

Public Housing Law §§ 30(2), 30(5), 33, 34; Session Laws L. 1939, CH. 808, L. 1969, CH. 488, L. 1969, CH. 1600, L. 1974, CH. 482; New York Constitution Article XIII, § 13

The procedure prescribed by Public Housing Law § 34 to remove a member of the Authority's board applies to the members who sit on the board by virtue of election by the tenants of the Authority.

August 4, 2015

Gregg A. Coffey  
Masch, Coffey & Associates, LLP  
Village of Nyack Housing Authority  
254 South Main Street  
Suite 515  
New City, New York 10956

Informal Opinion  
No. 2015-2

Dear Mr. Coffey:

You have requested an opinion relating to the procedure to be followed to remove a member of the Housing Authority board from office. The statutes governing the Housing Authority include a procedure for removal by the mayor, and your question specifically is whether this procedure applies not only to remove a member who was appointed by the mayor, but also to remove a member who was elected by the residents of the Authority's housing. As explained below, we are of the opinion that it applies to both appointed and elected members.

The Housing Authority is governed by a seven-member board. Five members are appointed by the mayor of the village of Nyack and two members are elected by the tenants of the Authority. Public Housing Law § 30(2),(5). The mayor may remove a member of the board for inefficiency, neglect of duty, or misconduct in office after the member has an opportunity to publicly defend him- or herself with respect to the charges against him or her. Public Housing Law § 34.

The statute establishing the procedure for removing a member was enacted at a time when all board members were appointed by the village mayor. L. 1939, ch. 808, 1939 N.Y. Laws 1978, 1986, 1988. Much later, the Public Housing Law was amended to allow, and then to require certain, housing authority boards to include tenant-elected members. L. 1969, ch. 488, 1969 N.Y. Laws 1600; L. 1974, ch. 482, 1974 N.Y. Laws 1365. The statute governing the procedure for removal has not been amended since tenant-elected members were added to housing authority boards.

We are of the opinion that the procedure established for removing board members by Public Housing Law § 34 applies to tenant-elected members as well as to those appointed by the mayor. First, and most significantly, the statute by its language applies to all members without distinguishing between those appointed and those elected.

Second, it is not uncommon under New York law for an elected official to be subject to removal by another officer for malfeasance . *See, e.g.*, N.Y. Const. Art. XIII, § 13 (Governor removes elective sheriff, county clerk, district attorney); Public Officers Law § 33 (Governor removes county treasurer, county coroner, chief elective officer of city).

Third, application of the statutory removal procedure does not undermine the legislative decision to give residents representation on the board, because after removal the law provides for a new election for a tenant-member “as soon as may be practical.” Public Housing Law § 30(5). Thus, while the mayor is authorized to remove a board member elected by the residents, he or she does not fill the vacancy by appointment. Instead, that position will be held by another member chosen by the residents of the Authority’s housing.

Thus, no reason appears to question the plain meaning of Public Housing Law § 34, which provides a procedure for removing any member of the Authority’s board.

For these reasons, we are of the opinion that the procedure prescribed by Public Housing Law § 34 to remove a member of the Authority’s board applies to the members who sit on the board by virtue of election by the tenants of the Authority.

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