

Advisory Opinion No. 92-32

The Conflicts of Interest Board has been asked for an opinion as to whether, consistent with Chapter 68 of the City Charter, a former electrical inspector in the Department of Buildings (the "Department") may, within one year after the date of his or her resignation from the Department,

(a) file applications for certificates of electrical inspection with the Department's Bureau of Electrical Control ("BEC"), and

(b) attend inspections, by Department inspectors, of electrical work covered by such applications.

This inspector has applied to BEC for a Master Electrician's license and represents that he will not solicit any work from the City within one year after the date of his resignation from the Department.

For the reasons set forth below, it is the opinion of the Board that the former Department employee may file such applications and attend such inspections within such one-year period without violating the provisions of Chapter 68.

Application Process

Section 27-3018(b) of the New York City Electrical Code requires licensed electricians to file an application for a certificate of electrical inspection before starting any work for the installation, alteration or repair of electrical appliances for light, heat or power. Upon receipt of this application, which is mailed to the Department with a \$10 filing fee, BEC reviews the application for completeness and the payment of appropriate fees. If the application is complete and the fees are paid, the Department issues a permit for the proposed electrical work.

Inspections

After the work is completed, the applicant may request an inspection. Prior to 1988, the Electrical Code required that all types of electrical work be individually inspected upon completion. Local Law 73, adopted in 1988, removed the individual inspection requirement for eight categories of minor electrical maintenance work, replacing it with a spot-check inspection system for the licensed electrician's minor work. Based on a satisfactory outcome of the spot check review, inspection certificates are issued for all of the licensee's minor electrical work.

Department electrical inspectors conduct their inspections in the presence of the licensed electrician or his or her representative and issue violations when, in the judgment of the inspector, the electrical work does not conform to the requirements of the Electrical Code.

The electrician may appeal such violations to the inspector's supervisor, who is the Borough Manager, and then to that person's supervisor, who is the General Manager. Further appeal can be made to BEC's nine-member Advisory Board, which includes two Department representatives. A certificate of electrical inspection will be issued when a subsequent inspection indicates that outstanding violations have been corrected. The Department issued 33,576 certificates of inspection in fiscal year 1991.

Conclusion

It is the opinion of the Board, that the former Department employee may submit applications for certificates of electrical inspection to the Bureau of Electrical Control within one year after the termination of his or her service with the Department and may also be present at the agency's inspection of the electrical work covered by such applications, because the application and initial inspection involve

"ministerial" matters.

Charter Section 2604(d)(2) prohibits a former public servant from appearing before his or her agency within one year after leaving City service. "Appear" means to make any communications, for compensation, other than those involving ministerial matters. See Charter Section 2601(4). This includes all personal appearances, such as by telephone, testifying at public hearings or attending meetings on behalf of a client. See Volume Two, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 150, 182.

A "ministerial" matter means an administrative act, including the issuance of a license, permit, or other permission by the City, which is carried out in a prescribed manner and which does not involve substantial personal discretion. See Charter Section 2601(15) (emphasis added). It was the intent of the Charter Revision Commission that this definition not be construed broadly. See Volume Two, Report of the New York City Charter Revision Commission, supra, at 151.

The filing of the applications in question is a ministerial action since it entails nothing more than submission of a properly completed form and payment of a prescribed fee. Initial inspections are also

ministerial in nature, as they involve a review of work based on the stated requirements of the Electrical Code, and the issuance of violations where those stated requirements have not been met.

An appeal of any violation would, however, stand on a different footing. Appeals involve the interpretation of Electrical Code requirements, either by internal Department personnel, or by a special Advisory Board, which includes Department representation. They would also likely involve discussions, meetings and negotiations between the Department and the licensed electrician as to how the violation should be corrected. Thus, the former electrical inspector cannot be personally involved in the appeal of any violation for one year after leaving the Department. The resolution of any such appeal would involve the agency's "substantial personal discretion" and the former inspector's involvement would constitute a prohibited appearance under Charter Section 2604(d)(2).*

* Since Charter Section 2604(d)(2) only prohibits a former public servant's appearances before his or her former agency, Chapter 68 does not prohibit a former public servant employed by an agency other than the Department from participating in the Department's review of contested violations of the Electrical Code within one year after the termination of his or her City service.

Sheldon Oliensis
Chair

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Dated: November 23, 1992