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Housing—Conflict of Interest Law Disqualifies Tenant as Housing Commissioner: Brown v. Kirk

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BROWN V. KIRK: CONFLICT OF INTEREST LAW DISQUALIFIES TENANT AS HOUSING COMMISSIONER

The concern that an otherwise honorable person could be tempted to reap private benefits from public service[1] underlies conflict-of-interest laws.[2] Strictly applied, conflict-of-interest laws have the effect of voiding any decision[3] or contract[4] where any potential for personal

1. "An impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the government." United States v. Mississippi Valley Co., 364 U.S. 520, 549 (1961). *See* Aldon v. Borough of Roseland, 42 N.J. Super. 495, 502, 127 A.2d 190, 194 (App. Div. 1956); Smith v. City of Albany, 61 N.Y. 444, 446 (1875). *See also* Manning, *The Purity Potlach: An Essay on Conflict of Interest, American Government, and Moral Escalation*, 24 FED. B.J. 239 (1964).

2. *See, e.g.*, 18 U.S.C. § 208 (1970). This provision prescribes criminal penalties for persons who participate personally and substantially as a government officer or employee in proceedings that "to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest." *Id.* § 208(a). *See* United States v. Mississippi Valley Co., 364 U.S. 520 (1961) (contract in which an unpaid government consultant provided financial information about an atomic energy project to an investment banking firm for which he was an active officer was voided); United States v. Carter, 217 U.S. 286 (1910) (criminal conviction of army captain who colluded with contractors for river and harbor improvements in Savannah, Georgia was upheld).

State and local governments have also enacted conflict-of-interest laws. *See, e.g.*, MASS. ANN. LAWS ch. 268A, § 23(d) (Michie Law. Co-op 1968) (no state, county, or municipal officer or employee shall "use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others or give the appearance of such action"); CAL. GOV'T CODE § 1090 (Deering 1973) (high-level government officials required to disclose economic interests). *Cf.* ABA CODE OF JUDICIAL CONDUCT CANON 5(c)(1), (2) (1972) (judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality). *See generally* Note, *Conflict of Interests: State Government Employees*, 47 VA. L. REV. 1034 (1961); 70 W. VA. L. REV. 400, 401 (1968). For a review of conflict-of-interest provisions applying to municipal employees, see Freilich & Larson, *Conflict of Interest: A Model Statutory Proposal for the Regulation of Municipal Transactions*, 38 U. MO. K.C.L. REV. 373 (1970); Kaplan & Lillich, *Municipal Conflict of Interest: Inconsistencies and Patchwork Prohibitions*, 58 COLUM. L. REV. 157 (1958); Note, *The Doctrine of Conflict of Interests Applied to Municipal Officials in New Jersey*, 12 RUTGERS L. REV. 582 (1958); Note, *Conflict-of-Interests of Government Personnel: An Appraisal of the Philadelphia Situation*, 107 U. PA. L. REV. 985 (1959); 20 BUFFALO L. REV. 487 (1971).

3. *See, e.g.*, Wilson v. Iowa City, 165 N.W.2d 813 (Iowa 1969) (voiding decision of city council relating to urban renewal project where members had property interests

benefit to the public official exists. However, a trend toward limiting the scope of disqualifying interests and requiring disclosure of holdings as a prerequisite to assuming public office has evolved.[5] Nevertheless, many courts continue to rely on the traditional inclusive conflict of interest approach. As a result many persons whose interests and input could provide positive benefits to governmental decision-making have been precluded from public office.[6]

In *Brown v. Kirk*,[7] the Illinois Supreme Court held that Illinois' conflict-of-interest statutes[8] disqualified public housing tenants from

within project area); Griggs v. Borough of Princeton, 33 N.J. 207, 162 A.2d 862 (1960) (voiding decision of borough council because two members were employed by university, which held controlling interest in municipal improvement corporation).

