

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

March 21, 2000

OPINION 2000-005

TO: Ald, Ken Golden, District 10

FROM: Eunice Gibson, City Attorney

SUBJECT: Conflict of Interest

You have asked my opinion as to whether or not you are required to abstain from voting and participating in City action relating to the New Loft. In my opinion, such abstention is not required.

You have furnished me with the following factual background: Your adult daughter lives at her own residence and is self-supporting. She is employed full time as a health educator by the Center for Prevention Intervention (CPI), formerly Picada. The New Loft, formerly an independent agency, is now also run by CPI, but there is no program or funding connection between the two branches of the merged agencies. In the 2000 City budget, CPI was allocated funds for services provided to young people at the New Loft. At present, the New Loft program occupies space in a City-owned building. Because of Overture Foundation activities, the New Loft program will need to seek a new location. As a member of the Overture Advisory Committee, you have authority to take part in formulating plans for the City's participation in the relocation process. That process could include City funding. As a member of the Common Council, you have authority to participate in approving or disapproving City funding and other City policy actions affecting the New Loft.

The City Code of Ethics, Sec. 3.47, Madison General Ordinances (MGO) defines "immediate family" as follows:

3.47(2)(d) (d)"Immediate family" means 1. An individual's spouse or designated family or registered domestic partner, or 2. An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of her or his support from the individual or from whom the individual receives, directly or indirectly, more than one-half of her or his support.

Because your adult daughter is self-supporting, she is not a member of your immediate family for the purpose of the Code of Ethics.

Sec. 3.47 (5)(a)1. provides: 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.

Even if the New Loft were to receive additional City funds, that would not constitute financial gain or anything of value or any advantage, privilege or treatment for your private benefit. Sec. 3.47 (5)(a)1., MGO.

Sec. 3.47 (5)(a)3. provides:

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. copy from ordinance.

If, either as a member of the Council or of the Overture Advisory Committee, you were to take official action to award City funds to the New Loft program, such an action would not affect you, either directly or indirectly. Further, the New Loft is not an organization with which you are associated or in which you have a financial or personal interest. (The term "associated", in the City's Code of Ethics, means that you are director or officer or own at 2% of the outstanding equity of an organization. Sec. 3.47 (2)(b), MGO. "Personal interest", in the City's Code of Ethics, means any interest greater than nominal, direct or indirect, arising from blood, marriage, adoption . . . or from close business, political or other association. Sec. 3.47 (2)(f), MGO.)

A related, but different, requirement appears in Sec. 3.47 (5)(f)1.,MGO, but the effect is the same.

Sec. 3.47 (5)(f)1.provides:

(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.

As I have already concluded, on the facts presented, you do not have a financial or personal interest in this matter, should it come before the Common Council. Neither do you have any interests in this matter which conflict or appear to conflict with your official duties or impair or reasonably appear to impair your independence of judgment or action. Under the facts you have presented, any connection between your daughter's employment with CPI and City financial assistance to the New Loft is simply too remote to impair independence of judgment.

Eunice Gibson
City Attorney

EG:nje

CAPTION: An alderperson does not violate the City's Code of Ethics by voting to approve financial assistance to one program provided by an agency when the alderperson's adult child is employed by another program sponsored by the same agency.

cc: Mayor
City Clerk