

A deputy building inspector may perform inspections on the building inspector's home and issue any necessary permits.

August 1, 1997

Frank J. Phillips, Esq.
Town Attorney
Town of Stony Point
74 East Main Street
Stony Point, NY 10980

Informal Opinion
No. 97-35

Dear Mr. Phillips:

You have asked whether the deputy building inspector may perform inspections and, if appropriate, issue permits regarding the building inspector's home. You point out that the town board, and not the building inspector, appointed the deputy. You have advised us that the building inspector disclosed to the town supervisor that the deputy would be conducting an inspection on the building inspector's home. You also state that the building inspector is an at-will employee of the town who works without a contract.

In prior opinions, we have emphasized that public officials should avoid circumstances that compromise their ability to make impartial judgments solely in the public interest. See, e.g. Op Atty Gen (Inf) No. 97-5. The situation you describe gives rise at least to an appearance that the deputy's ability to make impartial judgments may be compromised, since the deputy will be responsible for determining whether his superior receives a requested permit. Accordingly, it would be preferable if someone other than the deputy could conduct the inspection. However, in your town the building inspector and the deputy are the only individuals authorized to make inspections and issue permits. In our view, therefore, a "rule of necessity" should apply and the deputy may conduct the inspection and, if warranted, issue any permits. See, Morgenthau v Cooke, 56 NY2d 24, 29 n3 (1982) (although a judge ought not hear a case in which the judge has a personal interest if it can be avoided, the judge must hear the case if it cannot be heard otherwise).

We conclude that, under the circumstances, the deputy building inspector may perform inspections on the building inspector's home and issue any necessary permits.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

SIOBHAN S. CRARY
Assistant Attorney General