

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

OPINION 00-007

April 28, 2000

TO: Barbara Constans, CDBG

FROM: Eunice Gibson, City Attorney

RE: **Application of State and Local Conflict of Interest Laws - Members of Madison Development Corporation Loan Committee**

You have asked my opinion as to whether state or local laws would be violated in the following fact situation: The City of Madison grants CDBG funds to Madison Development Corporation (MDC), a private nonprofit corporation. MDC uses the funds for small business development and lending, according to applicable CDBG regulations. In order to carry out its responsibility, MDC has established a Loan and Investment Committee, consisting of certain members of MDC's Board of Directors and representatives of local lending institutions.

Occasionally, businesses which apply for and are eligible for CDBG-funded loans are also customers of the lending institutions whose representatives serve on the MDC Loan Committee. In the instant situation, MDC has received a loan request from Power Designers LLC, which has received a loan commitment from Anchor Bank. An employee of Anchor Bank is a member of the MDC Loan and Investment Committee. The bank employee who is a member of the MDC Loan and Investment Committee abstained from voting and refrained from discussion when the Committee discussed the loan to Power Designs LLC. In his work at the bank, he will have no connection or involvement with the business which received this particular loan. In addition, he has made full disclosure to MDC of the bank's interest in this particular loan, and such disclosure was publicly noticed in the MDC Agenda for the meeting at which this loan was discussed. Because Anchor Bank will benefit financially from the loan of CDBG funds to Power Designers LLC, this situation would be in violation of HUD conflict of interest regulations, 24 CFR 570.611.

24 CFR Sec. 570.611(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, I conclude for the reasons that follow, there would be no violation of state or local law.

MDC is a nonprofit, nonstock corporation governed by the provisions of Chapter 181, Wis. Stats. MDC's board and officers are not subject to state and local government ethics requirements, or to conflict of interest laws which apply to public officials and employees. Section 181.0831, Wis.

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stats., concerns conflicts of interest of directors of nonprofit, nonstock corporations. Section 181.0831, Wis. Stats., provides that a transaction between a nonprofit corporation and any entity in which a director of the nonprofit corporation has a material financial interest is void or voidable unless certain conditions are met. In this case, there is no transaction between MDC and an entity in which an MDC director has a material financial interest, therefore, Sec. 181.0831, Wis. Stats., is inapplicable.

Under these circumstances, no state or local law or ordinance is violated.

Eunice Gibson
City Attorney

EG:AZ:sob

CAPTION: State and local laws are not violated when a member of the MDC loan committee is an employee of a local lending institution which funds a loan to a company which will receive a CDBG-funded loan through MDC.

cc: Mayor
City Clerk