VOLUME NO. 37 OPINION NO. 110

CONFLICT OF INTEREST - Tenant in a housing authority is ineligible to serve as commissioner of the housing authority; REVISED CODES OF MONTANA, 1947 - Section 35-107.

HELD: A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority.

27 January 1978

David V. Gliko, Esq.
Great Falls City Attorney
City of Great Falls
Great Falls, Montana 59403

Dear Mr. Gliko:

You have requested my opinion concerning whether a tenant in a housing authority may serve as a commissioner of the housing authority. A housing authority is a public body consisting of five commissioners, created pursuant to the Housing Authorities Law, section 35-101, et. seq., R.C.M. 1947, and delegated powers to build and maintain safe and sanitary dwelling accomodations for persons of low income. The commissioners are appointed by the mayor. Section 35-105, R.C.M. 1947.

Your request is governed by section 35-107, R.C.M. 1947, which states:

> No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of any authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

The Montana Supreme Court has not construed this statute in the situation posed in your request. However, two states, Connecticut and Illinois, have interpreted similar statutory language as prohibiting tenants in a housing authority from serving as commissioners of the housing authority. Although decisions of sister states are not binding upon the Montana Supreme Court, the Court has stated that when a Montana statute is similar to one in a sister state, the Supreme Court will give consideration to construction placed on that statute by courts of the sister state. Dept. of Highways v. Hy-Grade Auto Court, 169 Mont. 340, 546 P.2d 1050 (1976).

In Housing Authority of City of New Haven v. Dorsey, 164 Conn. 247, 320 A.2d 820 (1973), cert. denied 414 U.S. 1043 (1973), the Connecticut Supreme Court interpreted a statute identical to section 35-107, R.C.M. 1947. The problem presented by a tenant of a housing authority serving as a commissioner is best stated in Dorsey at 822:

> Within the context of this common-law standard the General Assembly has provided by statute that no commissioner of a housing authority shall acquire any interest, direct or indirect, in any housing project. General Statutes §8-42. An "interest" has been defined as having a share or concern in some project or affair, as being involved, as liable to be affected or prejudiced, as having self-interest, and as being the opposite of disinterest. (Citation omitted.)
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> The interests of a housing authority commissioner would center on the points at which management policies and functions of the authority come into contact with individual tenants. These include the selection and retention of tenants, the determination of rents to be charged, the services and other benefits to be furnished, and the enforcement of the rules governing the conduct and rights of the tenants. In fixing rents the commissioners must consider the payments on the principal and interest on the bonded indebtedness, the cost of insurance and administrative expenses, the amounts to be set aside in reserve for repair, maintenance and replacements, and vacancy and collection losses. (Citation omitted.)
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> The task of fixing rent charges is such that a tenant commissioner might be called on to vote to

> increase his own rent in order to amortize and service the housing authority's debt obligation. If he is reluctant to increase rents which include his own, the housing authority might fail to pay its bonded indebtedness and permit unchecked physical depreciation of the properties. Matters on which the housing authority votes include the setting and the enforcing of its policies as to delinquent rents and the eviction of tenants. As a housing authority commissioner, a tenant would also be required to participiate in voting on decisions involving the hiring and firing of housing authority personnel who deal with him and his family from day to day.
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> Thus, whether or not the tenant as a housing authority commissioner is in fact benefiting himself individually by his vote, his personal interests are always directly or indirectly involved in his vote on the commission. This is not to say that his personal interests are inevitably and on all occasions antagonistic to the interests of the housing authority. The fact, however, that he is a tenant makes it possible for his personal interests to become antagonistic to the faithful discharge of his public duty. (Citation omitted.)

Section 35-109, R.C.M. 1947, presents this same conflict of interests by granting housing authority commissioners the same powers discussed in Dorsey.

Support for this rationale is found in Brown v. Kirk, 64 Ill.2d 144, 355 N.E.2d 12 (1976), wherein the Illinois Supreme Court, citing Dorsey, held tenants of a housing authority ineligible to serve as commissioners.

In construing legislative intent, statutes must be read and considered in their entirety and legislative intent may not be gained from wording of any particular section or sentence, but only from consideration of the whole. Vita-Rich Dairy Inc. v. Dept. of Business Regulation, ___ Mont. ___, 553 P.2d 980 (1976). Reading section 35-107, R.C.M. 1947, in its entirety, the disclosure requirements found in the second sentence only apply to pre-existing interests. Otherwise, the first sentence of section 35-107, R.C.M. 1947, serves no useful purpose. There would be no bar to a commissioner or employee from acquiring an interest in a housing authority because he could simply disclose this

interest after acquisition. Section 35-107, R.C.M. 1947, prohibits any commissioner from acquiring an interest in property included or planned to be included in a housing authority after his appointment, but does not require a commissioner to divest himself of interests acquired prior to his appointment. A commissioner is only required to disclose the latter type of interest.

The argument could be made that a person who is already a tenant of the housing authority remains eligible for appointment as commissioner. This argument was rejected by Brown. The court stated at p. 14:

> However apt this distinction between a newly acquired and pre-existing interest may be in cases where the question is purchase of property to be included in a project, we think that it is not appropriate in the case of a tenant, who retains a continuing contractual relationship with his landlord subject to periodic renewal.

This continuing contractual relationship between landlord and tenant is also prohibited by section 59-501, R.C.M. 1947, which states:

> Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof, must not be interested in any contract made by them in their official capacity, or by any body, agency, or board of which they are members or employees.

THEREFORE, IT IS MY OPINION:

> A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority.

Very truly yours,

MIKE GREELY
Attorney General