

Renting Property to Public Assistance
Recipients

Charter Sections 2604(b)(2)
2604(b)(3)
2604(b)(4)

Advisory Opinion No. 95-29

The Conflicts of Interest Board (the "Board") has received a request for an opinion from the Human Resources Administration ("HRA") as to whether Opinion No. 666 of the Board of Ethics, this Board's predecessor, continues to have interpretive value under revised Chapter 68 of the City Charter. Board of Ethics Opinion No. 666 established certain guidelines whereby HRA employees could rent apartments to public assistance recipients in buildings owned or managed by the employees.

Background

Officials at HRA have advised the Board that HRA currently complies with Opinion No. 666; that, from the perspective of HRA, they see no reason to alter the guidelines established in such opinion; and that HRA

desires a formal statement from the Board as to whether or not the guidelines contained in that opinion, which was issued in 1985, may continue to be relied upon in assessing the propriety of any landlord-tenant relationship between an HRA employee and a public assistance recipient.

For the reasons stated below, the Board herein modifies Opinion No. 666 and determines that such opinion, as modified, is consistent with, and continues to have interpretive value under, revised Chapter 68.

Discussion

Opinion No. 666 provided that an HRA employee could rent apartments to public assistance recipients, provided that:

(1) with respect to each such recipient, (a) the HRA employee did not work in the Income Maintenance Center which handled that recipient's case, or (b) the Department of Social Services (which oversees HRA's Income Maintenance Centers) insulated the employee from that recipient's case, and also kept a careful record of all such rentals; and

(2) the rental unit or units under the management or ownership of an HRA employee and rented to public

assistance recipients consisted of no more than one building of "modest size" (a building of modest size having been defined in Opinion No. 666 as one which contained no more than eight units).

These guidelines resulted from the Board of Ethics' having attempted to reconcile several competing interests. The Board of Ethics recognized that while HRA employees were required to scrupulously avoid any appearance of using their official positions for personal gain, many of them resided in the same neighborhoods where recipients of public assistance lived, and the small buildings which employees owned often represented a significant part of their savings.

An absolute rule prohibiting employees from renting to public assistance recipients, or requiring them to choose between City employment or retention of their investments, could have caused a substantial hardship to middle-income employees, particularly when such investments were not likely to conflict with the employees' official City duties. Also, in light of the refusal of many landlords to rent apartments to public assistance recipients, an outright prohibition would have only exacerbated a serious problem affecting the City: the shortage of safe and reasonable living

quarters for lower income families, within HRA rent guidelines.

Revised Chapter 68, which became effective on January 1, 1990, contains restrictions on the conduct of public servants which are intended "to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision making and to enhance government efficiency." See Charter Section 2600.

There are several general rules which apply to all public servants' non-City activities, and which are particularly relevant in this case. First, public servants are prohibited from engaging in any business, transaction or private employment, or having any financial or other private interests, direct or indirect, which conflict with the proper discharge of their official duties. See Charter Section 2604(b)(2).

Secondly, public servants are prohibited from using or attempting to use their positions to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servants or any person or firm associated with the public servants. See Charter Section

2604(b)(3). Public servants are also prohibited from disclosing or using any confidential information concerning the City which is obtained as a result of the public servants' duties and which is not otherwise available to the public. See Charter Section 2604(b)(4).

In plain language, these prohibitions are intended to insure, among other things, that public servants do not attempt to advance private interests, or influence their value, through official action, relationships with government colleagues, or access to special or confidential information. Further, as indicated above, these prohibitions are intended to preserve public confidence in government by avoiding situations in which public duties appear to conflict with, or be compromised by, private affiliations or interests, even if the public servant in question does not attempt to use the power of office to secure a personal advantage.

In considering the question of whether HRA employees may rent apartments to public assistance recipients, it is appropriate to consider the facts and circumstances of these cases and to balance the need to avoid the appearance of impropriety and the actual likelihood of conflicts of interest or undue influence

against the resulting hardship to individuals and families. The approach taken by the Board of Ethics, in Opinion No. 666, reflects such a balancing.

If an HRA employee does not work in the Income Maintenance Center handling a public assistance recipient's case, he or she is not ordinarily in a position to influence decisions concerning the type or amount of public assistance offered to the recipient, including payments for housing. Alternatively, HRA may take steps to insulate an employee who works in an Income Maintenance Center from the case of a particular recipient who is a tenant in a building owned or managed by that employee. This would also avoid actual and potential conflicts of interest, but only if that insulation means that the employee cannot use his or her City position to assure the receipt of rental payments and has no opportunity to otherwise influence HRA decision-making, directly or indirectly, with respect to such case.

The Board hereby modifies Opinion No. 666, in order to make clear what "insulation" must entail. The affected HRA employees must not recommend or decide on the types or amounts of public assistance to be offered to the recipient, or be otherwise involved, directly or

indirectly, in the recipient's case. This includes, but is not limited to, not participating in agency discussions concerning the case, not attending meetings with City officials or others with respect to such case or the assistance offered to such recipient, and not receiving copies of relevant documents. See Advisory Opinion No. 92-5, which contains the Board's definition of "recusal." These precautions should, in addition, help ensure that the conduct of affected HRA employees will be consistent with Charter Sections 2604(b)(2), (3) and (4), discussed above.¹

Conclusion

For the reasons discussed above, it is the opinion of the Board that HRA employees may, consistent with Chapter 68, rent property that they own or manage to recipients of public assistance, provided that they

¹ The Board notes that, in its Advisory Opinion No. 92-35, it determined that a City employee of an agency other than HRA could retain his ownership interest in a partnership which owned buildings with apartments which were rented to public assistance recipients, notwithstanding that the partnership engaged in business dealings with the City. While that opinion focused on the business dealings, which are not at issue in the instant case, it also emphasized that the affected City employee was adequately insulated, as a City employee, from any involvement in the partnership's business dealings with the City.

comply with the guidelines set out in Opinion No. 666 of the Board of Ethics, which are described above and modified in this opinion, and provided further that there is no evidence suggesting that these transactions would give rise to an actual or potential conflict of interest otherwise proscribed in Charter Sections 2604 (b)(2), (3) and (4), among others. Specifically, HRA employees who rent property to income assistance recipients may not use their City positions to assure that they receive rental payments. Also, as noted in Opinion No. 666, HRA should keep careful records of HRA employees' rentals to public assistance recipients. If HRA employees wish to rent property to recipients of public assistance under any other circumstances, those employees are required to submit the matter to the Board for its consideration.

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