

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

OPINION NO. 03-004

TO: Hickory Hurie, CDBG Grants Supervisor

FROM: James L. Martin, City Attorney

SUBJECT: **APPLICATION OF STATE AND LOCAL CONFLICT OF INTEREST LAWS TO PROPERTY SALE BY MADISON DEVELOPMENT CORPORATION TO THE SALVATION ARMY**

DATE: August 13, 2003

You have asked my opinion as to whether state or local laws would be violated in the fact situation described below:

Madison Development Corporation (MDC) is a Wisconsin nonstock, nonprofit corporation governed by a 13 member Board of Directors. The City of Madison loaned HOME funds to MDC to finance MDC's purchase of two residential properties which were used to house and provide supportive services to formerly homeless persons. MDC desires to sell the properties to the Salvation Army which intends to use the properties for the same purpose. The Salvation Army is an Illinois nonstock, nonprofit corporation. The Salvation Army would assume MDC's HOME loan obligations and in addition would request an additional \$50,000 loan from the City's CDBG Office.

A member of the MDC's Board, Ruth Ann Schoer, is employed by the Salvation Army as its Development Director. Because of her Board membership and because of her Salvation Army employment, the HOME Program's conflict of interest provisions found at 24 CFR 92.356 are applicable to her.

24 CFR 92.356(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 that there would be no violation of state or local law.

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MDC is a nonprofit, nonstock corporation governed by the provisions of Chapter 181, Wis. Stats. Section 181.0831, Wis. 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 not void or voidable if the relationship or interest of the director is disclosed to the board or committee that authorizes or approves of the transaction. Ms. Schoer's employment at the Salvation Army was disclosed to MDC's Board and to its Executive Committee, which is charged with authorizing and approving the sale of the properties. Ms. Schoer abstained from any votes regarding the transaction at the Board level. MDC's Board and its officers are not subject to state and local government ethics requirements, or to conflict of interest laws which apply to public officials and employees.

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

James L. Martin
City Attorney

JLM:AZ:sob

cc: Mayor
City Clerk

Caption: Wisconsin law and Madison ordinances are not violated when a member of the MDC Board, who is an employee of another nonprofit corporation which may purchase CDBG-funded buildings from MDC, discloses her interest to the MDC Board and refrains from voting on the matter.