4. *See, e.g.*, Ganntt v. Arkansas Power & Light Co., 189 Ark. 449, 74 S.W.2d 232 (1934) (voiding contract with waterworks district in which commissioners were also stockholders of contracting company); Norrell v. Judd, 374 S.W.2d 192, 194 (Ky. Ct. App. 1963) (voiding contract for cable television connections to public housing sites where housing director was also director of contracting company); Conley v. Town of Ipswitch, 352 Mass. 201, 224 N.E.2d 411 (1967) (finding illegal "contract" where druggist, a town selectman, recovered cost of drugs dispensed to welfare recipients directly from the city welfare office).

5. The transition toward disclosure type statutes reflects the economic changes in and the growing complexity of society, and the fact that many situations present fewer dangers of real conflict. Note, *Conflict of Interests: State Government Employees*, 47 VA. L. REV. 1034, 1056-57 (1961); 18 U. FLA. L. REV. 675, 680 (1966). In general, the official must disclose only those interests which could be materially affected by his service. However, some recent statutes require general disclosure of financial and property interests. *See, e.g.*, CAL. GOV'T CODE § 1090 (Deering 1973). These general disclosure statutes raise potential constitutional issues and may inhibit potential public officers from submitting to such openness regarding their business affairs. *See generally* Pares & Smith, *California's Governmental Conflict of Interests Act: The Public Interest v. The Right to Privacy*, 49 L.A.B. BULL. 321 (1974); Note, *Fighting Conflict of Interests in Officialdom: Constitutional and Practical Guidelines for State Financial Disclosure Laws*, 73 MICH. L. REV. 758 (1975).

6. *See* Atherton v. City of Concord, 109 N.H. 164, 245 A.2d 387 (1968). "[I]f every possibility of conflict, no matter how remote, uncertain, contingent, insubstantial or specific, were cause for disqualification, many persons who are . . . suited for office by the very reason of their commercial or professional experience would be prevented from contributing their services to the community." *Id.* at 165-66, 245 A.2d at 389. *See also* Manning, *The Purity Potlach: An Essay on Conflict of Interest, American Government, and Moral Escalation*, 24 FED. B.J. 239 (1964); McElwain & Vorenberg, *The Federal Conflict of Interest Statutes*, 65 HARV. L. REV. 955 (1952).

7. 64 Ill. 2d 144, 355 N.E.2d 12 (1976).

8. The court relied upon both the specific conflict-of-interest provision pertaining to housing authority commissioners, The Housing Authorities Act, ILL. ANN. STAT. ch. 67-1/2, § 5 (Smith-Hurd 1975), and the state's general provision, The Corrupt Practices Act, ILL. ANN. STAT. ch. 102, § 3 (Smith-Hurd 1975), to disqualify the tenants. The Housing Authorities Act prohibits any direct or indirect interest in any project. For those interests acquired before the appointment, disclosure is required. The Corrupt Practices

serving as commissioners of a local housing authority. The suit was initiated by tenants of the East St. Louis Housing Authority who were appointed commissioners by the Mayor, but subsequently declared ineligible by the State Director of Local Government Affairs.[9] The supreme court, reversing the appellate court,[10] found that the tenants' leases were contractual interests with the housing authority. The court concluded that due to this contractual relationship, the potential for personal gain derived from the tenant's role as commissioner created a conflict-of-interest within the scope of the statutes.[11]

Conflict-of-interest theory is based on the common law principle that a person in a fiduciary position cannot faithfully serve both his own interests and the public trust simultaneously.[12] Concerned with high moral standards, the common law rule applied regardless of the good faith of the individual involved,[13] since even the appearance of a

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Act, on the other hand, prohibits interests in "any contract or the performance of any work in the making or letting of which such officer may be called on to act or vote." *Id.*

9. The plaintiffs were four tenants of the East St. Louis Public Housing Authority who sought declaratory relief for themselves and all other existing and future tenants that the state conflict-of-interest statutes did not preclude low income housing tenants from serving as commissioners. 33 Ill. App. 2d 477, 342 N.E.2d 137 (1973).

The plaintiffs named the Director of State Department of Local Government Affairs as defendant. The Director is empowered to certify and approve the appointments to local housing authorities. ILL. ANN. STAT. ch. 67-1/2, § 3 (Smith-Hurd 1975). The Director refused to approve the local appointments based on an advisory opinion of the Illinois Attorney General.

