

CDBG Conflict of Interest

April 19, 1993

Mr. David H. Olson
City Manager
414 E. 12th St.
29th Floor, City Hall
Kansas City, MO 64106

Dear Mr. Olson:

Thank you for your letter dated February 17, 1993, appealing the denial of an exception to the Community Development Block Grant (CDBG) conflict of interest provisions at 24 CFR 570.611(b) by the Department of Housing and Urban Development (HUD) Kansas City Regional Office. The conflict concerns Kenneth T. Bacchus, a member of the City Council of Kansas City, Missouri. Mr. Bacchus is the sole owner of The Bacchus Company, which is a general partner in a limited partnership called The Citadel Development Co., L.P. The Citadel Development Co., L.P., purchased all of the vacant lots in the subdivision called the Citadel Center which is a mixed-income homeownership and rental housing project consisting of approximately 80 acres. It is a partially developed subdivision of about 100 homes and 14 duplexes with 100 vacant lots. Mr. Bacchus resides in the Citadel Center.

The City created a Second Mortgage Loan Program in the 1980's which is operated by a nonprofit organization, the Housing Development Corporation and Information Center (HDCIC), a 24 CFR 570.204 subrecipient. HDCIC receives CDBG funding for this program from the City's Department of Housing and Community Development, following approval by the City Council. The City Council's approval is given by resolution which, when introduced, is referred to the City Council Plans and Zoning Committee, chaired by Mr. Bacchus. In 1992, \$320,000.00 of CDBG funds were placed in the Second Mortgage Loan Program. The funds are used to provide second mortgage financing to qualified persons who are selected by HDCIC.

Some of the families who participate in the Second Mortgage Loan Program are purchasing vacant lots from the Citadel Development Co., L.P., and building homes on those lots. In some cases, realtors have referred potential homebuyers to The Bacchus Company for the construction and purchase of a home. As sole owner of The Bacchus Company and a general partner of The Citadel Development Co., L.P., which owns Citadel Center, Mr. Bacchus will receive a financial benefit from CDBG funds when homebuyers are able to participate in the Second Mortgage Loan program to purchase homes in the Citadel Center. This is a conflict of interest under the CDBG regulations.

The conflict of interest regulation at 24 CFR 570.611(b) is intended to protect the reputation of the CDBG program from even the appearance of providing special treatment or serving a special interest. The regulation prohibits conflicts, including situations where a person who is covered by the regulation might obtain a financial interest or benefit from a (CDBG) assisted activity. It is clear from the information provided that Mr. Bacchus is a person covered under the regulations at 24 CFR 570.611(b). He has thus

requested an exception under the provision at 24 CFR 570.611(d). With regard to meeting the necessary threshold requirements at 24 CFR 570.611(d), Mr. Bacchus has publicly disclosed the nature of the conflict by filing a copy of his January 29, 1993, memorandum to the HUD Kansas City Regional Office with the City Clerk. He also obtained a legal opinion from Patricia Jensen, Assistant City Attorney for Kansas City, and an accompanying opinion of the Municipal Officials Ethics Commission that the interest for which the exception is being sought does not violate state or local law for the conflict of interest provisions.

In reviewing the criteria in the CDBG regulations at 24 CFR 570.611(e), Factors to be considered for exceptions, we reviewed the information to evaluate:

1. whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available.

The City states that Mr. Bacchus and the Bacchus Company provide a unique minority developer presence and that he is the only developer that has successfully provided quality housing at an affordable price for persons qualifying under the CDBG Second Mortgage Loan program. We have been advised by the HUD Kansas City Regional Office, however, that there are other entities that have the necessary expertise to provide low- and moderate-income families with affordable housing, without involving a conflict of interest.

2. whether an opportunity was provided for open competitive bidding or negotiation.

No information was provided regarding this factor and is therefore presumed to be inapplicable in the instant case.

3. whether the person affected is a member of a group or class of low- and moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.

This provision of the regulations applies only to the person(s) for whom the exception is being sought. No information has been provided to indicate this factor would apply to Mr. Bacchus since he is not the intended beneficiary of the Second Mortgage Loan Program.

4. whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question.

Your correspondence states that Mr. Bacchus recused himself from consideration of the portion of the City's Year 19 CDBG Plan which dealt with the Second Mortgage Loan Program in January 1993 and will recuse himself from consideration of any ordinances and resolutions which deal with this program in the future, thus withdrawing from the decision-making process.

5. whether the interest or benefit was present before the affected person was in the decision-making position or exercised CDBG functions or responsibilities.

It is noted that the Second Mortgage Loan Program and Mr. Bacchus' involvement in the Citadel Center predate his election to City Council.

6. whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict.

It has been noted that the Citadel Center provides homes for middle-income and upper-middle-income persons. Since Mr. Bacchus can provide housing to these persons, we do not see that he would suffer undue hardship. We do not see undue hardship resulting to the grantee either. Information provided during the course of our review indicates that the Public Works Department allocated \$175,000 in sales tax money to the Citadel project. The money is being used for public improvements on the site. Therefore, it does not appear that the City's investment in this community is coming to a halt.

Taking into account the cumulative effect of the above factors, I must sustain the decision made by the HUD Kansas City Regional Office and deny an exception to the conflict of interest provision at 24 CFR 570.611(b). I have been unable to determine that the decision reached by the HUD Kansas City Regional Office was not in accordance with the CDBG regulations at 24 CFR 570.611(b). It is important to note that the regulations do not provide anyone with a right to an exception. Each case is unique, varying in such respects as the amount of financial gain, the degree to which a public purpose is achieved, the actual or apparent involvement in the decision resulting in the gain and the degree to which public disclosure results in a perception that the public purpose achieved outweighs the personal gain.

Thank you for complying with the CDBG regulations.

Very sincerely yours,

Don I. Patch
Acting Deputy Assistant Secretary for Grant Programs