

Advisory Opinion No. 92-3

The Conflicts of Interest Board has been asked for an opinion as to whether, consistent with Chapter 68 of the City Charter, a public servant employed by the Department of Housing Preservation and Development ("HPD") may rent an apartment in a building that he learned was vacant from another HPD employee who supervises the building's manager. This vacancy was not advertised to the public.

It is the opinion of the Board that it would be a violation of Chapter 68 for the public servant to rent this apartment under the circumstances here described, inasmuch as it was only because of his official duties that he learned that this apartment was available, and, further, because it creates the appearance that he obtained a private advantage because of his official position. See Charter Section 2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain or other private or personal advantage, direct or indirect.

See also Opinion No. 635 (1982) of the Board of Ethics, this Board's predecessor, which we find is

consistent with revised Chapter 68. In this opinion, the Board of Ethics prohibited an HPD employee from buying an apartment when he learned of its availability solely because of his prior official dealings with this building, because such purchase would give "[t]he appearance at least, of the employee having used his position to obtain the apartment," and thus be in violation of former Chapter 68 of the Charter then in effect. The Board of Ethics observed in this opinion, as is our view here, that "[n]o such conflict would arise if the employee were applying for an apartment in such a building as a member of the general public on exactly the same basis as other members of the public."

Sheldon Oliensis  
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: January 9, 1992