The Illinois Attorney General's opinion defined "interest" according to Webster's New International Dictionary (2d ed. 1953), as a "right, title, share or participation in a thing," and found that the tenant's lease would be a "share or participation in the housing project." 1973 ILL. OP. ATT'Y GEN. 612 (1973).

10. 33 Ill. App. 2d 477, 342 N.E.2d 137 (1973).

11. 64 Ill. 2d at 148-49, 355 N.E.2d at 14-15.

12. The principle is derived from the common law concept of the duty of loyalty which a trustee owes to the interests of the *cestui que trust*. When the trustee must act for another, the trustee is prohibited from benefiting himself from this representation since one cannot serve two masters at the same time or act satisfactorily when faced with conflicting interests. *See* 3 G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 54 (1946); SCOTT, THE LAW OF TRUSTS § 495-505 (3d ed. 1967).

In government service, an officer is held to owe a constructive duty to the public at large as the *cestui que trust*. *See* Terry v. Bender, 143 Cal. App. 2d 198, 300 P.2d 119 (1956). "A public office is a public trust created in the interest and for the benefit of the people. Public officers are obligated, *virtute officii*, to discharge their responsibilities with integrity and fidelity. Since the officers of a governmental body are trustees of the public, they may not exploit or prostitute their official position for their private benefit." *Id.* at 206-07, 300 P.2d at 125.

13. The purpose behind this rule is to remove the possibility for self-dealing by precluding the individual from weighing his own interest along with those of the public;

conflict could undermine public confidence in governmental decisions.[14]

Most jurisdictions have recognized the need for reasonable limitations on the private conduct of public servants and have adopted statutes which define permissible activity. Recognizing that the interests may be direct or indirect,[15] most jurisdictions require that the benefits be personal and pecuniary,[16] though advantages to one's fami-

in a sense to protect the officer from succumbing to his own human frailties. *See, e.g.*, Low v. Town of Madison, 135 Conn. 1, 60 A.2d 774 (1951). *See* note 1 *supra*.

An extreme example of a court's interpretation of this principle is found in People *ex rel.* Schenectady Illuminating Co. v. Board of Supervisors, 166 App. Div. 758, 151 N.Y.S. 1012 (1915). There it was found that the sale of $7.44 worth of lamps was disqualified because an official who owned one share in the company retained an interest derived from a general concern with the company's prosperity. *Id.* at 768, 151 N.Y.S. at 1014.

Any situation where the potential for self-dealing arises can invoke the conflict-of-interest rule, regardless of evidence of good faith or good judgment. *See* Price v. Edmonds, 337 S.W.2d 658 (Ark. 1960); Norrell v. Judd, 374 S.W.2d 192 (Ky. Ct. App. 1964). *See also* 10 MCQUILLAN, MUNICIPAL CORPORATIONS § 29.97 (3d ed. 1966); Kaplan & Lillich, *Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions*, 58 COLUM. L. REV. 157, 181 (1958).

14. *See* Board of Selectmen v. Linder, 352 Mass. 581, 227 N.E.2d 359 (1967). In *Linder*, the defendant was a member of the town board who agreed to serve as a paid correspondent to a local newspaper. The court found that to serve in both positions simultaneously would violate the state conflict-of-interest law since its purpose "was as much to prevent giving the appearance of conflict as to suppress all tendency to wrongdoing." *Id.* at 583, 227 N.E.2d at 360. *Cf.* ABA CODE OF PROFESSIONAL RESPONSIBILITY, CANON 9 (1971) (A Lawyer Should Avoid Even the Appearance of Professional Impropriety). *See also* notes 15-21 and accompanying text *infra*.

15. *See* Stigall v. City of Taft, 58 Cal. 2d 565, 375 P.2d 289, 25 Cal. Rptr. 441 (1962) (official's ownership of more than 3% of stock in plumbing company contracting with city held to constitute conflict); S & L Assocs. v. Township of Wash., 61 N.J. Super. 312, 160 A.2d 635 (App. Div. 1960) (town planning commissioners' ownership of property in areas which they zoned for industry constituted conflict). *See generally* Kaplan & Lillich, *Municipal Conflicts of Interest: Inconsistencies and Patchwork Prohibitions*, 58 COLUM. L. REV. 157, (1958); Kennedy & Beck, *Interest of Public Officers in Contracts Prohibited by Law*, 28 S. CALIF. L. REV. 335, 339 (1955).

