California Fair Political Practices Commission

December 2, 1988

Manuela Albuquerque
City Attorney
City of Berkeley
Legal Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: Your Request for Advice
Our File No. A-88-422

Dear Ms. Albuquerque:

We have received your request for advice regarding whether the non-profit Housing Development Corporation located in Berkeley is an "agency" subject to the provisions of the Political Reform Act ("the Act").1/

QUESTION

Is the Housing Development Corporation (hereafter "corporation") a "local government agency" and, therefore, are the activities of certain persons affiliated with it subject to the financial disclosure and disqualification provisions of the Act?

CONCLUSION

The Corporation is a "local government agency" under the Act and the activities of "public officials" affiliated with the corporation are subject to the financial disclosure and disqualification provisions of the Act.

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

In 1985 the Mayor of the City of Berkeley committed Community Development Block Grant funds to hire a consultant to solicit citizen input and work with city staff in an effort to revitalize an area in South Berkeley. The consultant submitted a plan to acquire real property in the targeted area and to build low income housing on the real property. The plan included, among other things, a recommendation that the city establish a citizen's committee (hereafter "committee") to make recommendations on the plan to the city council. It also recommended that the developer be a company, a joint venture or an entity created for the specific purpose of developing the housing and that, after development, the housing eventually be held by a low income owners' cooperative.

The committee was formed in 1985. In early 1986, on the basis of recommendations from the committee, the city directed the consultant to implement the revitalization plan in three phases. Phase I was to facilitate community involvement in the process. Phase II was to prepare a detailed site development plan and to acquire the site. Phase III was for pre-construction activities, issuing a public contract and negotiating a disposition and development agreement which included project design and financing as well as relocation and infra-structure construction. The committee was to be intimately involved in each of these phases and became recognized as having a major role in the policy decisions of the revitalization plan.

In mid-1987 the committee recommended that the corporation be established as the developer for the housing and that the corporation's directors be the same as the committee members. The city council accepted this recommendation and directed that the city hire attorneys to do the incorporation. The corporation was thereafter formed as a nonprofit corporation with authority to make nearly all decisions regarding development of the housing. The legal authority for the corporation's formation is set forth in Government Code Sections 37364 and 50570.[2/]

2/ Section 37364 empowers cities to provide affordable housing to persons of low or moderate income by sale, lease or other disposal of city-owned real property at less than fair market value. (Footnote 2/ continued on next page.)

After formation of the corporation, it and the city negotiated several agreements. One, a disposition and development agreement, requires the corporation to develop the housing and plans for financing the construction and related costs. However, the city retains the right to approve all plans and financing schemes and the duty to pay certain expenses associated with the project, including the corporation's administrative and pre-development costs. The city also promises to assist the corporation in its attempts to seek other private and public financing. The city has provided the corporation with access to administrative and pre-development costs by way of an interest-free loan in the sum of $225,000. This loan will be forgiven if it cannot be paid from the proceeds of any permanent financing obtained by the corporation. The city has also retained the right to approve the corporation's use of these funds. To date, all funds received by the corporation have been from the city.

In conjunction with the disposition and development agreement, the city will lease the real property for the project to the corporation for 55 years for the sum of one dollar and subject to restrictions associated with use for low to moderate income housing. Ownership of the housing will vest in the city upon expiration of the lease.

ANALYSIS

The Act was adopted by California voters as part of the initiative process in 1974. Among the purposes that the Act expressly sought to accomplish were disclosure by public officials of assets and income that may be affected by their official actions and disqualification of the officials from acting so that conflicts of interest could be avoided. (See

---

(Footnote 2/ continued.)
Section 50570 permits local agencies to sell, lease or otherwise transfer real property to any housing corporation or nonprofit corporation "upon such terms and conditions ... the local agency may deem to be best suited to the development of the parcel for housing available to persons and families of low or moderate income at affordable housing costs .... The deed or other instrument of conveyance shall provide that whenever the ownership of the land or the mortgagor corporation is no longer composed of a majority of the nonprofit ... sponsors, title to the land shall revert to the local agency."

Section 81002(c).) To effect these purposes, the Act included a chapter on conflicts of interest[3] which sets forth disclosure and disqualification requirements for "public officials" serving in decisionmaking positions at various levels of state or local government.

