



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-10

Application of Code of Ethics to CHFA Employee and Spouse

The Administrator of the Technical Services Division of the Connecticut Housing Finance Authority ("CHFA"), Martha E. Close, and her husband, Peter G. Byram, have asked a number of questions regarding the application of the Code of Ethics for Public Officials to their various public and private employment and business interests.

According to Ms. Close and Mr. Byram, the Technical Services Division of CHFA is responsible for the development processing and recommendations for all multifamily housing programs administered by CHFA. Ms. Close supervises and directs fifteen subordinate staff members in three related program areas; Architecture and Engineering, Cost Analysis, and Multifamily Underwriting. Ms. Close and her staff are responsible for preparation and/or coordination of all pre-development and development-related elements of a multifamily project prior to occupancy, including feasibility analyses and recommendations for approval/disapproval action by the CHFA Board of Directors. Funding approvals range from \$500,000 to \$30 million.

Ms. Close also chairs the Hebron Housing Authority and is a member of the Board of Directors of The Housing Education Resource Center, a non-profit tenant and landlord education organization.

Mr. Byram is President and Executive Director of The Hebron Housing and Community Development Corporation ("HHCDC"), a non-profit corporation which will receive its principal funding from loans and/or grants from the state Department of Housing. ("DOH"). Currently, the Hebron Housing Authority and HHCDC are jointly administering a \$3 million elderly housing project. Funding for the project is being provided in large measure by a grant from DOH. Among other activities, Mr. Byram is also employed as Secretary and acting Executive Director of the Hebron Housing Authority, and is a principal and general partner in The Realnet Group, a commercial real estate brokerage firm with its principal office in Danbury.

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The following questions were posed:

1. May Peter Byram, individually, act in the capacity of housing development or community development consultant with any individual or firm that is, or contemplates, doing business with CHFA?

2. May Peter Byram, individually, act in the capacity of housing development or community development consultant with any individual or firm that is, or contemplates, doing business with DOH?

3. May HHCDC, with Peter Byram acting in the capacity of President and Executive Director, act, or contract for the provision of services, as a housing development or community development consultant with any individual or firm that is, or contemplates, doing business with CHFA?

4. May HHCDC, with Peter Byram acting in the capacity of President and Executive Director, act, or contract for the provisions of services, as a housing development or community development consultant with any individual or firm that is, or contemplates, doing business with DOH?

5. May HHCDC enter into a contract for loan funding or grant assistance with DOH?

6. May HHCDC enter into a contract for loan funding or grant assistance with CHFA?

7. Is there any apparent or potential conflict arising from the relationship between Peter Byram and Martha Close and their respective relationships to the various entities described?

8. May Peter Byram engage in real estate brokerage and, during the conduct of such activity, receive a commission for the sale of property to:

a. HHCDC?

b. The Hebron Housing Authority?

c. A private individual or entity not associated in any manner with any of the entities with whom Peter Byram is currently associated?

d. A private individual or firm who has had, or may have, dealings with CHFA?

9. To what extent are any restrictions applicable to other principals and/or individual sales personnel associated with the real estate firm of which Mr. Byram is a principal?

10. To what extent are any restrictions respecting sale of real estate applicable to other members or employees of HHDC?

11. To what extent are any restrictions imposed on Mr. Byram applicable to any other member of the board of directors or employees of HHDC?

Taking each question in turn:

1. Mr. Byram has indicated that in addition to his other housing activities, he also provides, through HHDC, consultation services related to housing and community development. Under the Code of Ethics, any business entity in which Mr. Byram is a director, officer, owner, or limited or general partner, is also a business with which his spouse, Ms. Close, is associated. Conn. Gen. Stat. §1-79(b). Therefore, both HHDC and The Realnet Group are businesses with which Ms. Close is associated.

Ms. Close may not reveal any confidential information acquired in the course of her state position as Administrator of the Technical Services Division of CHFA to anyone for financial gain. Conn. Gen. Stat. §1-84(c). Similarly, she may not use her state position or confidential information received through her position for the financial benefit of, among others, herself, her spouse, or a business with which she is associated. §1-84(c).

Under Conn. Gen. Stat. §§1-85 and 1-86, Ms. Close may not take official action if that action would affect a financial interest of, among others, herself, her husband or a business with which she is associated, and that interest is distinct from that of a substantial segment of the general public.

The Ethics Commission has previously held that certain business enterprises of the spouse of a state employee are "ripe for violations of the principles of the Code of Ethics for Public Officials, even if the employee makes a dedicated effort to avoid them." Ethics Commission Advisory Opinion No. 82-8, 44 Conn. L. J. No. 21, p.3B (Nov. 23, 1982). (Wife of highway construction inspector may not supply temporary traffic control devices to construction firms which are doing or may do business with the State on Department of Transportation contracts).

The same reasoning applies to Ms. Close and Mr. Byram. Under the circumstances, inadvertent violations of §1-84(c) would seem unavoidable. For example, a firm contemplating or

attempting to obtain financing from CHFA might well hire Mr. Byram in the hope of ingratiating itself with his wife. Even if Ms. Close made every effort to abstain from working on any matter involving an individual or firm for whom Mr. Byram was providing consulting services (an abstention which would seem extremely difficult in light of her supervisory position at CHFA) the conflict is still not resolved. The Commission has consistently held that in such situations a state employee must abstain from acting not only on matters directly affecting his or her spouse's interests but also on matters affecting those in competition with the spouse. See, e.g., Ethics Commission Advisory Opinion No. 81-18, 43 Conn. L.J. No. 23, p. 43A (December 8, 1981). It would appear that the need for Ms. Close to recuse herself so frequently would result in too great a restriction on her ability to perform her duties for CHFA to be a feasible option.

