

RESOLUTION 2004-129
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING THE ADVISORY OPINION AND
RECOMMENDATION NO. 2004-2 OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board (the "Board") consisting of three members of the City Council; and

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers of board and commission members of the City; and

WHEREAS, the Ethics Review Board met on October 25, 2004, to consider a question posed by Councilmember Hamrick as to whether Councilmembers who own rental property may have a conflict of interest in considering proposed regulations of such properties; and

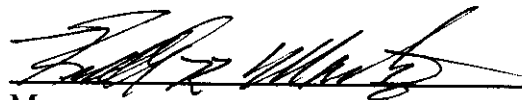
WHEREAS, the Board has issued an advisory opinion with regard to this matter; and

WHEREAS, Section 2-569(e) of the City Code provides that all advisory opinions and recommendations of the Board be placed on the agenda for the next special or regular City Council meeting, at which time the City Council shall determine whether to adopt such opinions and recommendations; and

WHEREAS, the City has reviewed the opinion and recommendations of the Board and wishes to adopt the same.

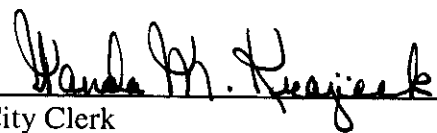
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2004-2 of the Ethics Review Board, a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A," has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion and recommendation contained therein.

Passed and adopted at a regular meeting of the City Council held this 16th day of November, 2004.



Mayor

ATTEST:



City Clerk

OPINION 2004-2
OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

October 26, 2004

The Ethics Review Board (the "Board") met on the above-referenced date at the request of Councilmember Hamrick, pursuant to the provisions of Sec. 2-569 of the City Code, to consider an ethical question posed by Councilmember Hamrick.

QUESTION PRESENTED.

The question presented by Councilmember Hamrick is as follows: At what point might a Councilmember who owns rental properties have a conflict of interest in participating in an official capacity in the City Council's deliberations and/or City decisions regarding the regulation of rental properties?

APPLICABLE LAW.

City Charter provisions pertaining to this matter include the following:

Interests in other decisions. Any officer or employee who has, or whose relative has, a financial or personal interest in any decision of any public body of which he or she is a member or to which he or she makes recommendations, shall, upon discovery thereof, disclose such interest in the official records of the city in the manner prescribed in subsection (4) hereof, and shall refrain from voting on, attempting to influence, or otherwise participating in such decision in any manner as an officer or employee.

Financial interest means any interest equated with money or its equivalent.

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public.

(Charter of the City of Fort Collins, Art. IV §9)

DISCUSSION.

The relevant standard to be applied in reviewing this particular question is the Charter "personal interest" standard. The first question to be addressed under this standard is whether a proposed ordinance requiring the registration and/or licensing of rental properties, or a change to the "more

than three unrelated persons" ordinance would, in the judgment of a reasonably prudent person, result in some "direct and substantial" benefit or detriment to the owners of rental properties. For the purposes of this opinion, the Board assumes the existence of a direct and substantial benefit or detriment.

The key phrase in the definition of personal interest in this situation is the phrase "different in kind from that experienced by the general public." There are hundreds, if not thousands, of people in the City who own rental properties. Therefore, a Councilmember who owns one or more rentals is part of a very large category of persons who would be affected by the proposed changes in City regulations. Such Councilmembers would not be uniquely affected by the proposed legislation unless, perhaps, property rental was a Councilmember's sole or primary source of income, in which case the number of similarly situated City residents would be greatly reduced.

Numerous opinions of the Ethics Review Board have focused on the size of an affected group in determining whether a conflict of interest exists. For instance, in Opinion No. 93-3 the Board rendered the opinion that Councilmember Bob McCluskey did not have a conflict of interest in participating in Council deliberations regarding the establishment of storm drainage utility fees that would affect property he owned in a particular storm drainage basis. In support of that opinion, the Board cited the following as important factors in determining whether a conflict of interest exists:

- **The extent to which the decision "focuses" on the individual Councilmember.** If a Councilmember's interest is like hundreds of others who are similarly situated, then it is likely that the Councilmember can participate in the decision. The smaller the group of affected interests, the more likely it is that the Councilmember who is a member of that group should not participate in the decision."
- **The magnitude of the potential financial or personal impact of the decision on the individual Councilmember.** If the Councilmember will only be slightly impacted, either financially or personally, by a Council decision, then he or she is less likely to have a financial or personal conflict of interest in the decision. On the other hand, if the impact will be a very substantial one, a conflict is more likely to be found.
- **The need for the Councilmember to participate in the decision as an elected representative.** If the decision is of substantial importance to a Councilmember's constituents, either as a district representative or as Mayor, then the Councilmember should carefully consider whether his or her decision to declare a conflict of interest would leave those constituents without a representative voice in the decision. The constituents' entitlement to a representative voice must be balanced against the degree of personal interest which the Councilmember may have in the decision.

Similarly, in Opinion 92-8, the Board noted that "Councilmembers should be able to participate in policy level decisions unless the policy decision is so immediately and directly tied to a financial or personal interest of the councilmember that the policy decision cannot be effectively separated from the personal interest (as opposed to the personal views) of the councilmember."

CONCLUSIONS.

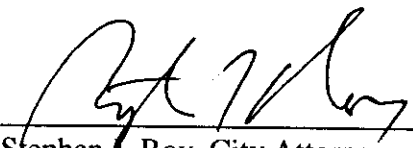
The Board believes that the following guidelines will assist Councilmembers who own rental properties in determining whether a conflict of interest exists when Council is considering the proposed regulation of rental property.

1. Whether income derived from rental properties constitutes a primary source of income for the Councilmember, or for his or her relative, or is instead a supplemental source of income; and
2. Whether participating in the Council decision might enhance or diminish the business interests, personal assets, or employment status of the Councilmember, or his or her relative, in a way that is different from other rental property owners.

As with all conflict of interest questions, this question must be addressed more specifically on a case-by-case basis. The point of the case-by-case inquiry would be to determine whether the Councilmember, as a rental property owner, would be differently affected by the proposed regulations than most other owners of rental property because of the magnitude of the Councilmember's rental property holdings.

This advisory opinion was reviewed and approved by Mayor Martinez, Mayor Pro Tem Bertschy and Councilmember Weitkumat, as regular members of the Ethics Review Board, for distribution to members of the Council and for distribution to the City Clerk, to be maintained in the permanent file of opinions of the Ethics Review Board.

Dated this 9th day of November, 2004.



Stephen J. Roy, City Attorney