Section 82048 defines "public official" as:

> ... every member, officer, employee or consultant of a state or local government agency ....

The issue posed in your letter is whether the corporation is a "local government agency." If it is, then "public officials" of the corporation will be subject to the disclosure and disqualification requirements of the Act.

Section 82041 defines "local government agency" as follows:

> ... a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

While this definition is helpful where an entity clearly functions under the direct aegis of local government, the definition is not helpful in a case such as the corporation's. Here, the inquiry is whether, under Section 82041, the corporation qualifies as an "other agency" of the City of Berkeley.

Since neither the Act nor Commission regulations further define what "other agency" means, we turn to Commission opinions on the subject. In <u>In re Siegel</u> (1977) 3 FPPC Ops. 62 (copy enclosed), the Commission set forth four criteria by which it determined whether an entity was public or private under the Act. These criteria have been consistently applied by the Commission in its determination of this question. (See <u>In re Leach</u> (1978) 4 FPPC Ops. 48; <u>Francis</u> Advice Letter, A-86-214; <u>Hopkins</u> Advice Letter, A-81-38, copies enclosed.)

---

[3] See Chapter 7 of Title 9 of the Government Code (Sections 87100-87500).

Accordingly, we apply these criteria in an attempt to determine whether the corporation is a "local government agency" under the Act.

The first criterion is whether the impetus for formation of the corporation originated with a government agency. This was undoubtedly the case in formation of the corporation. It's existence was conceived by the committee and recommended to the city council. Thereafter, the city council instructed the city manager to hire attorneys to form the corporation. So, in this case, the city was more than the impetus for formation of the corporation. Its own attorneys drafted the documents by which the corporation was formed.

The second criterion is whether the corporation is substantially funded by, or its primary source of funds is, a government agency. Under its disposition and development agreement with the city, the corporation is required to develop a housing project for persons of low and moderate income and to also develop plans for financing the project. The city and the corporation have also signed a loan agreement. In this agreement, the city, among other things, has agreed to buy the real property for the housing, loan funds to the corporation for administrative and pre-development costs, sell tax exempt bonds (if feasible) and assist the corporation in obtaining private and public financing for the development. Currently, the city has loaned approximately $225,000 to the corporation for administrative and pre-development costs, but the loan is interest-free and, if not repaid through new financing, will be forgiven by the city. Apparently, these have been been the only funds received by the corporation to date from any source. Also, the real property upon which the development will occur will be leased by the city to the corporation for a period of 55 years for one dollar and ownership of the development will vest in the city upon expiration of the lease.

Though it is possible that the corporation will eventually obtain non-government financing in its effort to build housing, we believe that the corporation nevertheless meets the second criterion set forth in the <u>Siegel</u> Opinion. This is so because the city has agreed to furnish all of the real property upon which the housing will be built at essentially no cost to the corporation. According to your letter, the estimated value of acquiring the property is approximately $1.7 million, which represents approximately 38% of the estimated cost of the entire redevelopment. Furthermore, ownership to the property and its improvements will vest in the city after expiration of the lease to the corporation. We believe, therefore, that the city is the primary source of funding for the corporation.

The third criterion is whether one of the principal purposes for formation of the corporation is to provide services or undertake obligations which public agencies are legally and traditionally authorized to perform. The provision of adequate housing for low and moderate income families is without question an obligation that public agencies have been legally and traditionally authorized to perform. Government Code Section 37364, a provision under which the corporation was formed, enunciates the legislative finding that "real property of cities can be utilized, in accordance with a city's best interests, to provide housing affordable to persons and families of low or moderate income." On these grounds, we conclude that the corporation meets the third criterion of the Siegel Opinion.

The final criterion, whether the corporation is treated as a public entity by other statutory provisions, is problematic. As we read your letter, the corporation appears to be purely a public benefit corporation formulated under the Nonprofit Public Benefit Corporation Law set forth at Corporations Code Section 5110, et seq. While such a corporation is tax exempt like a government entity, there appears to be nothing else which would demonstrate that these types of corporations are treated the same as public entities by other statutory provisions.