16. *See, e.g.*, N.Y. GEN. MUN. LAW art. 23, § 800(3) (McKinney 1974). An "interest" is defined as " direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves." *Id. See* WIS. STAT. ANN. § 946.13 (West Supp. 1976). Criminal penalties are provided for public officers or employees who, in their public capacity, negotiate or bid for a contract in which they have a private pecuniary interest, direct or indirect. *Id.* § 946.13(1)(a). *See also* Panozzo v. City of Rockford, 306 Ill. App. 443, 28 N.E.2d 748 (1940) (debtor or relative of official not sufficient to invoke conflict-of-interest law); Marsh v. Town of Hanover, 113 N.H. 667, 313 A.2d 411 (operation of private ambulance service by city fireman would be conflict-of-interest only if it competes for business with public ambulance system); Mumma v. Town of Brewster, 174 Wash. 112, 24 P.2d 438 (1933) (interest must be financial, not based on sentiment alone).

ly,[17] to proprietary interests,[18] and sometimes to one's employer[19] may invoke the law. Other states apply a more inclusive standard which provides that any personal benefit that could influence a public decision is prohibited.[20]

In recent years, some states have adopted "remote interest" statutes[21] which define the quantity of interests, mostly financial, below which it is presumed to be of such inconsequential value that an official will not be swayed in the execution of his duties.[22] These laws require either partial or full disclosure of financial and property interests by the prospective member to the governing body.[23] Once an official has disclosed his holdings, the issue of whether these interests should bar participation is dependent on the facts of the particular case.[24]

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17. *See* Low v. Town of Madison, 135 Conn. 1, 60 A.2d 774 (1948); Githens v. Butler Co., 350 Mo. 295, 165 S.W.2d 650 (1942). *Cf.* N.Y. GEN. MUN. LAW art. 23, § 800(3) (McKinney 1974) (employee deemed to have interest in contracts of his spouse, minor children and dependents).

In *Githens*, the Missouri court voided the sale of land to the wife of a county judge. The court reasoned that the husband's legal duty to support his wife and his entitlement to his wife's real estate were disqualifying pecuniary interests even though they were indirect. 350 Mo. at 299, 165 S.W.2d at 652.

18. *See, e.g.*, Stigall v. City of Taft, 58 Cal. 2d 565, 375 P.2d 289, 25 Cal. Rptr. 441 (1962) (conflict exists where city official owned stock in plumbing company contracting with city); Laconia Hous. & Redev. Auth. v. Emanuel, 281 A.2d 159 (N.H. 1971) (no conflicting interest when attorney representing corporate developer carrying out redevelopment project divested interests and took no official action on matter when elected mayor of city). *See also* N.Y. GEN. MUN. LAW art. 23, § 800 (McKinney 1974).

19. *See, e.g.*, Griggs v. Borough of Princeton, 33 N.J. 207, 162 A.2d 862 (1960) (decisions designating university owned land as renewal area when made by employees of university serving on planning board were voided); *cf.* Wilson v. City of Long Branch, 27 N.J. 360, 142 A.2d 837 (1958) (mayor who was director and stockholder of bank owning some mortgages in area designated as blighted was not disqualified from voting on resolution). *Contra*, Adair v. Nashville Hous. Auth., 388 F.Supp. 481 (D.C. Tenn. 1974), *aff'd*, 514 F.2d 38 (6th Cir. 1975), *cert. denied*, 423 U.S. 928 (1976).

20. *See, e.g.*, Stigall v. City of Taft, 58 Cal. 2d 565, 375 P.2d 289, 25 Cal. Rptr. 441 (1962); Low v. Town of Madison, 135 Conn. 1, 60 A.2d 774 (1948); Emwags v. Reading Parking Auth., 385 Pa. 592, 124 A.2d 92 (1956).

