

Case No. 08038.A
August 27, 2008
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ADVISORY OPINION

August 27, 2008

[Al Dee]
[City Department]
[Department Division]
121 N. LaSalle St., Room []
Chicago, IL 60602

RE: Case No. 08038.A

Dear Mr. [Dee]:

You are a [professional] with the City's [Department], [Division]. On June 27, 2008, you asked for an advisory opinion addressing whether a proposed conveyance of land from the City's Department of Housing to a City employee is prohibited by the Governmental Ethics Ordinance. More specifically, you asked for an opinion as to whether, based on the facts set forth below, the conveyance falls within the "unless sold pursuant to a process of competitive bidding following public notice..." exclusion in Municipal Code § 2-156-110. As explained in this opinion, the Board has determined that: 1) the land was sold pursuant to a process of competitive bidding following public notice; and thus 2) the conveyance will not result in this City employee having a prohibited financial interest under the Ordinance.

FACTS:

The Property: The City property located at 13[xxx] S. Avenue "[letter]" (the "Property") was posted for 30 days on the City's Department of Housing's ("DOH") website for homes available for purchase. The purchase price, \$5,000, was established by the DOH. The Property was being offered for sale pursuant to the City's Preserving Communities Together (PCT) Program.¹

¹1. The PCT program is authorized by §11-31-1(d) of the Illinois Municipal Code, 24 ILCS 5/11-31-1(d). It replaced the Chicago Abandoned Properties Program ("CAP") which was adopted by Ordinance May 20, 1992, and published in the Journal of Proceedings of the City Council ("Journal of Proceedings") for such date at pages 16322-16335.

The Preserving Communities Together Program: In general terms, the PCT Program involves the City's conveyance of abandoned buildings (typically, 3 units or less) to developers for rehabilitation. According to [Art Smith], Deputy Commissioner of [Department], whom you authorized Board staff to contact, DOH reviews all applications based on the applicants' previous experience, financial capacity, scope of work for the project, development budget, and proposed end use. Mr. [Smith] stated that after rehabilitation, the property may be occupied by, leased by, or resold by the developer. The weight given to each factor depends on the type of project (light or extensive rehab/ owner-occupant or developer). The condition of the building and the level of rehabilitation that it needs is considered in reviewing the scope of work submitted by each applicant, and, with more difficult rehabilitation projects, the DOH will give greater weight to applicants with more experience. For owner-occupant projects, according to Mr. [Smith], being a resident of the community where the property is located is given greater weight (assuming the required rehabilitation is not too extensive). Mr. [Smith] indicated that one of the most important factors in all cases is the financing that the applicant has--lines of credit, construction financing, construction escrow, etc. The DOH has to make sure the applicant has a commitment for the amount that will be needed to cover the project.

As provided by the PCT Ordinance, DOH administers the PCT Program. After the applicants have had an opportunity to walk through the property to gather information for the scope of work and construction budget, a deadline is set for those items to be submitted to DOH. All completed applications are reviewed by the Program Assistant, the Program Coordinator, the Program Building Inspector, and the Program Deputy. Recommendations are made to the Deputy Commissioner, who has the final say of which applicant the Department will select to develop the property under the Program.

Mr. [Smith] indicated that properties are posted for a minimum of 30 days or until the DOH has at least 2 applicants, whichever takes longer. He said that it is usually a minimum of 45 days, because once the DOH gets 3 applicants, it sets a deadline for applications, which is usually 14-30 days from the point that DOH receives the third completed application.²

²2. Mr. [Smith] provided the following example as a typical time table:

The Conveyance: The City conveyed the Property to [Rick Ross], a City employee. Mr. [Ross] and another applicant (name not provided, but also a City employee) each submitted to DOH an application to purchase and rehabilitate the single family home on the Property in accordance with provisions of the PCT Program. After evaluating each applicant's proposed use, budget, qualifications and scope of work, as described above, DOH selected Mr. [Ross] as the developer to whom the Property should be conveyed. DOH's selection was not based on purchase price, because that amount had already been set by DOH. According to Mr. [Smith], DOH chose Mr. [Ross] because the other applicant's and his wife's combined income exceeded 80% of the median income of the area in which the property is located (this is the criterion DOH refers to as "affordability"). Although the program ordinance does not itself impose any affordability requirements as to the resale, rental or occupancy of the rehabilitated home, the proposed redevelopment agreement between the City and Mr. [Ross] will require him to sell the Property to a purchaser with a total household income of less than 80% of Area Median Income unless otherwise authorized by the Commissioner of the DOH. Given the market in which the home is located, this will result in a **sale** at what is effectively the market value. DOH recommended that City Council authorize the conveyance of the Property to Mr. [Ross].

