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PATRICK J. FORD

April 13, 2009

Mayor, Council Members, and
Zoning Commission Chair and Members
CITY OF UNIVERSITY HEIGHTS
1004 Melrose Avenue
Iowa City, Iowa 52246

Re: Conflicts of Interest; Open Meetings Law

Ladies and Gentlemen:

Several University Heights city officials and other citizens have asked me about conflicts of interest concerning the proposed redevelopment of St. Andrew Presbyterian Church property. Specifically, I have been asked whether city officials who are church members or live close to church property may cast votes as members of the University Heights City Council or Zoning Commission. For reasons that follow, I do not believe any sort of legal conflict of interest exists.

The Iowa Supreme Court has noted that the state's conflict of interest laws demand "complete loyalty to the public and seek to avoid subjecting a public servant to the difficult, and often insoluble, task of deciding between public duty and private advantage". Wilson v. Iowa City, 165 N.W.2d 813, 822 (Iowa 1969). The Iowa Legislature has enacted a conflict of interest statute (Iowa Code §§ 68B.2A et seq.), which also provides guidance concerning such questions. Based upon my review of pertinent statutes and Iowa Supreme Court cases, I do not believe any city officials have a legal conflict of interest that prohibits consideration of the anticipated redevelopment proposal based upon church membership or based upon residence near church property. The law focuses on the "private advantage" a public official might gain by taking or refraining from taking certain action. The principal focus is on direct pecuniary advantage. I am hard-pressed to conceive how city

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officials who are church members or live near church property acquire any "private advantage" by voting one way or another on a redevelopment proposal. I would, however, encourage any officials who are church members to disclose that fact as a matter of institutional integrity and respect for fellow officials and other citizens.

My conclusion notwithstanding, Iowa law makes clear that if city officials believe they have conflicts of interest that would prevent them from "deciding between public duty and private advantage", then those officials have the right to and should recuse themselves from consideration of the issue at hand. If you believe you cannot set aside private advantage to perform your public duty, then you have a conflict of interest, and you should recuse yourself. This decision is yours to make as a matter of personal ethic and conscience; it is not subject to review by other city officials, by me, or by anyone else. If you conclude a conflict of interest exists, then you should publicly announce that conclusion and thereafter abstain from any consideration of the proposal. Simply abstaining from voting is not enough; you should identify the conflict of interest, and thereafter refrain from participating in any discussion or any voting.

I hope that this letter provides some clarification concerning Iowa's conflict of interest rules. In summary, my opinion is that no city official has a legal conflict of interest that would prohibit consideration of a proposal for the redevelopment of St. Andrew property based upon belonging to the church or living near church property. If individual officials believe that they cannot separate any private advantage they may receive from voting one way or another from their duty to act in public's best interest, those officials should make an announcement to that effect and recuse themselves from further participation.

Finally, I want to reiterate what I have previously communicated regarding Iowa's Open Meeting Law. Iowa law requires that meetings of governmental bodies be preceded by posting a meeting notice and tentative agenda 24 hours in advance of the meeting. The law also requires that all such meetings be open to the

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public. The law defines "meeting" as a gathering of a majority of the members of a governmental body "where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties". Iowa Code § 21.2(2).

Thus, neither three members of the city council nor three members of the zoning commission may gather to discuss or deliberate with regard to the St. Andrew redevelopment proposal without giving advance notice and holding a meeting that the public may attend. Members of the council and members of the zoning commission may, however, attend the public forums sponsored by the proponent of the St. Andrew redevelopment and may attend each other's meetings without triggering public meeting requirements so long as the members of the body in question do not "deliberate or take action", but rather simply listen and observe.

Please call me if you have questions concerning this letter or if I may provide additional information.

Very truly yours,

LEFF LAW FIRM, L.L.P.

Steven E. Ballard