

**Opn. No. 96-40**

GENERAL MUNICIPAL LAW § 806; PUBLIC HOUSING LAW §§ 30, 37, 404; 24 CFR §§ 811.101, et seq.

The position of city commissioner of neighborhoods, housing and inspections, member of a board of commissioners of a municipality's housing authority and member of a local not-for-profit corporation that administers the municipality's United States Department of Housing and Urban Development (HUD) Section 8 programs are compatible.

Gillian D. Brown, Esq. Informal Opinion  
General Counsel No. 96-40  
Buffalo Municipal Housing Authority  
300 Perry Street  
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Dear Mr. Brown:

You ask whether the City of Buffalo's Commissioner of Neighborhoods, Housing and Inspections may serve as a member of the Buffalo Municipal Housing Authority (BMHA) Board of Commissioners and as a member of the Board of Directors of the Rental Assistance Corporation of Buffalo (RAC), a local not-for-profit corporation that administers the United States Department of Housing and Urban Development (HUD) Section 8 program in Buffalo.

The Commissioner of Neighborhoods, Housing and Inspections is responsible for the city's housing policy. He or she prepares a comprehensive plan for revitalization of city neighborhoods including provisions for code enforcement, grant programs and new housing strategies. The Commissioner is in charge of all publicly supported neighborhood residential rehabilitation and construction and enforces all laws governing construction, alteration, repair and maintenance of buildings and structures.

The BMHA has been established by the State Legislature as a public corporation and has as its general purpose the alleviation of adverse housing conditions in the City of Buffalo. Public Housing Law §§ 37, 404. The BMHA is governed by a seven-member board of commissioners. The mayor of Buffalo names the appointive members of the Authority. See, Public Housing Law § 30(2). The Public Housing Law permits one member of the BMHA to serve as an official or employee of the City of Buffalo. Id., § 30 (4). Therefore, the commissioner by law may serve on the housing authority's board.

In the absence of a constitutional or statutory prohibition against dual-officeholding, one person may hold two or more offices simultaneously unless they are incompatible. The leading case on compatibility of office is People ex rel. Ryan v Green, 58 NY 295 (1874). In that case the Court held that two offices are incompatible if one is subordinate to the other or if there is an inherent inconsistency between the two offices. The former can be characterized as "you cannot be your own boss", a status ordinarily easy to understand. The latter is not as easily characterized, for one must analyze the duties of the two offices to ascertain whether there is an inconsistency. An obvious example is the inconsistency of holding both the office of auditor and the office of director of finance.

There are two subsidiary aspects of compatibility. One is that, although the common law rule of the Ryan case is limited to public offices, the principle equally covers an office and a position of employment or two positions of employment. The other is that, although the positions are compatible, a situation may arise where one has a conflict of interests created by the simultaneous holding of the two

positions. In such a situation, the conflict is avoided by declining to participate in the disposition of the matter. If such situations are inevitable as opposed to being possibilities, there is an inherent inconsistency in the positions.

As the City of Buffalo's designated administrator of Federal Section 8 certificates, RAC is responsible for making its determinations consistent with HUD regulations. While a not-for-profit corporation, RAC's activities are subject to supervision by HUD. See, 24 CFR §§ 811.101, et seq.; Municipal housing authorities, in contrast, are governmental bodies existing as independent public corporations separate from the State and its municipalities. Ciulla v State of New York, 191 Misc 528 (Ct Cl 1948). As such, the board of commissioners of the BMHA is legally independent of the city government of the City of Buffalo.

Given the status of these entities, it is unlikely that the functions and duties of a housing authority commissioner and a member of the board of directors of the rental assistance corporation will conflict. In our view, the two positions are compatible.

Also, the Commissioner of Neighborhoods, Housing and Inspections' responsibility for the city's housing policy appears to be consistent with membership on RAC's board. Both positions serve the city's housing interests. Should a conflict of interests occur between any of these positions, it can be remedied through recusal.

We conclude that the Commissioner of Neighborhoods, Housing and Inspections may also be a board member of both the Buffalo Municipal Housing Authority and the Rental Assistance Corporation.

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,

JOSEPH CONWAY  
Assistant Attorney General