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August 23, 1990

C O N F I D E N T I A L

**ADVISORY OPINION
CASE NO. 90028.A**

Since the beginning of April, 1990, the Board of Ethics has received several requests from individuals seeking advisory opinions as to the propriety of their continued participation in the Urban Homestead Program and the Section 312 Rehabilitation Loan Program. On April 27, 1990, the Board received a request from **INDIVIDUALS A & B**

Until April the Board of Ethics was neither familiar with these programs nor had it reviewed these programs in light of the Governmental Ethics Ordinance. Once brought to the Board's attention, an investigation was initiated and extensive research was conducted in each of these cases.

These requests raised two distinct issues: (1) Whether City employees can receive property from the City through its Urban Homestead Program; and (2) Whether City employees can receive loans from programs administered or funded by the City, including funds from the Section 312 Loan Program.

On August 10, 1990 the Board concluded that, as a general matter, the Governmental Ethics Ordinance prohibits City employees from participating in the Urban Homestead Program. However, based on the totality of the circumstances in this particular case, it is the Board's opinion that equity and justice require it to conclude that **INDIVIDUALS A & B** should be allowed to continue to participate in the Program. With regard to the issue of related loan programs, the Board concluded that **INDIVIDUALS A & B** may not receive loans for \$5,000 or more from loan programs administered by the City, including Section 312 Rehabilitation loans.

The Board of Ethics is the agency charged with the responsibility of faithfully interpreting the Governmental Ethics Ordinance. It renders advisory opinions which are consistent with the language, purpose and goals of the Ordinance.

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When appropriate, the Board makes recommendations for further action. Recommendations reflecting the Board's opinion in this case shall be forwarded to the Department of Housing.

In coming to its decisions, the Board made a thorough review of the Urban Homestead Program and the Section 312 Rehabilitation Loan Program and conducted extensive research of the facts surrounding the INDIVIDUALS A's & B's particular situation. Our review of the Urban Homestead Program indicates it was designed to provide homes to low and moderate income families that reside in the City of Chicago. The Program is administered by the City's Department of Housing. Homes needing substantial rehabilitation are made available to qualified winners of a random public drawing (the Housing Lottery). Eligible winners purchase their selected property for \$1.00 and they promise to fulfill obligations stipulated in the Homesteader's Purchase Agreement, which among other things requires the Homesteader to bring the property into City code compliance. Prior to the conveyance of conditional title, the property involved belongs to the City.

The Board's review of INDIVIDUALS A's & B's circumstances revealed the following:

INDIVIDUALS A and B submitted their application to participate in the Urban Homestead Program and paid the required \$25.00 application fee. INDIVIDUALS A and B they won the lottery and thereby received the opportunity to fulfill the necessary eligibility requirements under the Program.

After that INDIVIDUAL A became a City employee. Requirements which they met before their participation was questioned included: the submission of all necessary documents regarding income, expenses and debts (at which time they expended \$35.00 for a credit check and filing fees for a release of lien); the completion of a House Verification Report; the performance of inspections regarding the rehabilitation work needed and its estimated cost; the submission of contractors bids; the selection of a contractor; and an appraisal of the property. The cost of the appraisal was \$150.00.

INDIVIDUALS A and B entered into the Homesteader's Purchase Agreement with the City. According to the records from the Department of Housing conditional title to the property has not yet been transferred.

In addition to meeting the requirements imposed by the Homestead Program, INDIVIDUALS A & B also worked with the Department of Housing

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to obtain financing for the rehabilitation work. They completed a Neighborhood Home Improvement Loan Program Application stating that the City of Chicago was **INDIVIDUAL A's** employer. Up to this point **INDIVIDUALS A's & B's** eligibility in the Urban Homestead Program was never questioned.

In January 1990, **INDIVIDUALS A & B** were told there was a problem with the loans due to **INDIVIDUAL A's** City employment. Every four weeks thereafter they called the Housing Department for a decision. In approximately the middle of April 1990, they were advised to contact this office, which they did on April 27, 1990.

During a telephone interview, **INDIVIDUAL B** stated that in addition to the expenses mentioned above, she took off a total of approximately two weeks time from work, using personal and vacation days to conduct business associated with the Homestead Program. Moreover, she indicated that had they known they were not eligible to receive property under the Homestead Program, **INDIVIDUAL A** would not have accepted City employment.

ISSUE I: Whether City employees can receive property from the City through its Urban Homestead Program.

The Board has concluded that City employees are prohibited by the Governmental Ethics Ordinance from receiving property through the Urban Homestead Program. The Board, in coming to this determination, looked to Section 26.2-11 of the Ordinance. This section contains two provisions which prohibit City employees from receiving property under the Urban Homestead Program. The first provision that the Board reviewed prohibits an employee from having a financial interest in a contract of the City when the consideration of the contract is paid with funds which belong to or are administered by the City or when the consideration of the contract is authorized by ordinance. The exact language of Section 26.2-11 is as follows:

No elected official or employee shall have a financial interest in his own name or in the name of any other person in any contract, work or business of 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. Compensation for property taken pursuant to the City's eminent domain power shall not constitute a financial interest within the meaning of this section. Unless sold

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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. No appointed official shall engage in a transaction described in this section unless the matter is wholly unrelated to the official's City duties and responsibilities.

One definition of financial interest in the Ethics Ordinance is: "any interest with a cost or present value of \$5,000.00 or more." Section 26.2-1(1)(ii). Our research indicates that the property which one would receive under the Homesteader's Purchase Agreement will have a value of more than \$5,000.00.