21. MINN. STAT. ANN. § 471.88 (West 1976); N.Y. GEN. MUN. LAW art. 23, § 802 (McKinney 1974). *See also* CAL. GOV'T CODE § 1091(b)(1)-(9) (Deering 1973); LA. REV. STAT. ANN. § 42.1112 (West 1965).

22. *See, e.g.*, MINN. STAT. ANN. § 471.88(8) (West 1976) (This provision excludes interests in contracts for goods or services of less than $1,000 and the when contracting governmental unit has a population of less than 5,000.); N.Y. GEN. MUN. LAW art. 23, § 802(2)(f) (McKinney 1974) (This provision relates to contracts which exceed $100 only and additionally provides that ownership of less than 5% of the outstanding stock shall not void a contract between the government and the corporation. *Id.* § 802(2)(a)).

23. *See* note 5 *supra*. *See also* 18 ST. LOUIS U.L.J. 641 (1974).

24. *See, e.g.*, S & L Assocs. v. Township of Wash., 61 N.J. Super. 312, 160 A.2d 635 (App. Div. 1960) (conflict-of-interest found where members of town planning commis-

State courts have used remote interest, disclosure type conflict-of-interest provisions, similar to that in the Illinois Housing Authorities Act,[25] to void contracts or decisions, but have rarely reached the issue of an official's qualifications to serve as housing commissioner. In *Norrell v. Judd*,[26] the Kentucky Court of Appeals nullified a contract made by the director of a local housing authority with a company that he simultaneously served as director. The court refused to order removal from office absent a self-executing provision in the statute.[27] Similar decisions have been reached by the Iowa[28] and Kansas[29] Supreme Courts. In a California case involving alleged conflict-of-inter-

sion owned land in area zoned industrial at the time of determination to exclude plaintiff's land from industrial classification).

The test for conflicting activity while in office is whether the officer or employee participated in the making of the contract in his official capacity. Stigall v. City of Taft, 58 Cal. 2d 565, 375 P.2d 289, 25 Cal. Rptr. 441 (1962). In Adair v. Nashville Hous. Auth., 388 F. Supp. 481 (D.C. Tenn. 1974), *aff'd*, 514 F.2d 38 (6th Cir. 1975), *cert. denied*, 423 U.S. 928 (1976), a challenge to decisions of the Nashville, Tennessee Housing Authority included claims of conspiracy and conflict-of-interests on the part of bank and university employees participating as commissioners in decisions affecting property interests of their employers. The district court found that the lack of personal pecuniary benefit or showing of private favoritism by these commissioners were sufficient to dispose of these claims. *Id.* at 489. The court found "no evidence that the officials were, in their public capacities, at any time motivated by any purpose other than serving the interests of the community." *Id.*

25. *See* note 8 *supra*.

26. 374 S.W.2d 192 (Ky. Ct. App. 1963).

27. *Id.* at 194. In *Norrell*, the court found the defendant's conduct relevant only to whether the contract should be voided rather than toward any sanctions against the permissibility of his actions. Without a self-executing provision which would automatically declare the office vacant upon a finding of conflict, the court refrained from determining the issue of defendant's competence to serve. *Id. See* KY. REV. STAT. § 80.080 (1970).

28. Wilson v. Iowa City, 165 N.W.2d 813 (Iowa 1969). In *Wilson*, the court voided the decision of the Iowa City Council declaring certain areas eligible for federal urban renewal funds. Rather than disqualifying the votes of interested councilmen, the court concluded that the state urban renewal conflict-of-interest provision, IOWA CODE ANN. § 403.16 (West 1973), required more inclusive application. The court reasoned that the statute prevented these public officials not only from gaining personal advantage after they knew what was to be included within the blighted area, but also to prevent them from "trading upon advance information." 165 N.W.2d at 820. This decision prompted the Iowa legislature to enact a "crucial vote" statute which provided for voiding a vote only where the vote of the members with conflicting interest is crucial to the outcome. IOWA CODE ANN. § 403.16 (West Supp. 1976). *See also* Note, *Remedies For Conflict of Interest Among Public Officers in Iowa*, 22 DRAKE L. REV. 600, (1973).

