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Formal Advisory Opinion 2004-4 Conflicts of Interest Related to Neighborhood Planning Units

Opinion Summary

There is no inherent conflict of interest when a city employee is elected to serve as an officer in a neighborhood planning unit, but the code enforcement officer has a potential conflict of interest concerning code enforcement matters that come before her NPU; the real estate agent has an actual conflict of interest in connection with the zoning variance based on his role as the sales agent for a neighboring property owner who opposed the application. When a NPU chairperson has a financial or personal interest in any decision pending before the NPU, the officer must publicly disclose that interest in writing on the official records of the agency, with a copy to the municipal clerk, and is then disqualified from presiding, participating, or voting on the issue or representing the NPU on the matter before a city agency.

Questions Presented

1. Is it a conflict of interest for a city housing code enforcement officer to serve as chairperson of a neighborhood planning unit?
2. Is it a conflict of interest for a NPU chairperson who is a real estate agent to preside over a discussion and represent the NPU before a city agency on a zoning variance request opposed by the chairperson's client?

Facts

1. A city employee who works as a housing code enforcement officer in the Bureau of Code Compliance in the Department of Planning and Community Development was elected to serve as chairperson of her NPU in 2004. Other city employees in the Finance Department and Public Works Department are officers in their NPUs.

The neighborhood planning units are citizen advisory groups established to assist with the city's comprehensive development plan. See Atlanta, Ga. Code § 6-3011 to § 6-3019. The NPUs meet monthly to make recommendations on zoning, land-use, and other planning issues and to learn about activities in their community and city government. The NPU chairperson typically is responsible for preparing an agenda, presiding at meetings, recommending or appointing subcommittees, and representing the NPU before city departments and agencies. By law, the NPUs make recommendations to the Zoning Review Board on all applications for a special use

permit or rezoning, to the Board of Zoning Adjustment on applications for a zoning variance or special exception, and to the License Review Board on applications for a liquor license.

Of the 24 NPUs, six listed code enforcement as an item on their agenda in a recent month. The Bureau of Code Compliance handles complaints about residential structures, junk vehicles, vacant lots, and scrap tires. Code enforcement officers inspect housing properties, issue correction notices, and testify in court about code violations. They may attend NPU meetings in their area to report on activities, respond to questions, and receive requests for action about specific properties. The NPU members do not vote on any matters related to code enforcement.

2. A real estate agent serves as chairperson of his NPU. He and his firm regularly sell property located in the neighborhoods that comprise the NPU. As part of its required review of zoning issues, the NPU considered an application for a zoning variance that was opposed by a neighbor who had retained the chairperson as a sales agent. After presiding over the discussion of the variance request, the chairperson announced that he would not be voting because he represented a neighboring property owner. The other NPU members voted to recommend that the city deny the application. Later, the NPU chairperson appeared before the Board of Zoning Adjustment on behalf of the neighborhood and stated that his NPU was opposed to the application for a variance.

Discussion

Conflicts of Interest

The Code of Ethics seeks to protect the integrity of city government by prohibiting city officials and employees from engaging in conflicts of interest. Specifically, the ethical standards prohibits affected individuals from participating in business activities, rendering services, or having contractual, financial, or personal interests that conflict with the individual's official duties or the city's best interest. See Atlanta, Ga. Code § 2-802. The code applies to NPU officers as persons elected to a city body or office. See §§ 2-801, 2-813.

1. There is no inherent conflict in working for the city as an employee and participating as a city resident and citizen in the NPU system. City employees should not automatically be disqualified from leadership in their NPU because the city pays their salary and coordinates the NPU system. On the contrary, it is important to have city employees who live in the city and are active in their community. However, as an employee's duties become more closely connected to the zoning, planning, and development issues handled by the NPUs, the possibility of a conflict becomes more likely.

The positions of housing code enforcement officer and chairperson of a NPU present the potential for a conflict, especially in the NPUs where code enforcement is a critical issue. As chairperson of one of those NPUs, the code enforcement officer would be presiding over meetings in which her co-workers report on city enforcement actions against specific properties. If NPU members challenged the city's actions, the NPU chairperson would be placed in the untenable situation of trying to represent both the interests of her community and her employer. In her other role as an employee in the Bureau of Code Compliance, the code enforcement officer may be privy to confidential information about the city's governing operations, obtain advance knowledge about new policies and enforcement efforts that may have a substantial impact on her community, or use her position within the city to seek more vigorous enforcement of the housing code in her NPU. Because of the problems caused by these divided loyalties,

the Board of Ethics concludes that there is a potential, if not actual, conflict of interest between working as a city housing code enforcement officer and serving as chairperson of a NPU where code enforcement is a regular item on the meeting agenda.

2. Similarly, the NPU chairperson who is a real estate agent has an actual conflict of interest in the pending variance request based on his role as the sales agent for a neighboring property owner opposed to the variance application. The ethics code prohibits city officials from voting, discussing, participating, or influencing others about any pending matter in which they have a financial interest. Although the NPU chairperson disclosed his interest in the variance request and abstained from voting on it, he failed to completely remove himself from the decision-making process. A NPU officer who has an actual conflict of interest about a specific matter is also disqualified from presiding over any discussion or representing the NPU on the matter before any city agency.

Disclosure and Disqualification

There are two types of disqualification that may apply when a conflict of interest exists. When the conflict occurs infrequently, concerns an insignificant matter, or arises without notice, the individual may disclose his or her interest on the public record and decline to participate in the matter pending before the agency. There are situations, however, when recusal is an insufficient remedy to eliminate the conflict of interest. When the reasonably expected frequency or significance of the individual's recusal on specific matters causes a material detriment to the agency or prevents the individual from fulfilling his or her obligations to the city, then the individual is disqualified from holding both positions. Whether a person is disqualified from participating on a specific matter or disqualified from holding a position depends on the facts and generally must be reviewed on a case-by-case basis.

Because the conflicts of interest, both actual and potential, involving the two NPU officers are limited to specific matters, it is possible for the individuals to continue to serve as chairperson, but decline to participate in any decision in which they have a conflict. Thus, the code enforcement officer must step aside as presiding officer and have the vice-chairperson preside over all discussions about code enforcement matters at the meeting. In the situation of the real estate agent, the conflict does not arise from the nature of his job, but from his representation of a specific property owner affected by a matter pending before the NPU for decision. In that situation, the real estate agent must disqualify himself from participating in any way in the zoning matter.

Section 2-813 sets out the procedure for city officials and board members to follow in disclosing a financial or personal interest. The officer must publicly disclose at the meeting the nature of his or her interest prior to any decision on the matter; the disclosure should be in writing on the official records of the agency, with a copy filed with the municipal clerk. After disclosing the interest as soon as it is known, the NPU officer is prohibited from voting, discussing, deciding, participating, considering, or influencing others about the matter. If the officer is presiding at the meeting, he or she must step down and have another officer assume the responsibility of presiding at the meeting and presenting the NPU's recommendation to the appropriate city agency.

Adopted May 20, 2004

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