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EMUD

ADVISORY OPINION
CASE NO. 93016.A
FINANCIAL INTEREST STATEMENT FILING REQUIREMENT

To:

Date: June 9, 1993

In a memorandum dated April 20, 1993, you requested that the Board of Ethics review its decision of January 13, 1993 that the members of the Central Area Circulator Board (Special Service Area #12) are required to file Statements of Financial Interests. You stated that the City intended this Board to be an advisory body and that, therefore, its members should not be required to file. In support of your request you submitted a memorandum dated May 4, 1993, which the Board reviewed and considered.

Section 2-156-150(a)(iii) of the Governmental Ethics Ordinance requires each appointed official to file a Statement of Financial Interests unless the official is "a member of an agency that is solely advisory in nature and has no authority to make binding decisions, to enter into contracts or to make expenditures, other than expenditures necessarily incurred for research in connection with its advisory functions."

The question is whether the powers of the Circulator Board are such that they would permit an exception, under the criteria stated above of section 2-156-150(a)(iii), to the general rule that appointed officials must file Statements of Financial Interest.

A review of section 6 of the enabling ordinance of the Circulator Board reveals that certain powers granted to the Board are not solely advisory and therefore compel the conclusion that Circulator Board members must file Statements of Financial Interests. Subsections (h) and (j) of section 6 specifically grant the Circulator Board the power to negotiate contracts. It is the Board's opinion that the power to negotiate contracts is not solely advisory.

Moreover, subsection (i) of section 6 grants the Circulator Board the power to hire staff, which entails making binding decisions. Although the



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Board has never exercised this power, it is nonetheless provided by the ordinance. Under Board precedent, the authority provided by the ordinance is determinative, even when it is not exercised. (See case no. 88040.E.)

For the reasons stated, it is the Board's opinion that the Circulator Board does not meet the qualifications for an agency whose members are not subject to the Statement of Financial Interests filing requirement. Therefore, the Board affirms its prior determination that the members of the Central Area Circulator Board are required to file annual Statements of Financial Interests.

Our determination in this case is based on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change in the facts may alter our opinion.



Catherine M. Ryan
Chair

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NOTICE OF RECONSIDERATION AND RELIANCE

Reconsideration: This advisory opinion is based on the facts outlined in this opinion. If there are additional material facts or circumstances that were not available to the Board when it considered this case, you may request reconsideration of the opinion. A request for reconsideration must (1) be submitted in writing, (2) explain the material facts or circumstances that are the basis of the request, and (3) be received by the Board of Ethics within fifteen days of the date of this opinion.

Reliance: This advisory opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.