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Formal Advisory Opinion 2003-2 Conflicts of Interest Involving the Atlanta Development Authority President

Opinion Summary

There is no inherent conflict of interest related to the Atlanta Development Authority's president based on his personal and financial interest in a company that may seek to do business with the City of Atlanta. If the company seeks to do business with the city, the president must recuse himself and decline to participate in any matter involving the city and the company.

Question Presented

Does the president of the Atlanta Development Authority have an actual or perceived conflict of interest under the City's Code of Ethics based on his personal and financial interests in a real estate development company that may seek funding from a city tax allocation district?

Facts

The Atlanta Development Authority is a public authority that the Atlanta City Council activated in 1997 to promote the city's growth and revitalization. The authority serves as the redevelopment agency for the city's tax allocation districts and has the power to issue tax-exempt bonds to support development projects. Its subsidiaries include the authority that issues tax-exempt bonds for housing and the authority that handles economic development in the city's central business district. A nine-member board of directors, which the Mayor chairs, governs the authority. The ADA president does not serve on the organization's board, but may serve on the boards of its subsidiaries.

The ADA Board of Directors hired a new president who has both personal and financial interests in Cousins Properties, Inc., a real estate development company that is publicly traded on the New York Stock Exchange. His wife serves on the company's Board of Directors and owns a substantial number of shares in the company. His father-in-law is the founder of Cousins Properties, serves as its board chairman, and owns a large percentage of shares, although not a controlling interest, in the company.

Historically, Cousins Properties has done no business directly with the City of Atlanta or any city authority. It, however, has its headquarters in the city, owns a significant amount of office space and medical property within the city limits, and is actively seeking to construct an office building on property that it owns in a city tax allocation district. As part of that project, Cousins may ask the city to issue tax-exempt bonds to improve the district's public infrastructure.

Discussion

No Inherent Conflict of Interest

A primary purpose of the Code of Ethics is to prohibit conflicts of interest. The Ethics Code specifically prohibits personal investments in business transactions that conflict with an official or employee's official duties. Section 2-820 (a) states: "No official or employee shall invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction, which creates a conflict with and adversely affects official duties of the official or employee to the detriment of the city." The provision does not specify the remedy when an official or employee has an investment that is incompatible with his or her official responsibilities.

The Board of Ethics concludes that this particular code provision does not preclude the president from serving as president of the Atlanta Development Authority. Instead, the president's position is similar to other city officials and employees who may have a conflict of interest concerning specific matters, such as the city council member whose law firm represents the city in legal matters. In that situation, the Ethics Code does not require the elected official to resign from his position with the law firm. Instead, the ethical standards require officials to disclose their personal or financial interest in any decision pending before their council and not vote, discuss, decide, participate, or seek to influence others on the matter. See § 2-813. The same standard applies to the ADA president.

A different situation might be presented if the role of Cousins Properties as a developer doing business with the City of Atlanta were so commanding, pervasive, and continuous that the president would be unable to fulfill his job responsibilities due to constant disqualifications based on his family's investment in Cousins. At present, however, Cousins does not do any business with the city, the Board has been advised that it would be "extremely rare" for Cousins to seek to do business with the city, and any business it seeks with the city or city authority would involve a discrete project.

Recusal from Contract Participation

In the event that Cousins Properties were to ask the city to issue tax-exempt bonds or engage in another transaction with the city, the Code of Ethics would preclude the president from working on the project. Section 2-812 prohibits all city officials and employees from participating in any decision concerning contracts in which the official or employee has a financial or personal interest. This provision is written broadly to ban any direct or indirect involvement at any stage in the decision-making process when the official or employee knows, or should know, that he, his immediate family, or a business connected to his family has any financial or personal interest in the matter. The section prohibits the official or employee from participating in any decision, approval, disapproval, or recommendation; preparing any specification or request for proposal or influencing any contract standard; rendering any advice; investigating, auditing, or reviewing any application, request, or claim; or seeking to influence the votes or decisions of others. Therefore, the Board of Ethics concludes that the president must recuse himself and

decline to participate, seek to influence, or decide any matter involving the City of Atlanta and Cousins Properties, Inc. See §§ 2-812, 2-813, & 2-820.

To ensure that the president is insulated from all stages of the decision-making process, the ADA board needs to establish a procedure for handling any matter between Cousins and the authority. This procedure should include assigning to another staff member the responsibility for handling matters related to the tax allocation district where Cousins seeks to construct an office building.

Adopted November 20, 2003

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