

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

June 28, 1999

**OPINION 99-008**

TO: Barb Constans, CDBG

FROM: Eunice Gibson, City Attorney

SUBJECT: **APPLICATION OF STATE AND LOCAL CONFLICT OF INTEREST LAWS TO ALDERWOMAN JUDY OLSON'S EMPLOYMENT WITH QUAKER HOUSING, INC.**

You have asked my opinion as to whether state or local laws would be violated in the following fact situation: Alderwoman Judy Olson was re-elected to the Common Council in April of this year, and was elected Common Council President. She is an employee of Quaker Housing, Inc., which has applied for both CDBG and HOME funds through the City's Community Development Block Grant office. The funds are to be used for capital improvements. The CDBG Commission has approved the application, and a resolution authorizing the allocation has been adopted by the Common Council.

Such a situation would violate U.S. Department of Housing and Urban Development Conflict of Interest Regulations, 24 CFR 92.356 and 24 CFR Sec. 570.611. I understand that you have requested HUD to grant an exception, as provided in Secs. 92.356(d) and (e), and in Secs. 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 officers from participating in the making of a public contract in which the officer has a private interest, and forbids the officer from performing some function as regards the contract which requires the exercise of discretion on the officer's part.

In her role as an employee at Quaker Housing, Inc., Ms. Olson has avoided taking any part in the application for the CDBG grant. She is not a member of the Board of Directors of Quaker Housing, Inc. and does not vote on matters coming before the Board. She has fully disclosed the conflict of interest to the Board of Directors of Quaker Housing, Inc., and left the room and abstained from discussion of the CDBG application whenever that topic has come before the Board. She will not

be involved in the administration of any funds which may be received pursuant to the grant. The directors of Quaker Housing, Inc. will be handling those matters in order to avoid a conflict. Since Ms. Olson did not participate in the negotiation for the CDBG funds, and since she will not perform any function under the proposed contract which governs the use and distribution of the funds, Sec. 946.13, Wis. Stats., is not violated in this situation.

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 him, a member of her or his immediate family either separately or together, or an organization with which the incumbent or her or his immediate family member is associated.

\* \* \*

(f) Disclosure and Disqualification.

1. An elected official who has or whose immediate family member has a financial or personal interest in any matter coming before the Common Council shall disclose on the records of the Common Council the nature and extent of such interest. This provision shall not apply if the elected official disqualifies herself or himself from participating in discussion of the matter and from voting on it. An elected official shall disqualify herself or himself from discussing and voting if the matter under consideration involves her or his or her or

his immediate family member's financial or personal interests to the extent that such interests conflict or appear to conflict with her or his official duties or would impair or reasonably be expected to impair her or his independence of judgment or actions.

Section 3.47, MGO, was not violated in this situation. Alderwoman Olson properly disclosed her conflict to the Board of Estimates and the Common Council and abstained from discussion and voting on Quaker Housing's application when it came before those bodies.

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Eunice Gibson  
City Attorney

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**SUMMARY:** Wisconsin law and Madison ordinances are not violated when a member of the Common Council is also an employee of a nonprofit agency receiving CDBG funds, when full disclosure has been made and the member refrains from participation in the Common Council action affecting the agency and refrains from participating in the negotiation for, and performance under, the contract with the City.

cc: Susan J.M. Bauman, Mayor  
Ray Fisher, City Clerk

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