



Copey

U.S. Department of Housing and Urban Development

Minneapolis Field Office
920 Second Avenue South, Suite 1300
Minneapolis, Minnesota 55402-4012

JUL 27 2010

Mr. Wally Strand, Board Chairperson
Housing and Redevelopment Authority
of Meeker County
33361 710th Avenue
Kimball, MN 55353


Dear Mr. Strand:

The following three representatives from the United States Department of Housing and Urban Development ("HUD") attended the Meeker County Housing and Redevelopment Authority ("HRA") Board Meeting on Monday, June 28, 2010: Tammy Widmann and Dana Kitchen, Public Housing Revitalization Specialists and Amy Schwarz from the Office of General Counsel. Attendance at the board meeting was prompted by a letter from HRA Board Member Lia Nistler requesting assistance from HUD in resolving internal board disputes. Sandy Tischer, the Executive Director of the HRA, also contacted Ms. Widmann and Ms. Schwarz regarding Ms. Nistler's letter and the HRA board conflicts.

At the time of Ms. Nistler's letter, the board was comprised of five citizens from Meeker County. Two of the board members, including the chairperson, also serve as county commissioners. The HRA board did not include any resident members.

Following the June 28, 2010 HRA meeting, you asked us to research the following issues:

- 1) Whether county commissioners are prohibited from serving as board members or board chairs on local HRA boards;
- 2) The requisite number of HRA board members under Minnesota law;
- 3) Election procedures of the resident board member;
- 4) Federal law and regulations regarding procuring legal services;
- 5) Board access to documents involved in said legal work;
- 6) The scope of a data compliance officer's authority;
- 7) The use of Public Housing funds to procure a mediator



Each item is addressed sequentially below.

1) Whether Minnesota Law prohibits county commissioners from serving as board members or board chairs on local HRA boards.

Serving as both a county commissioner and a county HRA board member is considered “incompatible” by the Minnesota Office of Attorney General. The Minnesota House of Representatives issued an Information Brief about Compatibility of Offices in October of 2005. According to this brief, holding a position as a county commissioner and as a HRA board member is incompatible. Incompatible offices are defined as a combination of public offices that creates a conflict of interest if one person held both offices at the same time. This finding is based on Attorney General Opinion 358a-3, November 29, 1976. If Meeker County HRA would like additional information on this issue, the HRA can request a written legal opinion from the Attorney General pursuant to Minnesota Statute (“stat.”) section (“§”) 8.07.

2) The requisite number of HRA board members under Minnesota law.

The requisite number of HRA board members required for the HRA board is a state law question which may be addressed by the HRA’s attorney. Generally, when a county HRA is established, the county governing body “shall appoint five persons or the number of commissioners for the governing body, plus up to two additional commissioners, as commissioners of the county authority.” Minnesota Stat. § 469.006, subd. 1. The requisite number of board members may be affected by the entity’s organizational transcript and additional factors. The HRA is also required to have a resident as a board member.

Please note that at the time of the meeting, the Meeker County HRA was not in compliance with the federal regulations regarding resident board members. The federal rules provide that the membership of the governing board of each PHA must contain at least one eligible resident board member. This is written in Title 24 of the Code of Federal Regulations (“CFR”) 964.415(a). Small PHAs (PHAs with less than 300 public housing units) may be exempt from this requirement if they provide reasonable notice to the resident advisory board for the opportunity for residents to serve on the governing board. This is written in Title 24 of the CFR 964.425(a)(1)—(3). Prior to and at the June 28, 2010 HRA meeting, Ms. Widmann informed the HRA board and the HRA Executive Director that notice must be provided to the residents immediately of the opportunity to serve on the HRA board. The Executive Director notified the tenants of the opportunity to serve on the HRA board by letter on July 12, 2010.

3) Election procedures of the resident board member.

Title 24, part 964.420(a) states, “Residents directly assisted by a public housing agency may elect a resident board member if provided for in the public housing agency plan, adopted in accordance with 24 CFR, part 903.” If not part of your Authority’s PHA Plan, the resident board member needs to be appointed in the same manner as a non-assisted board member.

4) Federal law and regulations regarding procuring legal services.

Grantees and subgrantees are required to use their own procurement policies which reflect applicable state and federal laws and regulations. The regulation can be found in Title 24 of the CFR 85.36(b). Therefore, the HRA board needs to follow its own procurement procedures when procuring legal or other services. The federal regulations provide further information regarding procurement procedures at Part 85.36 of Title 24.

5) Board access to documents involved in said legal work.

Whether the HRA board has access to documents involved in the legal representation of the board is an internal issue that the HRA board needs to resolve on its own. HUD cannot interfere with the attorney and client relationship.

6) The scope of a data compliance officer's authority.

Minnesota Statute requires governmental authorities to appoint an employee of the entity to act as the entity's data practices compliance official. Minn. Stat. § 13.05, subd. 13. The data compliance official is the designated person to whom individuals may direct questions about data practices requests. *See* Minnesota Statutes, § 13.05, subd. 13. The scope of the HRA's data compliance officer's authority is governed by state law and can be addressed by the HRA's attorney.

7) The use of Public Housing funds to procure a mediator;

Per Ms. Widmann's email sent to you the morning of July 23, 2010, our office has determined that procuring a mediator is an appropriate use of Public Housing funds. We recommend that your Board commence with the selection of a mediator as soon as possible. Please follow your procurement policy. Our office cannot select or recommend mediators, because we are not allowed to show preference to any service providers.

We hope this information is helpful to you. If you have any questions about this letter, please contact Ms. Tammy Widmann at (612) 370-3135, extension 2227 or Ms. Amy Schwarz at (612) 370-3000, extension 2246.

Sincerely,



FoV

Dianne Healy
Acting Director, Office of Public Housing

cc: Ms. Sandy Tischer, Executive Director
Ms. Mary Tietjen, Attorney for the Meeker County HRA