However, we do not believe that the corporation's failure to meet the fourth criterion exempts it from treatment as a local government agency under the Act. The corporation has been formed, is substantially funded and pursues goals established by the city. Its activities will lead to the construction of housing of an estimated value well in excess of $1 million. The housing may also affect the value of other real property in the area where it is built. Given these factors, we believe that opportunities for the types of conflicts of interest anticipated by the Act very well could arise.

In such a case, the Commission has an obligation to ensure that the corporation's officers, employees and other members "shall perform their duties in an impartial manner, free from bias caused by their own financial interests ...." (Section 81001(a); see also the In re Vonk (1981) 6 FPPC Ops. 1.)

Accordingly, we believe that the corporation is a "local government agency" under the Act and the activities of its officers, employees, and other members are subject to the Act's financial disclosure and disqualification requirements.

Should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

DMG:SH:ld

Enclosures

City of Berkeley

Legal Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704
Telecommunications Device for the Deaf (415) 644-6915

(415) 644-6380

October 26, 1988

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Sir or Madam:

I am writing to request your guidance as to whether a non-profit corporation that will cooperate with the City of Berkeley to develop low and moderate income housing pursuant to Government Code 37364 and 50570 in a revitalization effort, because of the particular circumstances under which it was created and its present source of funding, is subject to the Political Reform Act.

Long-standing citizen concern[1]/ over continued deterioration and criminal activity in South Berkeley and especially an area known as the "3000 block of Sacramento Street" led the Mayor, and the City Council, on May 7, 1985, to commit Community Development Block Grant funds to hire a paid consultant to solicit citizen input and work with City staff to formulate solutions and organize a revitalization effort.

In September, 1985 the consultant submitted an acquisition and development plan for the site. This draft plan stated (on page 5) that the consultant proposed, and the City endorsed, establishing a citizens' committee to work with the consultant in formulating the revitalization process. As a result, the Mayor established the Mayor's Committee on 3000 Sacramento (Committee) which made its recommendations to the City Council. Its recommendations were adopted without significant change as we describe below. The consultant's plan also proposed (on page 36) that after City development, the 3000 block would eventually be held by a low income owners' cooperative and suggested that the developer be either one company, a joint venture, or an entity created specifically to develop the 3000 block project of which would have a large amount of equity derived from outside

---

[1]/ An organization named South Berkeley Sacramento Adeline Ashby Avenue Task Force operated for several years with minimal City Staff support.

investors.

On January 7, 1986, a report went to the Council from the City Manager, which stated that its recommendations resulted from input the Committee provided in developing a broad consensus. In acting on the report, the Council recognized that the 3000 block of Sacramento Street was central to the revitalization of the South Berkeley community. To this end, the City directed the consultant to implement revitalization in three phases. Phase I was to facilitate community participation in the process. Phase II was to prepare a detailed site development plan and to acquire the site. In Phase II, the consultant worked with City staff and the Committee to determine what type housing would be best for the development. Phase III was for pre-construction activities, issuing an RFP and negotiating a disposition and development agreement which included project design and financing, as well as relocation and infrastructure construction. The Council report explained that the Committee would be intimately involved in all three phases of the process.

On January 15, 1987, the City Manager reported to Council that, over the past year, the Committes's role had expanded from that of an ad hoc citizen's group to a more formal role of recommending and reviewing policy, having "set major revitalization policies." At some point, the Committee, the consultant and City staff consensually recommended that the development proceed under the auspices of a non-profit corporation.

On July 28, 1987, the Committee sent an item to Council asking that City Council endorse plans to develop housing on the blighted block through a non-profit Housing Development Corporation (HDC), the directors of which would be the same individuals as the Committee members. The Committee recommended and City Council specified the HDC Board of Directors' role was to assure that the terms and the implementation of a disposition and development agreement for the site served the interests of both the City of Berkeley and the South Berkeley community. The City Council instructed the City Manager to hire attorneys to incorporate a non-profit corporation. The City Manager did so and the attorneys worked directly with the Committee.[2]/

---

[2]/ The August 13, 1987 minutes during the Committee's review of the Memorandum of Understanding between the SBNDC and the proposed HDC reflect that a member asked the question regarding who would be in charge of the project. The Chair stated that either as a Housing Development Corporation or as

Council also endorsed the Committee's plans for the Committee and a separate development corporation, the South Berkeley Neighborhood Development Corporation (SBNDC), to enter into an agreement to make the HDC a subsidiary of the SBNDC. This agreement provides that the HDC shall have the primary responsibility to develop the project and may make all decisions regarding the project except that the SBNDC may have approval authority over the marketing and management plan. The agreement provides that at the earlier of six months after project completion or 95% occupancy, the SBNDC will have the authority to appoint a majority of the HDC's Board of Directors. The consultant's contract was consistently renewed at expiration, and now the consultant is the Chief Executive Officer of the HDC.