The term "consideration" of a contract is defined as the benefit which one gives up in exchange for some other benefit. The City's consideration of the contract in this case is the Homestead property, and the contract in question is the Homesteader's Purchase Agreement. Moreover, the transfer of the property to the Homesteader is made pursuant to City Council ordinance. Consequently, the Board was compelled to conclude that any employee who enters into the Homesteader's Purchase Agreement with the City would have a financial interest in a contract, the consideration of which is authorized by ordinance. This conduct is clearly prohibited by the Ethics Ordinance.

Additionally, on this same issue, the Board looked to the provision of Section 26.2-11 which prohibits an employee from having a financial interest in the purchase of property which belongs to the City. Our research shows the Homestead Program involves a purchase of City property because the Homesteader receives property by quit claim deed from the City in exchange for \$1 and the promise to fulfill obligations stipulated in the Homesteader's Purchase Agreement. An exception to this part of the provision exists for property sold by the City pursuant to a process of competitive bidding. However, since the Homestead Program does not involve competitive bidding at any point of the process, this exception does not apply. The Board's analysis of this provision required it to conclude that an employee would have a financial interest in the purchase of property which belongs to the City if they entered into the Homesteader's Purchase Agreement with the City. Accordingly, it is the opinion of the Board that Section 26.2-11 of the Ordinance prohibits City employees from receiving property through the Homestead Program.

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Our investigation reveals that [INDIVIDUALS A & B] entered into the Homesteader's Agreement on [REDACTED]. Under Section 26.2-41, penalties may be imposed on employees for a violation of the Ethics Ordinance. Based on the opinion stated above, the question with which the Board was necessarily confronted was whether [INDIVIDUALS A & B] should be allowed to continue to participate in the Urban Homestead Program.

This case presented a very unique and difficult situation to the Board. The uniqueness of the case in the first instance centers on the fact that considerable luck is required before one can become a Homesteader. Under this Program, [INDIVIDUALS A & B]'s name had to be randomly chosen at the public drawing known as the Housing Lottery. This "luck of the draw" requirement distinguishes the Homestead Program from all other programs previously analyzed under Section 26.2-11 of the Ethics Ordinance. Additionally, the Board took notice of the fact that [INDIVIDUALS A & B] became lottery winners prior to the time [INDIVIDUAL A] became employed by the City. These unique features, when viewed in light of the totality of [INDIVIDUALS A & B]'s circumstances, gave the Board much to consider in coming to its decision.

In reviewing the facts, it became obvious to this Board that throughout their participation in the Program [INDIVIDUALS A & B] acted in good faith and in reliance on the affirmative actions of others to their detriment. They did not conceal the fact that [INDIVIDUAL A] became a City employee. Documents in Housing Department files show [INDIVIDUAL A]'s employer to be the City of Chicago. Yet, until recently [INDIVIDUALS A & B] were allowed to participate in the Program.

Moreover, since winning the Lottery both [INDIVIDUALS A & B] and the City have expended substantial sums of time, effort and money. The Board concluded that it would be a great loss to everyone concerned, should [INDIVIDUALS A & B] not be permitted to continue in the Program. Among other things, contracts have been entered into, credit checks run, inspections and appraisals completed, bids received, and a contractor selected. Under these circumstances, for the Board to negate what has already been done would be unconscionable. Therefore, in coming to our decision on this matter, we considered not just the letter of the Ordinance but the principles of equity, good conscience and justice.

For the foregoing reasons the Board cannot in this case make the recommendation that [INDIVIDUALS A & B] be prohibited from further

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participation in the Program. We have concluded that to do so would be highly inequitable and unjust.

ISSUE II: Whether City employees can receive loans from programs administered or funded by the City, including funds from the Section 312 Loan Program.

The Board also reviewed Section 26.2-11 to determine whether City employees are eligible to participate in Section 312 and other loan programs. As previously discussed, no City employee may have a financial interest in any contract when the price or consideration of the contract is paid with funds administered by the City. It is our understanding, based upon our review of the Section 312 Loan Program, that HUD provides loan funds which the City Department of Housing administers. In past decisions of the Board, it has been determined that the Ethics Ordinance prohibits City employees from receiving loans of \$5,000 or more from programs administered by the Department of Housing (e.g. Case No. 89121.A). In that case, the Board of Ethics determined that the loans fell within Section 26.2-11 of the Ordinance because: (1) loan agreements are contracts; and (2) the loans in question were administered by the City. For these reasons, it is the Board's opinion in this case that City employees are prohibited from receiving loans of \$5,000 or more from loan programs administered by the City. This opinion allows INDIVIDUALS A1B to receive loan funds of less than \$5,000 through loan programs administered by the City. Loans for \$5,000 or more would constitute a violation of the Ordinance.

CONCLUSION:

The Board's determination and recommendations to the Housing Department based upon the totality of circumstances in this case are as follows: (1) that INDIVIDUALS A1B be allowed to continue their participation in the Urban Homestead Program, so long as they can meet the conditions of the Program; (2) that INDIVIDUALS A1B may not receive funds of \$5,000 or more from loan programs administered by the City.

RELIANCE:

An advisory opinion issued for one case is not a sufficient basis for inferring legal permissibility or impermissibility of conduct in other cases, even though cases may be similar in some respects. This advisory opinion is based on the specific set of circumstances described above. It should be relied upon for

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legal guidance only by the following persons: (1) persons involved in specific transaction or activity with respect to which an advisory opinion is rendered, or (2) persons involved in a specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which an advisory opinion is rendered.

cc: [REDACTED]
[REDACTED]

Kelly Welsh, Corporation Counsel
Department of Law

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