

Standards of Conduct

Legal Opinion: GMP-0046

Index: 6.600, 6.630, 6.660  
Subject: Standards of Conduct  
FOIA Exemption 6: Names Withheld

January 24, 1992

MEMORANDUM FOR: Peter M. Campanella, Regional Counsel, 3G  
FROM: Carole W. Wilson, Associate General Counsel for Equal  
Opportunity and Administrative Law, GM  
SUBJECT: Standards of Conduct

This is in response to your October 17, 1991, request for an opinion. You state in your request that Mr. \_\_\_\_\_, Chief, \_\_\_\_\_ Office, disclosed an interest in the \_\_\_\_\_ Company, Incorporated, in his August 30, 1991, Confidential Statement of Employment and Financial Interests (HUD-844). Specifically, Mr. \_\_\_\_\_ noted that, in addition to holding an equity interest in the company, he also serves as an officer and director of the company. The Company is an entity engaged in real estate development, construction and real estate sales. You ask whether Mr. \_\_\_\_\_'s service as an officer and director of the \_\_\_\_\_ Company may be characterized as "active participation in, or conduct of business dealing with, or related to, real estate" subject to 24 C.F.R. 0.735-203(b)(4), or whether his interest should more appropriately be considered a financial interest under 24 C.F.R. 0.735-204. After examining this issue, I have concluded that Section 0.735-203(b)(4) applies to service as an officer or director of an entity engaged in real estate related activities. Consequently, I concur with your opinion that Mr. \_\_\_\_\_'s service as an officer and director of the \_\_\_\_\_ Company is subject to Section 0.735-203(b)(4).

Hornbook law provides that a corporation may only act through its officers and agents. In general, officers and directors are granted broad authority to manage the affairs of the corporation. Most states explicitly grant officers and directors the authority to purchase, sell, convey, mortgage or otherwise transfer assets. It follows that officers and directors may also, on behalf of the corporation, enter into contracts, advertise or otherwise solicit business, manage an office, and hire staff. These are the types of activities that Section 0.735.203(b)(4) was intended to regulate. See, Office of General Counsel memorandum dated December 28, 1988, entitled "Outside Employment in Fields Related to Real Estate."

We have reviewed our files and found three cases wherein the Department has relied upon Section 0.735-203(b)(4) to require an employee to resign positions as officers or directors of

corporations. The Department twice relied upon Section 0.735.203(b)(4) to prohibit employees from serving as directors of not-for-profit corporations engaged in the rehabilitation of low-income housing. See, Office of General Counsel memorandum dated June 26, 1991, entitled "Neighborhood Housing Services"; see also, Office of General Counsel memorandum dated February 27, 1991, entitled "Yachad: Request for Advisory Opinion." Regional Counsel has also used Section 0.735.203(b)(4) to prohibit an employee from holding a partnership interest in a real estate partnership that developed properties for resale. See, Regional Counsel, Region VII, memorandum dated February 1, 1989, entitled "FA&R Investments." Copies of these memoranda have been attached for your convenience.

In conclusion I would caution, that service as a director or officer, may not in and of itself, establish an action based on Section 0.735-203(b)(4). Rather, you may want to consider several additional factors prior to bringing an action. Relevant factors include the amount of time spent on corporate business and whether it was spent on a regular or sporadic basis, the receipt and extent of compensation for services, the nature and extent of solicitation of clients or business, the hiring of staff, the number of transactions involved, and the need for and use of real estate or other special licenses.

I trust that this responds to your inquiry. Please contact Aaron Santa Anna, Senior Ethics Counsel at (202) 708-2205 or FTS 458-2205 should you have further questions.

Attachments