



Federal Housing Finance Board

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September 10, 1996

Mr. Paul S. Barru
Chairman
Federal Home Loan Bank of Topeka
2660 West Long Circle
Littleton, Colorado 80120

Dear Mr. Barru:

This is in response to your recent request for information about whether, and to what extent, the Federal Home Loan Bank Act (Act) and regulations promulgated by this agency limit the political activities of appointed directors of the Federal Home Loan Banks (FHLBanks). In particular, I understand that one of the appointed directors (director) serving on the board of directors (board) of the FHLBank of Topeka intends to take a two-month leave of absence from his position with a state government in order to serve as the state director for a national political campaign committee. It is understood further that the director may recuse himself from two Topeka board [meetings in order to avoid the appearance of a conflict of interest

The qualifications and duties of directors of the FHLBanks are established by the Act, 12 U.S.C. § 1427, and regulations pertaining to the FHLBanks, 12 C.F.R. Part 932. Neither the Act, nor the regulations, impose any direct limitation on the political activities of appointed directors. Therefore, the director in question is not precluded from serving as state director of the campaign committee.

Finance Board regulations do, however, limit certain solicitations by appointed directors. Section 932.18 provides in pertinent part:

(d) Prohibited acceptance of things of monetary value. (1) Except as provided in paragraph (d)(Z) of this section, no [appointed] director . . . may . . . solicit or knowingly accept, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, or from a person who:

(i) Has or is seeking to obtain, contractual or other business or financial relationships with the Bank on whose board the director serves,

(ii) Has interests that may be substantially affected by the performance or non performance of the director's official duties, or

(iii) Is an officer, director, controlling shareholder, employee, or agent of a member (or such subsidiary, holding company or affiliate of the Bank on whose board the director serves, of a company that is a controlling shareholder of a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director serves, or of a trade organization comprised of members (or such subsidiaries, holding companies, or affiliates) that represents financial services, credit needs, housing or financial consumer protections.

12 C.F.R § 932.18(d)(1).

The purpose of this rule, as stated in the summary when it was published, is to “ensure that the director's performance of his duties . . . is not improperly influenced, or there is no appearance of improper influence as a result of such activities.” 56 Fed. Reg. 55205, 55209 (Oct. 25, 1991) As explained in the summary, the rule covers solicitations by an appointed director on behalf his own political campaign committee and the acceptance by that committee of campaign contributions from the persons and entities listed therein. Because the prohibition includes both solicitation and acceptance, it is our view that the rule also covers solicitations by a director on behalf of another person's political campaign. It is clear, therefore, that the director in question would be prohibited from personally soliciting political contributions from the sources listed in the regulation

A related question is whether the director's name or identity could be used by the campaign committee in connection with solicitations for contributions. The answer is yes, with certain caveats, as explained below. Section 932.18(d)(1) was adopted to prohibit personal solicitations targeted at certain persons or entities associated with the FHLBanks. It was not intended to prohibit the solicitation of funds by an entity in which an appointed director serves in some capacity, which is not organized for his own benefit, where he is not personally involved in the solicitation. While section 932.18 does not include a definition of personal solicitation, we think our conclusion is consistent with regulations promulgated by the Office of Government Ethics (OGE) that provide limitations concerning off duty fundraising activities by federal employees similar to those found in section 932.18(d)(1). OGE regulations provide:

personally solicit means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or . . . the contemporaneous dispatch of like items or mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation

is targeted at . . . prohibited sources It does not include behind-the-scenes assistance in the solicitation of funds such as drafting correspondence

5 C.F.R. § 2635.808(a)(4) (emphasis added).

On a related matter, OGE regulations provide also that an employee may not “[u]se or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort . . . ” 5 C.F.R § 2635.808(c). We find this reasoning to be sound and the concept applicable to the use of FHLBank directors names and identities by others For fundraising. If the director’s name or image is included in media campaigns or mass mailings, no information should be included that gives the impression that the FHLBank on whose board he serves endorses or is in any way involved with the campaign. Accordingly, it is recommended that his FHLBank title not be used in connection with his name. If, however, general biographical information about the director is included in campaign material, including a solicitation for contributions, it would not be inappropriate to include the fact that he is serving as a director of the FHLBank, provided there is no implication of FHLBank endorsement.

In summary, we conclude:

While nothing in the Act or Finance Board regulations would prevent the director from serving the state director of a political campaign, he should exercise caution so that he does not engage in fundraising activities that would violate section 93218(d)(1) or otherwise conduct himself in a manner that would rise to an appearance of impropriety.

Inclusion of the director’s name or identity in mass mailings or other media solicitations by the campaign committee is permissible, provided such solicitations are not targeted at sources listed in section 932.18(d)(1).

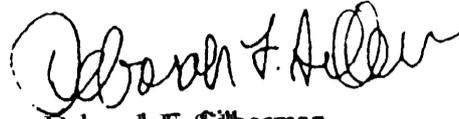
If the director permits the use of his name or identity by the campaign committee in mass mailings or other media solicitations, his title with the FHLBank should not be included

Whether the director recuses himself from board meetings is a matter for the director and the board to resolve based on a determination of whether the director’s responsibilities with the campaign committee would pose a conflict of interest with his duties as a FHLBank director. In reaching that determination, the director and the board may want to consider the matters to be acted upon at the meetings in question, as well as the applicability of state law regarding conflicts and fiduciary duties and FHLBank policy.

Mr. P Barru
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I trust this information is helpful. If you have further questions, please feel to contact me or David Guy, Associate General Counsel (202-408-2536).

Sincerely,



Deborah F. Silberman
Acting General Counsel

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