

Public Housing Law §§ 30(2), 32(1), 32(3), 34, 532

The positions of town board member and building administrator for the local housing authority are incompatible.

April 30, 2013

Eric J. Gustafson
Town Attorney
Town of Norfolk
40 Main Street
Massena, New York 13662

Informal Opinion
No. 2013-2

Dear Mr. Gustafson:

You have requested an opinion about whether a town board member can also serve as building administrator for the local housing authority. You have explained that a town board member recently was hired as a building administrator by the housing authority board members. He currently is holding both positions. As explained below, we are of the opinion that the positions are incompatible and thus he cannot hold both positions at the same time.

The Town of Norfolk Housing Authority was established by Public Housing Law § 532. The Housing Authority is governed by a board that has five members. *Id.* Housing authority board members are not salaried (but they may receive a per diem, up to \$2000 annually as established by the housing authority board, and their necessary expenses). *Id.* § 32(3).

The town board appoints the housing authority board members. Public Housing Law § 30(2). Housing authority board members' terms are staggered so one member's term ends each year. *Id.* The town board can remove a member of the housing authority board for inefficiency, neglect of duty, or misconduct in office after a public hearing. Public Housing Law § 34. The town board also can suspend a housing authority board member pending a determination of the charges against him. *Id.*

The housing authority board hires the Authority's employees, determines their qualifications and duties, and fixes their compensation (subject to the approval of the town board). Public Housing Law § 32(1). The housing authority board members thus exercise these powers over the building administrator who also serves as town board member.

We are of the opinion that the appointment and removal power that the town board exercises over housing authority board members renders the positions of town board member and building administrator for the Authority incompatible. The tenure of the members of the housing authority board depends on the determination of the town board. The housing authority board may be unable to impartially supervise its employee who also serves on the town board and thus wields a portion of the town board's appointment and removal power. At the least, service as both a member of the town board and housing authority employee will create the appearance of impropriety, which should be avoided to maintain public confidence in the integrity of government. *Matter of Held v. Hall*, 191 Misc. 2d 427, 433 (Sup. Ct. Westchester Co. 2002), *citing Matter of Town of Ramapo v. Watton*, 90 Misc. 2d 914, 918 (Sup. Ct. Rockland Co. 1977).

Also, we believe that recusal of the housing authority employee from town board discussion and appointment or removal of housing authority board members will not remedy the incompatibility of the positions. When appointing or removing a housing authority board member who takes part in determining the salary and the terms and conditions of their colleague's employment, the impartiality of the remaining town board members would not be free from doubt. *See Op. Att'y Gen. (Inf.) No. 99-39* (impartiality of town board in question even with dual officeholder recused).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions