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Via Facsimile and U.S. Mail

Ms. Marye Miller
Executive Director
Older Persons' Commission
312 Woodward
Rochester, MI 48307

Re: Non-resident Restrictions

Dear Ms. Miller:

This letter responds to your request for an opinion in regard to whether the Older Persons' Commission may provide service, on some basis, to non-residents of the three member communities, the City of Rochester, the City of Rochester Hills and Oakland Township. The Older Persons' Commission is operating under the Amended and Restated Interlocal Agreement (Agreement), dated March 28, 1985. The Agreement has been amended twice since then.

The answer to your question first must look to the Agreement for the powers and restrictions of the Commission. The two amendments do not apply to this question.

In Article I – Purpose of the Agreement, it is provided as follows:

ARTICLE I – PURPOSE

The purpose of this Interlocal Agreement is to establish an Older Persons' Commission to provide activities and services for older persons, defined as those individuals sixty (60) years of age or older residing in the governmental units which are parties to this Agreement. The activities and services to be provided shall include, but are not limited to, the joint ownership and operation of an older persons' activity center, transportation

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and actions directed toward the improvement of the social, legal, health, housing, educational, emotional, nutritional, recreational, and mobility status of older persons.

Also relevant are two powers of the Commission in Article IV – Powers, which provide general powers to the Commission as follows:

SECTION 1. GENERAL POWERS

E. Operate and establish policy and rules governing the use of an Older Persons' Activity Center not inconsistent with State or local law.

G. Conduct and carry out any program, activity or function which advances and directly relates to the purposes expressed in Article I.

Article I states the general purpose to provide activities and services for older persons, 60 years and older residing in the governmental units. In my opinion, this was not intended as a restriction that non-residents could not be served. The Commission must meet the purpose of providing the service to older persons "residing in the governmental units." As long as that is done, the Commission may also serve others. In fact, by serving others, the overall program might be stronger and cost effective.

My memory from drafting the original Agreement and the Amended and Restated Agreement does not include any intention that services be restricted to residents only. I believe what was intended was a general statement of purpose to ensure activities and services for older persons who are residents in the community. If it had been intended to prohibit services to non-residents or those under the age of 60, specific language would have been used such as the word "only" residents of the member communities could be served or an express statement against serving non-residents would have been included.

Subparagraph E of the Powers, quoted above, does not express restrictions on the power of the Commission in respect to the use of an activity center, so long as it's not inconsistent with state and local law. I know of nothing in state or local law which would restrict non-residents.

In respect to subpart G, the power to conduct and carry out programs which advance and directly relate to the purposes expressed in Article I, is a general expression of power, not

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a restriction on who may be served. As long as residents of member communities of 60 years and older are served, there is no restriction.

In addition to referring to the Agreement, there are other legal issues involved. I have reviewed certain regulations which pertain to funds derived from the Federal Community Development Block Grants. My initial reading causes me to believe the use of CDBG funds for furnishing of the new activity center would prevent restricting non-residents from using the Center. I have not made an exhaustive review of this matter and would need to do that if this becomes a primary issue.

If the Commission and/or member communities decide, on a policy basis, that restrictions against non-resident use should be the policy of the OPC, it will be necessary to research the CDBG regulations further and, also, to look at certain State law issues pertaining to tax exemptions and use of and restrictions on public facilities. Those legal issues have not yet been researched.

You have mentioned that if the Commission and/or member communities do not take a position that the Center may be available for non-residents, on a more limited basis and at a specific cost to what do resident older persons, there may yet be a question of how restrictive in respect to non-residents may you be. If you would like us to review this matter, please advise.

Very truly yours,

BEIER HOWLETT, P.C.



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LRT/jmh

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