In short, unless CHFA can ensure that Ms. Close will be insulated from taking all such actions and will still be capable of performing her state duties, Mr. Byram should not, either individually or through HHCDC, act as a housing consultant to any individual or firm that is, or contemplates, doing business with CHFA, while his wife is employed as Administrator of the Technical Services Division of CHFA. Also, in any matter in which Ms. Close must recuse herself, her superior must assign the matter to a peer or superior, not to a subordinate employee.

2. The concerns which were raised in response to Question 1 do not apply to Question 2. Although the Commissioner of DOH does serve as a member of CHFA, the two agencies operate as separate entities. CHFA is a quasi-public agency, and is not a department, institution or agency of the State. Conn. Gen. Stat. §8-244. The DOH is of course a department of the State. Provided that Ms. Close takes no action in violation of Conn. Gen. Stat. §§1-84(c), 1-84(g), 1-85 or 1-86, Mr. Byram may, individually or through HHCDC, act as a housing consultant to an individual or firm that is, or contemplates, doing business with DOH.

3. Because HHCDC is a business with which Ms. Close is associated, the response to Question 1 applies to this situation as well. HHCDC, a corporation run by Mr. Byram, may contract with any individual or firm that is, or contemplates, doing business with CHFA, only if the requirements outlined in the response to Question 2 are followed.

4. Because DOH and CHFA are separate entities, HHCDC may contract as a housing consultant with any individual or firm

that is, or contemplates, doing business with DOH, even though HHDC is a business with which Ms. Close is associated.

5. Under Conn. Gen. Stat. §1-84(i), no business with which a state employee is associated may enter into any contract with the State, valued at one hundred dollars or more, unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. Since HHDC is a business with which Ms. Close is associated, it may only enter into a contract with DOH for loan funding or grant assistance if the contract is awarded through an open and public process.

6. When a business with which a state employee is associated contemplates entering into a contract with the state employee's agency, compliance with Conn. Gen. Stat. §1-84(i) may not be sufficient to prevent a violation of the Code of Ethics. Unless Ms. Close, pursuant to §1-86, is able to recuse herself from any involvement whatsoever in the award of the contract or grant in question, neither Mr. Byram nor HHDC may contract with CHFA, regardless of how scrupulously the provisions of §1-84(i) are followed. Additionally, it must be remembered that the conflict cannot be avoided by having a member of Ms. Close's staff act in her place. Only a peer or superior may act for one who is required to abstain under §1-86.

7. The Code of Ethics for Public Officials does not speak of appearances of conflict, only actualities. Ethics Commission Advisory Opinion No. 90-6, 51 Conn. L.J. No. 35, pg. 3D (February 27, 1990). The specific conflicts raised by Mr. Byram's and Ms. Close's questions are addressed in this Opinion; apparent conflicts are not.

8a. The question of whether Mr. Byram may act as a real estate broker and, in the course of such activity, receive a commission for the sale of property to HHDC is not within the jurisdiction of the Ethics Commission, since Mr. Byram is not a state employee and HHDC is not a state entity.

8b. Again, this question is outside the Ethics Commission's jurisdiction. It should be noted, however, that under Conn. Gen. Stat. §8-42, no employee or commissioner of a housing authority "shall acquire any interest, direct or indirect, in any housing project or in any property 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." Since Mr. Byram is employed by the Hebron Housing Authority, it would appear that neither he nor HHCDC should be doing business with the Housing Authority. The Commission suggests that the interested parties seek the opinion of the Office of the Attorney General regarding the application of §8-42.

8c. The Code of Ethics does not prevent Mr. Byram from engaging in real estate brokerage and receiving a sales commission from a private individual or entity unrelated to Mr. Byram's other activities, provided that no quid pro quo involving Ms. Close's official action is offered or accepted in violation of Conn. Gen. Stat. §§1-84(f) and 1-84(g). Of course, Ms. Close may not use her position or disclose confidential information received in the course of her employment at CHFA to assist Mr. Byram in his real estate business. Conn. Gen. Stat. §1-84(c). Also, since The Realnet Group is a business with which Ms. Close is associated, neither Mr. Byram nor his firm may enter into any contract with the State unless the provisions of Conn. Gen. Stat. §1-84(i) are met.

8d. The same parameters outlined in the response to Question 8c should be followed in this situation. The reason that Mr. Byram may accept a commission from the sale of real estate to an individual or firm who has had or may have dealings with CHFA, but may not perform the work outlined in Questions 1 and 3 is that in the case of a real estate sale, Mr. Byram is merely representing the seller rather than directly providing services to an individual or firm which is also involved with CHFA.

9. The same restrictions which apply to Mr. Byram in connection with his Realnet Group activities apply with equal force to any other principal or sales personnel of that firm when acting on behalf of the firm, since The Realnet Group is a business with which Ms. Close is associated. §1-79(b).

10-11. Again, the same restrictions which apply to Mr. Byram in connection with his HHCDC activities apply as well to other members or employees of that corporation, since HHCDC is a business with which Ms. Close is associated. For example, an employee of HHCDC may not, on behalf of HHCDC, act as a housing consultant to any individual or firm that is, or contemplates, doing business with CHFA, so long as Ms. Close is employed by CHFA. If, however, an HHCDC employee or board member independently sells real estate or performs consulting work,

and HHCDC does not receive any financial benefit from the sale or work, then the restrictions of the Code of Ethics do not apply.

By order of the Commission,

(Rabbi) Michael Menitoff
Rabbi Michael Menitoff
Chairperson

Dated March 5, 1990