An April 12, 1988 Council Agenda Item from the City Manager lists the total development costs at $4,422,540, $2,715,575 for construction-related costs and the rest for site acquisition. At that time the City explored tax-exempt financing, but concluded that this left a substantial financing gap.

In this report, the City Manager reported that the Committee had explored several development alternatives. The Committee recommended a mixed-income residential development based on extensive work with the City, including a number of workshops and meetings. The Committee stipulated that the project's income and household mix should reflect community goals as expressed. Council did not reject these recommendations.

The City and HDC have negotiated a Disposition and Development Agreement (DDA), a Development Loan Agreement (DLA), and a site lease, all of which Council approved on May 10, 1988. The DDA requires the HDC to develop a project with certain levels of low and moderate income housing.[3]/ This DDA requires the HDC to develop plans for financing the project, but grants the City an approval right for all plans and financing schemes. The City retains the responsibility under the DDA for paying relocation

---

3000 block Committee, the Committee would be in charge.

[3]/ Twenty (20%) percent of the units must be rented to families with incomes of no more than fifty (50%) percent of the County median. Twenty (20%) percent of the units must be rented to families with incomes of no more than 80% of the County median. Sixty (60%) percent of the units must be rented to families with incomes of no more than 120% of the County median.

costs for existing residents and businesses, paying for environmental review, providing funds to the HDC under a separate agreement to cover administrative and pre-development costs, buying all the property, removing all the old underground fuel tanks, selling tax exempt bonds (if feasible), and assisting the HDC with seeking and obtaining other private and public financing for the development.

The initial finding for the administrative and pre-development costs is provided to the HDC by the City under a DLA. The City loaned the HDC $109,000 for these costs with a proposed increase of $116,000, for a total of $225,000.[4]/ This loan is interest-free, and if not repaid through proceeds of the permanent financing, will be forgiven upon completion of the project. Under the DLA, the HDC can use these funds only for costs approved in the budget or other costs which the City approves in writing. Also the City has final approval of any consulting or other contract for more than $1,500. To date, the HDC has received all its funds from the City and has derived funding from no other source. The City has agreed to cooperate in obtaining financing for the project.

In conjunction with the DDA, the City will lease the underlying property to the HDC for 55 years, for one dollar, with low to moderate income housing restrictions.[5]/ The ownership of the improvements will vest in the City upon the lese expiration.

At the time the loans was made and properties transferred, we were concerned that Government Code section 1090 might preclude the transactions because the Mayor's Committee on the 3000 block had, in its official capacity, recommended the loans which it then received in its private capacity as the Board of the HDC. We concluded however, that the transaction fell under Government Code section 1091.5 and thus the loans were permissible. That section provides that an officer or an employee is not deemed interested in a contract within the meaning of Government Code section 1090 if his or her interest is:

---

[4]/ An additional $350,000 has been allocated to the HDC to assist with a projected financing gap.

[5]/ Some staff contend that the low-income restriction eliminates any market value the lease may have. The City has not appraised the value of this lease.

> That of a noncompensated officer of a non-profit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.
>
> For purposes of this paragraph an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

Under these circumstances, we seek your guidance as to whether the HDC is subject to the Political Reform Act.

In this regard, we wish to stress that we have nothing but respect and appreciation for the efforts of the Committee and the HDC and believe them to be dedicated to the public interest. However, we have become painfully aware through the years that individuals may innocently violate some of the technical requirements of the conflict of interest laws, even where there is no desire or intent to profit personally from public service. For this reason, we seek your guidance on this matter.

