

CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010  
New York, New York, 10007  
(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

Renting Property to Recipients  
of Section 8 Funds

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

Advisory Opinion No. 98-13

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant employed by the Department of Housing Preservation and Development ("HPD") asking whether she may rent an apartment to a recipient of Federal Section 8 housing funds.

For the reasons discussed below, the Board has determined that this public servant, as well as other public servants,<sup>1</sup> may, consistent with Chapter 68, rent to recipients of Section 8 housing funds. Public servants must, however, conduct this rental activity in accordance with the restrictions set forth in this Opinion.

---

<sup>1</sup> "'Public servant' means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants." Charter Section 2601(19).

### Background

The public servant owns a two-family house. She lives in one-half and rents the other. When the public servant had a vacancy in the apartment, she advertised for a new tenant in the Daily News and used the services of a realtor. A suitable tenant was located through the realtor.

The tenant receives Section 8 Federal housing funds. Section 8 funds are administered through HPD, the agency where the public servant is employed. The public servant's work does not involve Section 8, and her work unit is located on a different floor from the Rent Subsidies Unit, which administers Section 8 funds.

### Discussion

Chapter 68 of the Charter contains the conflicts of interest provisions applicable to all public servants. These provisions are designed "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.

Among the provisions in Chapter 68 is Charter Section 2604(b)(2), which provides that public servants are prohibited from engaging in any business,



transaction or private employment, or having any financial or other private interest, direct or indirect, which conflicts with the proper discharge of their official duties.

In addition, Charter Section 2604(b)(3) provides that 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 servant or any person or firm associated with the public servant.

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

These provisions are designed to ensure that government decision-making is not subverted for the private interests or affiliations of public servants. These provisions are also designed to preserve public confidence in government by avoiding situations where it might appear that public duties conflict with private affiliations or interests, even if the particular public servant is not attempting to misuse

public office or exert undue influence on government decision-making.

The Board has been advised by HPD that it is difficult for a recipient of Section 8 funds to find suitable housing. The Board has also been advised by HPD that it is in the City's interest to encourage property owners to make their apartments available to low-income, Section 8 recipients. Further, the Board is aware that many City employees need to supplement their City salaries and that a common vehicle for such supplemental income is the ownership of rental property. The Board notes that a rule prohibiting City employees from renting to recipients of Section 8 housing funds, or requiring City employees to choose between City employment and retention of their investments, could cause a substantial hardship on middle-income employees, a hardship that appears unjustified in those cases where the investments are not likely to conflict with the public servant's official City duties. In addition, such a prohibition would run counter to the City's interest of ensuring housing for low-income residents.

In Advisory Opinion No. 95-29, the Board considered these very issues in a situation similar to the one presented in this case. In that Advisory



Opinion the Board determined that employees of the Human Resources Administration ("HRA") could rent apartments to public assistance recipients in buildings owned or managed by HRA employees. The Board determined that HRA employees may rent such apartments provided that they do "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." Advisory Opinion No. 95-29 at 6.

The Board, in Advisory Opinion No. 95-29, determined that employees of HRA, and by extension all other City employees, are permitted to rent apartments to recipients of public assistance, provided that the employees do not engage in activities that would be violative of Charter Sections 2604(b)(2), (b)(3) and (b)(4), which are discussed above. In this regard, the Board required HRA to ensure that its employees were "insulated" from decisions regarding levels of public assistance.

The Board in the instant case adopts the approach taken in Advisory Opinion No. 95-29. The Board finds that public servants at HPD, and other City agencies, may rent to recipients of Section 8 funds. However, to ensure the integrity of government decision-making and

to avoid the appearance of impropriety, City employees who wish to rent to recipients of Section 8 housing funds must abide by certain restrictions and procedures.

Employees of HPD who wish to rent to a Section 8 tenant must not be employed in the Rent Subsidies Unit. HPD, at its sole discretion, may determine whether to permit employees in the Rent Subsidies Unit to rent to recipients of Section 8 funds. If HPD decides to permit this, it must ensure that these employees are properly insulated from the particular recipient's case. HPD must also maintain documentation identifying those HPD employees who are renting to recipients of Section 8 funds.

Employees in any other City agency who either work in a unit involving Section 8 housing funds or who have decision-making responsibility involving the receipt of Section 8 funds are barred from renting to a tenant who receives such funds. These employees would only be permitted to rent to such tenants if their City agency (1) determined that the rental was acceptable; and (2) established procedures to insulate the employee from the particular recipient's case. These agencies, like HPD, would have to maintain documentation identifying



those employees who rent to recipients of Section 8 funds.

In order for there to be appropriate insulation, the public servant must not recommend or decide on the receipt of Section 8 funds to be offered to a particular tenant, or be otherwise involved, directly or indirectly, in the tenant's case. This recusal includes, but is not limited to, not participating in agency discussions concerning the tenant, not attending meetings with City officials or others with respect to the tenant or the Section 8 funds or other form of assistance offered to the tenant, 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 to ensure that the conduct of affected City employees will be consistent with Charter Sections 2604(b)(2), (b)(3), and (b)(4).

In addition, the rental unit or units under the management or ownership of a City employee and rented to a recipient of Section 8 funds must be of "modest size." As determined by the Board in Advisory Opinion No. 95-29, "modest size" means that the building must contain no more than eight units. If the building

contains more than eight units, the City employee must seek further guidance from the Board.

### Conclusion

For the reasons discussed in this Opinion, the Board has determined that HPD and other City employees may, consistent with Chapter 68, rent property that they own or manage to recipients of Section 8 housing funds, provided that they comply with the guidelines set forth in this Opinion. City employees who rent to a recipient of Section 8 funds must ensure that they do not use their City position to advantage themselves or their tenant(s). Also, employees in HPD's Rent Subsidies Unit are not permitted to rent to Section 8 tenants, unless HPD affirmatively approves the rental, institutes procedures to effectively insulate these employees from actions involving their tenants, and maintains accurate records of those employees who rent to Section 8 recipients. Likewise, employees in other City agencies are similarly barred from renting to any Section 8 tenant if they work in a unit responsible for Section 8 funds or if they have responsibility or decision-making for matters involving Section 8

housing, unless their City agencies establish the  
procedures outlined above.

Bruce A. Green  
Acting Chair

Jane W. Parver  
Benito Romano

Dated: December 7, 1998

98-289.ao