29. Anderson v. City of Parsons, 209 Kan. 337, 496 P.2d 1333 (1972) (limited the scope of disqualifying interests to cases where the voting officer has an interest in property in the specific project area selected).

est by the director of a redevelopment agency owning substantial property in the project area, the court upheld dismissal of the conflict-of-interest claim because the official neither acquired new interests during his service, nor failed to disclose his existing interests.[30]

The Connecticut Supreme Court in *Housing Authority v. Dorsey*[31] resolved the issue of the eligibility of tenants as housing commissioners.[32] The court applied an inclusive common law standard to bar tenants from serving in situations where private interest could interfere with public duty.[33] The *Dorsey* court found that the temptation of being able to select tenants, to determine rents, personnel policies, and rules governing the rights of tenants,[34] would always place the tenant commissioner in a position to weigh personal interests in matters before the authority.[35]

30. *In re* Dev. Plan for Bunker Hill, 61 Cal. 2d 21, 37 Cal. Rptr. 74, 389 P.2d 538 (1964). In this case, the conflict-of-interest statute was similar to the Illinois provision relied upon by the court in *Brown v. Kirk*. *See* note 8 *supra*. Nonetheless, the California court chose not to nullify any decisions. The court found adequate safeguards in the disclosure provision for the chairman of the redevelopment agency's preexisting ownership of 14 parcels of property in the project area. *Id.* at 66-67, 37 Cal. Rptr. at 103, 389 P.2d at 567.

31. 164 Conn. 247, 320 A.2d 820, *cert. denied*, 414 U.S. 1043 (1973).

32. While *Dorsey* is the only case on point, several state attorney generals have prepared advisory opinions on the issue of tenants' eligibility to serve as housing authority commissioners. For example, the Florida Attorney General interpreted a disclosure-type, conflict-of-interest provision, FLA. STAT. § 421.06 (1973), as not being in itself a disqualifying factor for appointment to the commission. Op. Fla. Att'y Gen. No. 073-96 (1973). He interpreted the housing authority conflict-of-interest provisions as applying to pecuniary interests. Specifically, the purpose was to prevent an official with inside information from gaining personal advantages from his position and to reap a profit to the detriment of the public. *Id.*

The Ohio Attorney General found no conflict-of-interest for a tenant commissioner so long as the tenant pays rent in accordance with the contractual formula. OP. OHIO ATT'Y GEN. No. 71-057 (1971). The opinion found that the intention of the provision barring commissioners from acquiring interests, OHIO REV. CODE ANN. § 3735.29 (Page 1971), related to "devices under which the member or employee may profit by reason of his position." *Id.*

The New York Attorney General also found no conflict of interest so long as the tenant disclosed the existence of this lease. The opinion concluded, however, that the tenant could not renew his lease during the term of office since this would constitute the acquisition of an interest. OP. N.Y. ATT'Y GEN. 95 (1967). *See* Centazzo v. Canna, 110 R.I. 507, 293 A.2d 904 (1972). *But see* OP. ILL. ATT'Y GEN. No. 612 (1973); OP. MO. ATT'Y GEN. No. 69-78 (1969); 1 POV. L. RPTR. (CCH) ¶ 2720.79 (Dec. 19, 1968) (N.C. Attorney General opinion).

33. 164 Conn. at 251, 320 A.2d at 822. *See* note 20 and accompanying text *supra*.

34. *Id.* at 252-53, 320 A.2d at 823.