On June 11, 2008, City Council passed the ordinance (the "June 11 Ordinance"), which authorizes the City to convey the Property to Mr. [Ross] pursuant to the PCT Program. The purchase price set forth in the June 11 Ordinance is \$5,000. Mr. [Ross] will not live (either as owner or tenant) in the home on the Property, but will rehabilitate the home and then sell or lease it.

You informed Board staff that, in the [Department]'s judgment, the conveyance did not fall within the "Eligible Persons" and "Eligible Programs" exclusion in § 2-156-110.

Day 1: DOH learns that it will most likely be acquiring a building and it posts it on the website and begins taking applications.

Day 45: DOH acquires the property. In the file DOH has 5 completed applications. DOH posts on its website a deadline "14 days out" to submit applications.

Day 59: Deadline to have all completed applications for the property. Those with complete applications are given the day and time of the open house where DOH will allow them to walk through with contractors to develop scope of work and development budgets.

Day 69: Open house is held for those applicants who made it in before the deadline.

Day 79: Scopes of work with costs and development budgets are due. Staff involved with selection process is given applications to review.

Day 83: Review meeting is held and an applicant is selected.

LAW AND ANALYSIS:

To advise you, we will consider the facts you have presented in accordance with § 2-156-110 of the Ordinance, "Interest in City Business." It states, in relevant part:

Except with respect to the participation of Eligible Persons in Eligible Programs, no elected official or employee shall have in his own name or in the name of any other person in any contract, work or business with the City, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance....Unless sold pursuant to a process of competitive bidding following public notice, no elected official or employee shall have a financial interest in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City....As used in this section, the terms "Eligible Persons" and "Eligible Programs" have the meanings provided in section 2-44-100 [sic] and shall be determined by the department of housing.

The Board accepts your Department's judgment that the facts presented indicated that the conveyance did not fall within the "participation of Eligible Persons in Eligible Programs" exclusion in § 2-156-110. Our analysis here focuses on whether there was a process of competitive bidding following public notice.

The facts presented indicate that the Property was posted for sale on the City's website for 30 days. More than one applicant applied through the website. Mr. [Smith] indicated that after evaluating each applicant's proposed use, budget, qualifications and scope of work, DOH selected Mr. [Ross] the Property's developer. DOH chose Mr. [Ross] because the other applicant's and his wife's combined incomes exceeded 80% of the median income of the area in which the property is located ("affordability").

Under Board case law, a City employee is prohibited from having a “financial interest” in the purchase of City property unless it is sold through “a process of competitive bidding following public notice.” Competitive bidding refers to a process in which all parties submitting bids are treated equally and are bidding on the same terms and conditions. See Case Nos. 93034.A, 00010.A, 06079.A. The requirement for public notice under the Interest in City business provision was also followed in this case. Mr. [Smith] indicated that properties are posted for a minimum of 30 days or until the DOH has at least 2 applicants, whichever takes longer. He said that it is usually a minimum of 45 days, because once the DOH gets 3 applicants, it sets a deadline for applications, which is usually 14–30 days from the point that DOH receives the third completed application. The property was on the DOH website for 30 days. After the City had the two applicants and reviewed each applicant’s proposed use, budget, qualifications and scope of work, DOH selected Mr. [Ross] as the developer to whom the Property should be conveyed. In a prior Board case, 93034.A, once the City accepted the proposals submitted by the two parties, the Commission, as required by Ordinance, declared its intention, at public meetings and by resolutions, to enter into negotiations with the specified developers. It then published these resolutions in the Sun–Times once a week for two consecutive weeks. Each notice expressly gave any other party interested in those properties 30 days to submit a proposal.³ The facts here fit well within the parameters established by the Board as constituting a process of public notice followed by competitive bidding. The City employees submitted bids and were evaluated according to the same terms and conditions as would have been applied to any other potential bidder in relation to this property. Thus, the Board concludes that there was a process of competitive bidding following public notice.

DETERMINATIONS: Based on the facts presented, the Board determines that: 1) the Property was sold pursuant to a process of competitive bidding following public notice; and thus 2) the conveyance the Property addressed in this opinion

³ The CDC also was required to mail copies of the resolutions to, and to invite proposals from, all parties who, within the last year, had advised the Commission or the Department in writing of their interest in any parcel in those redevelopment areas. These parties also were given 30 days to submit a proposal. No other bidders responded to the public notice on either property.

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will not result Mr. [Ross] having a prohibited financial interest under the Ordinance.⁴

Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other rules or laws may also apply to your situation. We also note that any City department may adopt restrictions that are more stringent than those imposed by the Governmental Ethics Ordinance.

RELIANCE: This opinion may only be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Miguel A. Ruiz, Chair

⁴³. The Board notes that, at the request of the Commissioner of Housing and the Law Department, an amendment to the PCT ordinance was presented to the City Council at its July 30, 2008, which will make the PCT program an "Eligible Program" under § 2-156-110, and specifically allow City employees to participate in this program. This opinion, however, obviously addresses a conveyance made before that ordinance would become effective.