Sincerely,

Manuela Albuquerque

MANUELA ALBUQUERQUE
City Attorney

MA:mb

cc: Eve Bach, Assistant City Manager
Planning & Community Development
Marie McKechnie, City Clerk

California
Fair Political
Practices Commission

November 1, 1988

Manuela Albuquerque
City Attorney
Legal Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, CA 94704

Re: 88-422

Dear Ms. Albuquerque:

Your letter requesting advice under the Political Reform Act was received on October 31, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan for
Diane M. Griffiths
General Counsel

DMG:plh

428 J Street, Suite 800 • P.O. Box 807 • Sacramento CA 95804-0807 • (916) 322-5660

88-422

City of Berkeley

Legal Department
Martin Luther King, Jr.
Civic Center Building
2180 Milvia Street
Berkeley, California 94704
Telecommunications Device for the Deaf (415) 644-6915

(415) 644-6380

FPPC
Oct 31 4 54 PM '88

October 26, 1988

Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Sir or Madam:

I am writing to request your guidance as to whether a non-profit corporation that will cooperate with the City of Berkeley to develop low and moderate income housing pursuant to Government Code 37364 and 50570 in a revitalization effort, because of the particular circumstances under which it was created and its present source of funding, is subject to the Political Reform Act.

Long-standing citizen concern[1]/ over continued deterioration and criminal activity in South Berkeley and especially an area known as the "3000 block of Sacramento Street" led the Mayor, and the City Council, on May 7, 1985, to commit Community Development Block Grant funds to hire a paid consultant to solicit citizen input and work with City staff to formulate solutions and organize a revitalization effort.

In September, 1985 the consultant submitted an acquisition and development plan for the site. This draft plan stated (on page 5) that the consultant proposed, and the City endorsed, establishing a citizens' committee to work with the consultant in formulating the revitalization process. As a result, the Mayor established the Mayor's Committee on 3000 Sacramento (Committee) which made its recommendations to the City Council. Its recommendations were adopted without significant change as we describe below. The consultant's plan also proposed (on page 36) that after City development, the 3000 block would eventually be held by a low income owners' cooperative and suggested that the developer be either one company, a joint venture, or an entity created specifically to develop the 3000 block project of which would have a large amount of equity derived from outside

---

[1]/ An organization named South Berkeley Sacramento Adeline Ashby Avenue Task Force operated for several years with minimal City Staff support.

investors.

On January 7, 1986, a report went to the Council from the City Manager, which stated that its recommendations resulted from input the Committee provided in developing a broad consensus. In acting on the report, the Council recognized that the 3000 block of Sacramento Street was central to the revitalization of the South Berkeley community. To this end, the City directed the consultant to implement revitalization in three phases. Phase I was to facilitate community participation in the process. Phase II was to prepare a detailed site development plan and to acquire the site. In Phase II, the consultant worked with City staff and the Committee to determine what type housing would be best for the development. Phase III was for pre-construction activities, issuing an RFP and negotiating a disposition and development agreement which included project design and financing, as well as relocation and infrastructure construction. The Council report explained that the Committee would be intimately involved in all three phases of the process.

On January 15, 1987, the City Manager reported to Council that, over the past year, the Committes's role had expanded from that of an ad hoc citizen's group to a more formal role of recommending and reviewing policy, having "set major revitalization policies." At some point, the Committee, the consultant and City staff consensually recommended that the development proceed under the auspices of a non-profit corporation.

On July 28, 1987, the Committee sent an item to Council asking that City Council endorse plans to develop housing on the blighted block through a non-profit Housing Development Corporation (HDC), the directors of which would be the same individuals as the Committee members. The Committee recommended and City Council specified the HDC Board of Directors' role was to assure that the terms and the implementation of a disposition and development agreement for the site served the interests of both the City of Berkeley and the South Berkeley community. The City Council instructed the City Manager to hire attorneys to incorporate a non-profit corporation. The City Manager did so and the attorneys worked directly with the Committee.[2]/

---

[2]/ The August 13, 1987 minutes during the Committee's review of the Memorandum of Understanding between the SBNDC and the proposed HDC reflect that a member asked the question regarding who would be in charge of the project. The Chair stated that either as a Housing Development Corporation or as

Council also endorsed the Committee's plans for the Committee and a separate development corporation, the South Berkeley Neighborhood Development Corporation (SBNDC), to enter into an agreement to make the HDC a subsidiary of the SBNDC. This agreement provides that the HDC shall have the primary responsibility to develop the project and may make all decisions regarding the project except that the SBNDC may have approval authority over the marketing and management plan. The agreement provides that at the earlier of six months after project completion or 95% occupancy, the SBNDC will have the authority to appoint a majority of the HDC's Board of Directors. The consultant's contract was consistently renewed at expiration, and now the consultant is the Chief Executive Officer of the HDC.