35. *Id.* at 251, 320 A.2d at 822. The *Dorsey* court applied an inclusive standard similar to the provision utilized in Low v. Madison. 135 Conn.1, 60 A.2d 774 (1948). *See* note 17

The Illinois Supreme Court found the rationale of the *Dorsey* case controlling in *Brown v. Kirk*.[36] The court found that the conflict-of-interest provision in the Housing Authorities Act embodied the inclusive common law standard and therefore the provision was designed to prevent the creation of any potential temptation or abuse.[37]

The supreme court disagreed with the analysis of the appellate court.[38] Recognizing that the Housing Authorities Act has both a disclosure provision which applies to pre-existing interests and an inclusive common law provision prohibiting any acquisition of interests after taking office, the court found that the leases were continuing contractual relations which were encompassed by the latter provision.[39] Second, the court found that the Illinois general conflict-of-interest statute,[40] was relevant to any potential relationships where potential personal gain existed and should not be limited to business relationships of the housing authority.[41]

The reliance on the inclusive standard by the supreme court is inconsistent with rulings of other Illinois courts which held that the

supra. As a result, the tenant is removed from all situations where his private interest could potentially conflict with the public duty.

36. 64 Ill. 2d 144, 148, 355 N.E.2d 12, 14 (1976).

37. *Id.*

38. The appellate court found that plaintiffs were not persons with direct or indirect property interests in the housing authority. The court found that the absence of language indicating eligibility standards in the housing authority's conflict-of-interest provision indicated a legislative intent to allow the appointment of interested commissioners so long as they disclosed those interests. 33 Ill. App. 2d 477, 481, 342 N.E.2d 137, 140 (1973). Furthermore, while the statute contained an absolute prohibition against acquiring any new interests while in office, disclosure of preexisting interests was statutorily mandated. *Id.* Similarly, the appellate court found the Corrupt Practices Act to pertain only to interests derived from the letting of contracts for the performance of services to the housing authority. *Id.* at 482, 342 N.E.2d at 141. To reach these conclusions, the court applied the general rule of statutory construction which provides for strict construction where disqualification is at issue. *Id.* at 483, 342 N.E.2d at 142. *See generally* J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION (1943).

39. 64 Ill. 2d at 145, 355 N.E.2d at 14. The court was able to reach this result because it found that the tenant's lease would exist both before and after the tenant would assume his duties as commissioner. This conclusion is debatable in two ways. First, it relies on the time element while ignoring the purpose of the disclosure requirement in the Housing Authorities Act. If the purpose of disclosure is to expose one's interest before assuming office, the public record will reveal *actual* conflicts rather than precluding a citizen from serving the public because of a *potential* for conflict-of-interest. Second, the characterization of a lease as a continuing interest seems contrary to the contract theory that once a contract is executed, the legal rights and responsibilities of the parties are fixed.

40. *See* note 8 *supra*.

41. 64 Ill. 2d at 145, 355 N.E.2d at 14.

conflicting interest must be certain and definable, and of a pecuniary or proprietary nature.[42] In contrast to the findings of the supreme court, the intermediate court found that the relevant statutes were directed toward the personal gain the official might obtain by voting in favor of a particular contracting party.[43] The tenant commissioner could then exercise the same prerogative of self-disqualification on issues involving personal financial interests that is available to other public officers with contractual or property interests. If the supreme court had chosen to apply this test rather than the more inclusive personal interest standard, the tenant, as commissioner, could remain eligible to vote on a range of matters that do not affect his financial interest in the housing authority.

The supreme court's revival of common law standards for conflict-of-interest[44] seems to be an unduly harsh remedy. Disclosure of the leasehold interest and compliance with civil and criminal laws affecting conduct of public officers would subject the tenant commissioner to the same safeguards against unfair promotion of self-interest that apply to other members of the local housing authority. In addition, tenant appointments promote both the policy objective of encouraging participation of lower-income persons in programs designed to assist them,[45] and political efforts of tenant organizations to gain access to management decision-making.[46] To prevent public housing residents

42. *See* People v. Sperry, 314 Ill. 205, 145 N.E. 344 (1924) (official received monthly salary from company contracting with city); People v. Saviano, 31 Ill. App. 3d 1049, 335 N.E.2d 553 (1975) (criminal conflict-of-interests where defendant who was member of forest preserve commission owned land sought by the commission); Kruse v. Streamwood Utilities Corp., 34 Ill. App. 2d 100, 180 N.E.2d 731 (1962) (official's ownership of stock in sewer and water company seeking franchise from city); Town of Peoria v. Rauschkolb, 333 Ill. App. 441, 78 N.E.2d 123 (1948) (supervisor and overseer of poor received 10% commission on drug purchases by city); Panozzo v. City of Rockford, 306 Ill. App. 443, 28 N.E.2d 748 (1948) (financial interest in city garbage collection contracts). *See also* Spak & Parenti, *Conflict of Interest: A Totally Ignored Illinois Criminal Sanction Against Corruption in Government*, 52 CHI.-KENT L. REV. 64 (1975).

