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March 19, 2007

***PRIVILEGED AND CONFIDENTIAL***  
***ATTORNEY CLIENT COMMUNICATION***

Jimmy L. Miller  
Executive Director  
Housing Authority of the City of New Haven  
360 Orange Street  
New Haven, Connecticut 06510

Re: Whether employment by the Housing Authority of the City of New Haven (the "Authority") of a member of the City of New Haven's Board of Aldermen violates the Hatch Act. Whether the candidacy by an employee of the Authority for election to the City of New Haven Board of Aldermen, violates the Hatch Act.

Dear Mr. Miller:

You have asked us to advise you of whether employment by the Authority of a member of the City of New Haven's Board of Aldermen violates Title 5 Part 2 Chapter 15 of the United States Code (the "Hatch Act," or the "Act"). You have further asked us whether the candidacy by an employee of the Authority for election to the City of New Haven Board of Aldermen violates the Hatch Act.

The Hatch Act does not prohibit the Authority from employing a member of the Board of Aldermen. The Hatch Act does, however, prohibit an employee of the Authority from seeking elective office in a partisan election. However, while the Hatch Act does not prohibit the Authority from employing a member of the Board of Aldermen, certain provisions of the 1995 Public Housing Annual Contributions Contract do prohibit such employment. While the Authority is not currently, pursuant to its designation as a Moving to Work ("MTW") Agency, subject to an Annual

Contributions Contract, the Authority is urged to review its designation as an MTW agency by HUD to determine whether the MTW designation contains a similar prohibition.

## **BRIEF BACKGROUND**

We understand that an employee of the Authority is currently a member of the Board of Aldermen of the City of New Haven. We further understand that the employee may seek re-election as an Alderman. Finally, we understand the election to the City of New Haven Board of Aldermen is a partisan election.

## **STATEMENT OF THE LAW**

### **The Hatch Act**

The Hatch Act provides that a State or local officer or employee may not be a candidate for elective office. (See 5 U.S.C. §1502). Section 1501(4) of the Act defines a "state or local officer or employee" as an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency. The Act defines a State or local agency as ... "the executive branch of a State, municipality or other political subdivision of a State, or an agency or department thereof."

In an opinion dated March 10, 1998 and issued by the United States Office of Special Counsel (the "OSC"), the OSC held that while the Act prohibits certain employees from engaging in partisan elections, it does not prohibit an employee from holding public office. Thus, an employee would be permitted to finish the elected term, but could not run for election (or re-election) in a partisan election.

### **The 1995 Public Housing Annual Contributions Contract ("ACC")**

Section 19 of the 1995 Public Housing ACC provides ... "(A)(1) In addition to any other applicable conflict of interest requirements, neither the HA nor any of its contractors.... may enter into any contract, subcontract or arrangement in connection with a project under this ACC in which any of the following classes of people has an interest, direct or indirect, during his tenure or for one year thereafter: (iii) Any public official, member of the local governing body, or State or local legislator, or any member of such individual's immediate family who exercises functions or responsibilities with respect to the project(s) or the HA..."

## **APPLICATION OF LAW**

The operation of the Authority is financed in part by grants made available by the United States Department of Housing and Urban Development ("HUD"). Thus,

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employee of the Authority is a "state or local officer or employee" as defined by Section 1501(4) of the Act. The Act further provides that an employee may not be a candidate for elective office in a partisan election – an election in which any candidate (not just the employee) represents either the Republican or Democratic Party. In the election for Board of Aldermen, candidates will represent either or both of the Republican or Democratic parties. Thus, the election is a partisan election, and Authority employees are prohibited by the Act from being a candidate for office in such an election.

Section 19 of the ACC provides that an employee may not enter into a contract with a local legislator who exercises functions or responsibilities with respect to the project(s) or the HA. To the extent that the housing authority has entered into an employment contract with an employee, if the employee is a local legislator who "exercises functions or responsibilities" with respect to the HA, such employment is in violation of the ACC.

## CONCLUSION

The employee may not, while employed by the Authority, be a candidate for elective office in a partisan election. The Hatch Act does not prevent the Authority from employing a member of the Board of Aldermen, but such employment is prohibited by the ACC if the employee exercises functions or responsibilities with respect to the Authority. The Authority is urged to review its Moving to Work Agreement with HUD to determine whether a similar prohibition exists therein.

I hope this information is useful to you. If you have any questions, comments or concerns, or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,



Rolan Joni Young