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**October 23, 1974**

**FILE NO. S-818**

**OFFICERS:  
Conflict of Interest  
Deposit of Funds**

**Frank A. Kirk, Director  
Department of Local Government Affairs  
303 East Monroe Street  
Springfield, Illinois 62706**

**Dear Director Kirk:**

This responds to your request for a clarification of opinion No. NP-596 dated May 31, 1973. In that opinion I advised that section 3 of the Corrupt Practices Act (Ill. Rev. Stat. 1973, ch. 102, par. 3) precludes the commissioners of a housing authority from designating a bank for deposit of funds where two commissioners of the housing authority own stock in said bank and where one such commissioner is a member of the bank's board of directors. You ask now whether that opinion also precludes the commissioners of a housing authority from designating as a bank in which funds are to be deposited or

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from which a certificate of deposit is to be purchased, a bank where a commissioner or executive director of the Authority has a savings account, checking account or loan.

In general, I have advised that a designation of a specific bank as a depository is precluded only when a member of the designating body is either a director, stockholder or employee in the bank or in some instances, a relative of a director, stockholder or employee. All possible interests that a public officer may have in an entity contracting with a public body are not prohibited. In People v. Adduci, 412 Ill. 621 at 627, the Supreme Court stated:

"\* \* \* The interest against which the prohibition is leveled is such an interest as prevents or tends to prevent the public official from giving to the public that impartial and faithful service which he is in duty bound to render and which the public has every right to demand and receive. Not every interest is a bad or corrupt interest. The desire of every public official to serve the public faithfully necessarily requires him to take a keen interest in the affairs of his office and the prohibition is manifestly not leveled against this interest. Whether or not the interest in any given case comes within the prohibition of the statute may well become a question of construction for the court in view of all the facts and circumstances shown in the particular case."

The particular relationships which you set forth in your request can best be characterized for purposes of this opinion, as those of either a debtor or a creditor. I have

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found no cases involving the relationship of debtor. It would appear the reason for this is that a public officer who is a debtor to a person or entity which has a contract with a public body is not likely to have direct or indirect interest in that contract. This assumes, however, that the loan was not made or the debtor relationship established on a condition that the public contract be awarded to the creditor or that the public contract was not awarded to the creditor on condition of forgiving the loan or obtaining other favored treatment. Such conduct could, of course, be considered bribery or official misconduct. (See Ill. Rev. Stat. 1973, ch. 38, pars. 33-1 and 33-3.) Such facts, however, do not appear from your request.

While in some situations the relationship of creditor to the contracting entity has been found sufficient to invalidate the contract, such relationship does not necessarily create a pecuniary interest and whether such relationship constitutes an interest which is prohibited by the statute, is to be determined by the facts and circumstances appearing in evidence. In Panozzo v. City of Rockford, 306 Ill. App. 443, the court stated at pages 451-452:

\* \* \* In Tuscan v. Smith, 130 Me.36, 153 Atl. 289, 73 A.L.R. 1344, it is conceded that indebtedness of a person, with whom the city executes a lease, to a member of the town board of selectmen, does

not necessarily create a pecuniary interest, directly or indirectly, of the selectman and vitiate his vote. It is plain from an analysis of the cases in the notes following the report of the Tuscan case in 73 A.L.R., that the question whether the relation of a debtor of a contracting party, to a public officer constitutes an interest within the statute or rule of common law against such officer being interested in a contract with the public, is to be determined from the facts and circumstances appearing in evidence. In the case of Wayman v. City of Cherokee, 204 Iowa 675, 215 N.W. 655, it is held that the question whether the relationship as creditor of a councilman with a contractor to whom was let a contract to do cement work for the city presented a question of fact as to whether the councilman was directly or indirectly interested in the contract. Also, the general rule is, that relationship of a public officer to a contractor is not a disqualifying interest making it unlawful for an officer to be interested in a public contract without proof that the officer has a pecuniary interest in the contract. (Thompson v. District Board of School Dist. No. 1 of Moorland Township, 252 Mich. 629, 233 N.W. 439, 74 A.L.R. 790, and cases cited there in the annotation, p. 792, et seq.; Tuscan v. Smith, supra.)"

The only benefit that a creditor of a bank, i.e. one who has money on deposit with the bank, could have in the designation of that bank as a depository of public funds is that such deposit may increase the stability of that bank. In view of the fact that most deposits are insured by the Federal government, I do not believe that such tangential interest could have such an affect on the public official to prevent that public official from giving to the public that impartial and faithful service which he is duty-bound to render.

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I, therefore, am of the opinion that the commissioners of a local housing authority are not precluded from designating as a bank in which funds are to be deposited or from which a certificate of deposit is to be purchased, a bank where a commissioner or executive director of the authority has a savings account, checking account or loan, unless there are additional facts or evidence which would prevent the commissioner or executive director from acting fairly and impartially.

Very truly yours,

A T T O R N E Y   G E N E R A L