whole or in part, with the proceeds of the HUD rehabilitation loan."

For the purposes of this Handbook, Public Body is defined as "The Local Public Agency (LPA) administering the federally assisted NDP or urban renewal project, and the municipality administering the section 117 concentrated code enforcement project or certified area program." (Chapter 12 (h)). Mr. Mendez is not an employee of the LPA nor does Kansas City, Kansas, (municipality) administer a Section 117 concentrated code enforcement project or certified area program. As Mr. Mendez does not fall within this definition, the applicable section from the Handbook would in no way prohibit Mr. Mendez from obtaining a rehabilitation loan.

* For some reason, in the handbook, j and k are identical provisions; there seems to have been some typing error.

K.S.A. 17-4758 provides a somewhat different restriction. The first applicable language from this statute does include City employees. It states:

"No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency which has been vested by a municipality with urban renewal project powers under Section 15 (17-4756) shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality or in any proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body."

In view of the fact that Mr. Mendez acquired the subject property prior to its designation for rehabilitation and the fact that if he does not bring his property up to applicable standards it will become subject to the sanctions prescribed under the Code Enforcement Program and the Urban Renewal Plan, it would be unduly harsh and illogical to consider the application for a Section 312 Loan to be a voluntary acquisition of an interest in an urban renewal project or contract in connection therewith. Mr. Mendez is compelled under the Urban Renewal Plan to secure monies to rehabilitate his property regardless of the source. Therefore, his entering into a contract for a rehabilitation loan can hardly be considered totally of his own volition.

A second part of this statute is also applicable. It states:

"If any such official, commissioner or employee presently owns or controls or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, . . . any such official, commissioner or employee shall not participate in any action by the municipality (or board or commission thereof), or urban renewal agency affecting such property."

The question thus becomes: Does Mr. Mendez, in the course of his employment with the City, "participate in any action by the municipality. .

The Honorable Curt Schneider
April 3, 1975
Page 4

affecting such property?" It is our opinion that Mr. Mendez does not. His duties in the Planning Department are purely of a ministerial capacity. He makes no ultimate decisions nor in any way promulgates any action that would affect his property.

By its very nature, Community Development envisions a much broader impact upon the total City. It represents a movement away from the Urban Renewal concept of total redevelopment of a few specified areas within the City. Were it to be held that one who is in any manner involved in the Community Development Program is either precluded from continuing in his present position or in being a recipient of the Program's benefits, a most illogical, unjust and far-reaching situation would arise. The recent case of Anderson v. City of Parsons, (209 Kan. 337, 496 P.2d 1333 (1972)), although not speaking directly to this issue, certainly supports this viewpoint. In interpreting K.S.A. 17-4758 (the applicable statute), the Supreme Court of Kansas states:

"We believe that the interpretation of K.S.A. 17-4758 which we have adopted is sound and is consistent with the rationale contained in City of Topeka vs. Huntoon, supra, (46 Kan. 634, 26 P. 488 (1891)). We adhere to the rule that members of a public board are disqualified to vote as such on proposals on which they have a prime interest adverse to the municipality they represent."

Mr. Mendez has no prime interest adverse to the municipality. He merely owns property in an urban renewal area while at the same time being an employee of the Community Development Division of the Planning Department. This case clearly represents an intent to limit the functions of an employee where there is the opportunity or the ability to profit at the expense of the citizenry because of their employment with the City or the Urban Renewal Agency. This is obviously not the case in this set of circumstances and in those which are similar.

Respectfully submitted,


Donald E. Martin
City Attorney

DEM:mm

CC - Mr. John Mendez
Mr. Ken Holm
Mr. Jack Glasgow