

APR 25 2014

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ATLAS, HALL & RODRIGUEZ, LLP  
ATTORNEYS AT LAW

TRAVIS COUNTY OFFICE  
7200 N. MOPAC EXPY., STE 430  
AUSTIN, TEXAS 78731  
TEL. (512) 583-0579  
FAX (800) 808-1132

P.O. BOX 3725 (78502-3725)  
818 W. PECAN BLVD. (78501-2418)  
McALLEN, TEXAS  
TEL. (956) 682-5501 FAX (956) 686-6109  
ATLASHALL.COM

CAMERON COUNTY OFFICE  
50 W. MORRISON RD., STE A  
BROWNSVILLE, TEXAS 78520-7262  
TEL. (956) 574-9333  
FAX (956) 574-9337

scrain@atlashall.com  
(956) 632-8221 Direct Line

April 23, 2014

Diana R. Serna, Director  
Hidalgo County Urban County Program  
427 E. Durante Avenue, Ste. 107  
Alamo, Texas 78516

RE: CHDO Applicant Elizandro Gallegos and Conflict of Interest

Dear Ms. Serna:

We received on April 23, 2014 your letter dated April 22, 2014 (the "Letter") wherein you requested a legal opinion regarding the above referenced applicant's application to Affordable Homes of South Texas, Inc. ("CHDO"). The Letter states the above referenced applicant is an employee of the CHDO. According to the Letter your staff obtained an affidavit from the above referenced applicant that the applicant "has not taken part in the processing and approval of the loan to purchase the single family home..."

24 CFR §92.356(b) provides that no person... who exercises or have exercised any responsibility with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process... may obtain a financial interest or benefit from a HOME accepted activity.

24 CFR §92.356(c) states the conflict of interest provisions of 24 CFR §92.356(b) apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or sub recipient which are receiving HOME funds. Therefore, since the above referenced applicant is an employee of the sub recipient there is a conflict of interest under 24 CFR §92.356.

24 CFR §92.356(d) provides upon the written request of the participating jurisdiction, HUD may grant an exception to the conflict of interest provisions on a case by case basis when the participating jurisdiction has provided among other items an opinion of the participating jurisdiction's attorney that the interest for which the exception is sought would not violate State or local law.

Chapter 171 of the Texas Local Government Code titled Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and certain other Local Governments governs

conflict of interest involving public officials. "Local public official" is defined in section 171.001 of the Texas Local Government Code as a member of the governing body or another officer, whether elected, appointed, paid or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

For the purposes of this letter, we are assuming that Affordable Homes of South Texas, Inc. is a nonprofit corporation that does not have voting stock or shares or in the alternative that if Affordable Homes of South Texas, is not a nonprofit corporation no employee of Hidalgo County or the Hidalgo County Urban County Program owns ten percent or more of the voting stock or shares of Affordable Homes of South Texas, Inc.

If the facts stated herein are correct and if the assumption stated in the immediately preceding paragraph is correct, then based on the foregoing we are of the opinion that the exception sought from HUD regarding the above referenced applicant would not violate Chapter 171 of the Texas Local Government Code.

The opinions expressed herein are subject to the following limitations, qualifications, assumptions and exceptions.

(a) Whether any of the obligations set forth may be specifically enforced as opposed to being the basis for a claim for damages;

(b) The laws of any jurisdiction other than the State of Texas as in effect on the date of this opinion;

(d) The effect of bankruptcy, insolvency, liquidation and similar laws generally affecting creditors' rights; or

(e) The effect of general principles of equity (regardless of whether considered in a proceeding in equity or at law).

The opinion expressed above is solely for the benefit of Secretary of Housing and Urban Development.

This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose, nor is it to be relied upon by any other person or entity or by you in any other context without our express written consent.


This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose, nor is it to be relied upon by any other person or entity or by you in any other context without our express written consent.

This opinion is based on and is limited to the laws of the State of Texas. Insofar as the foregoing opinion relates to matters of law other than the foregoing, no opinion is hereby given.

This opinion is as of the date hereof, and we undertake no obligation to supplement the opinions set forth herein as facts and circumstances come to our attention or changes in the law occur which could affect such opinions.

Very truly yours,

ATLAS, HALL & RODRIGUEZ, LLP

By:   
Stephen L. Crain

SLC/mt