43. 33 Ill. App. 2d at 483, 342 N.E.2d at 141-42.

44. *See* notes 13 & 14 and accompanying text *supra*.

45. *See* Hirshen & LeGates, *Neglected Dimensions in Low-Income Housing and Development Programs*, 9 URBAN L. ANN. 3, 15 (1975); Kline & LeGates, *Citizen Participation in the Model Cities Program: Toward a Theory of Collective Bargaining for the Poor*, 1 BLACK L.J. 44, 46 (1971).

46. *See, e.g.*, S. BURGHARDT, TENANTS AND THE URBAN CRISIS (1972); Hirshen & Brown, *Public Housing's Neglected Resource: The Tenants*, 6 CITY, at 15 (1972); Hirshen & LeGates, *Neglected Dimensions in Low-Income Housing and Development Programs*, 9 URBAN L. ANN. 3, 15 (1975); Lefcoe, *HUD's Authority to Mandate Tenants' Rights in Public Housing*, 80 YALE L.J. 463 (1971). *See also* Johnson, *Collective Tenant Action: Should the Rent Strike be Institutionalized*, 46 L.A.B.J. 138 (1971). *See generally* M.

from serving on a public body affecting their vital interests, while allowing wealthier persons representing banking, real estate and other interests to continue as commissioners, permits a rigid rule to conquer basic equity and policy concerns.

However, the resolution of this matter by the Illinois Supreme Court need not impair the legislature from clarifying the purposes of its conflict-of-interest statutes. Several states,[47] including Connecticut,[48] have revised their applicable provisions to exclude a tenant's lease from those interests which a commissioner of a housing authority may own or acquire. The California legislature has taken a further step by requiring at least two tenant commissioners to serve on its local housing authorities.[49] Congress has also responded by adding a policy to the federal public housing statute that no person should be barred from serving on the governing body of a housing agency because of his tenancy in a low-rent housing project.[50] Although public housing remains a primary concern of state governments, national and local[51] efforts to encourage tenant participation could focus on the state legislative process to reform the enabling laws for public housing authorities. A statutory declaration that tenants can serve as commissioners when they disclose their interests would then create a balance between the positive benefits of tenant representation in public housing decisions and the potential abuses of self-dealing.

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LIPSKY, PROTEST IN CITY POLITICS: RENT STRIKES, HOUSING, AND POWER OF THE POOR (1970).

47. *See, e.g.*, OKLA. STAT. tit. 97, § 2 (Supp. 1975); ORE. REV. STAT. § 456.115 (1975).

48. CONN. GEN. STAT. ANN. § 8042 (West 1975). The Connecticut statute was revised after the *Dorsey* decision to provide that "[o]ccupancy of a dwelling unit owned by the housing authority . . . shall not be deemed an interest in any project or in a contract for materials or services or in property included in any project for the purposes of this section." *Id.*

49. CAL. HEALTH & SAFETY CODE § 34270 (Deering Supp. 1976).

50. 42 U.S.C. § 1437 (Supp. 1975). "No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project." This policy statement was added to the federal public housing statute in response to state rulings barring tenants from participation on governing boards of housing authorities. *See generally* Lefcoe, *HUD's Authority To Mandate Tenants' Rights in Public Housing*, 80 YALE L.J. 463 (1971).

51. *See, e.g.*, Baron, *St. Louis Tenant Management Corporations*, 31 J. HOUSING 263 (1974); Beckham, *Tenant Responsibility: Boston Provides Showcase as Tenants Assume Leading Roles*, 30 J. HOUSING 76 (1973). *See also* Hartman & Carr, *Housing Authorities Reconsidered*, 35 J. AM. INST. PLANNERS 10 (1969).