An April 12, 1988 Council Agenda Item from the City Manager lists the total development costs at $4,422,540, $2,715,575 for construction-related costs and the rest for site acquisition. At that time the City explored tax-exempt financing, but concluded that this left a substantial financing gap.

In this report, the City Manager reported that the Committee had explored several development alternatives. The Committee recommended a mixed-income residential development based on extensive work with the City, including a number of workshops and meetings. The Committee stipulated that the project's income and household mix should reflect community goals as expressed. Council did not reject these recommendations.

The City and HDC have negotiated a Disposition and Development Agreement (DDA), a Development Loan Agreement (DLA), and a site lease, all of which Council approved on May 10, 1988. The DDA requires the HDC to develop a project with certain levels of low and moderate income housing.[3]/ This DDA requires the HDC to develop plans for financing the project, but grants the City an approval right for all plans and financing schemes. The City retains the responsibility under the DDA for paying relocation

---

3000 block Committee, the Committee would be in charge.

[3]/ Twenty (20%) percent of the units must be rented to families with incomes of no more than fifty (50%) percent of the County median. Twenty (20%) percent of the units must be rented to families with incomes of no more than 80% of the County median. Sixty (60%) percent of the units must be rented to families with incomes of no more than 120% of the County median.

costs for existing residents and businesses, paying for environmental review, providing funds to the HDC under a separate agreement to cover administrative and pre-development costs, buying all the property, removing all the old underground fuel tanks, selling tax exempt bonds (if feasible), and assisting the HDC with seeking and obtaining other private and public financing for the development.

The initial finding for the administrative and pre-development costs is provided to the HDC by the City under a DLA. The City loaned the HDC $109,000 for these costs with a proposed increase of $116,000, for a total of $225,000.[4]/ This loan is interest-free, and if not repaid through proceeds of the permanent financing, will be forgiven upon completion of the project. Under the DLA, the HDC can use these funds only for costs approved in the budget or other costs which the City approves in writing. Also the City has final approval of any consulting or other contract for more than $1,500. To date, the HDC has received all its funds from the City and has derived funding from no other source. The City has agreed to cooperate in obtaining financing for the project.

In conjunction with the DDA, the City will lease the underlying property to the HDC for 55 years, for one dollar, with low to moderate income housing restrictions.[5]/ The ownership of the improvements will vest in the City upon the lese expiration.

At the time the loans was made and properties transferred, we were concerned that Government Code section 1090 might preclude the transactions because the Mayor's Committee on the 3000 block had, in its official capacity, recommended the loans which it then received in its private capacity as the Board of the HDC. We concluded however, that the transaction fell under Government Code section 1091.5 and thus the loans were permissible. That section provides that an officer or an employee is not deemed interested in a contract within the meaning of Government Code section 1090 if his or her interest is:

---

[4]/ An additional $350,000 has been allocated to the HDC to assist with a projected financing gap.

[5]/ Some staff contend that the low-income restriction eliminates any market value the lease may have. The City has not appraised the value of this lease.

> That of a noncompensated officer of a non-profit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that such interest is noted in its official records.
>
> For purposes of this paragraph an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

Under these circumstances, we seek your guidance as to whether the HDC is subject to the Political Reform Act.

In this regard, we wish to stress that we have nothing but respect and appreciation for the efforts of the Committee and the HDC and believe them to be dedicated to the public interest. However, we have become painfully aware through the years that individuals may innocently violate some of the technical requirements of the conflict of interest laws, even where there is no desire or intent to profit personally from public service. For this reason, we seek your guidance on this matter.

Sincerely,

Manuela Albuquerque

MANUELA ALBUQUERQUE
City Attorney

MA:mb

cc: Eve Bach, Assistant City Manager
Planning & Community Development
Marie McKechnie, City Clerk