

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS

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In the Matter of the Inquiry of

[REDACTED] in capacity as a
Suffolk County Department Head

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2019-09
July 17, 2019

NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL

ADVISORY OPINION REQUEST

Request: The Department Head of Suffolk County Department of Social Services has asked if it is a conflict of the ethics laws for her to maintain her ownership of Family Development and Outreach Services 501(c)(3).

Summary: Based upon the information presented to the Board, this proposed outside activity *is not a conflict* of interest under the Suffolk County Code § 77-3(B) which states, "No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties". The Board finds that this proposed outside activity is not in conflict with the County Ethics Code. In an abundance of caution, the Board advises the Requestor that as a County Department Head, that the continued existence of the not for profit could create, in addition to an appearance of impropriety, an opportunity for impermissible conflict. Specifically, the Board advises of potential conflicts regarding this not for profit and impermissible donations from County vendors or lobbyists which would interfere with the Requestor's official discharge of duty under Suffolk County Codes § 77-2(A) and § 77-2(B), § 77-3(B), and § 77-3(C). The Board advises that any donations to the not for profit from County vendors, lobbyists, or other firms or persons doing business with the County, would be impermissible under the County Ethics Code.

GOVERNING AUTHORITY

The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and the Suffolk County Code Chapter 77.

PROCEDURAL HISTORY

This request was received on 6/1/2019, and the Board voted on this Advisory Opinion within 45 days of the conclusion of fact finding on 7/3/2019.

INFORMATION PRESENTED TO THE BOARD

The Requestor is the recently hired Department Head of the Suffolk County Department of Social Services. The Requestor has asked if it is a conflict of the ethics laws for her to maintain her ownership of Family Development and Outreach Services 501(c)(3).

The Requestor has advised through fact finding that her prior place of employment was HELP USA, she has no current outside income, and is the owner of the not for profit "Family Development and Outreach Services 501(c)(3)". The Requestor has advised that the not for profit ownership was disclosed at the time of hire with Suffolk County. As related to this not for profit, the Requestor advises that she holds a Masters degree in social

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work, there are no employees of the not for profit, and no income is paid from the not for profit. She additionally has advised that the not for profit receives donations for missionary trips to orphanages. The most recent missionary trip she took was to an orphanage located outside of the United States approximately 4 years ago. The not for profit does not have any contracts nor business dealings with Suffolk County. In furtherance, there are no active RFP's or SOQ's with the not for profit, Family Development and Outreach Services 501(c)(3).

OPINION AND ANALYSIS

In considering this inquiry, the Board employed the following three-step analysis to determine whether a prohibited conflict of interest would exist:

- a) Does the requestor have standing to obtain an Advisory Opinion from the Suffolk County Board of Ethics;
- b) Is the requestor seeking advice on proposed future conduct;
- c) Whether the potential conflict is prohibited conduct under the County ethics laws?

STANDING

The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a public servant employed by the Suffolk County Department of Probation which mandates compliance with the Suffolk County Ethics Laws regulated by the Suffolk County Board of Ethics¹ (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

The Law States in Pertinent Part:

§ A30-3(B). ADVISORY OPINIONS:

Advisory opinions shall be issued only with respect to proposed future conduct or action by a public servant. A public servant whose conduct or action is the subject of an advisory opinion shall not be subject to penalties or sanctions by virtue of acting or failing to act due to reasonable reliance on the opinion, unless material facts were omitted or misstated in the request for an opinion. The Board may amend a previously issued advisory opinion after giving reasonable notice to the public servant that it is reconsidering its opinion.

As applied, the Board determined that the request is regarding proposed ongoing and future conduct and is within the Board's jurisdiction.

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Sections of Law and County Policy Analyzed

The Laws State in pertinent part:

§ 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY.

A. No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.

B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

§ 77-3. PROHIBITED CONDUCT.

B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.

C. No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.

The Suffolk County Standard Operating Procedure A-15 paragraph 5, "Policy for Outside Employment for County Employees" states,

(5) Employees represented by collective bargaining units are subject to any and all provisions and restrictions relating to outside employment contained in current collective bargaining agreements. These employees should review their collective bargaining agreements and determine whether they contain outside employment provisions and restrictions. Employees represented by collective bargaining units are also subject to current and future County and departmental procedures and policies which are not inconsistent with the terms of the existing collective bargaining agreements. Employees who are excluded from the collective bargaining units are subject to departmental or County policies and procedures regarding outside employment which are now in effect or which may be promulgated in the future.

All outside employment is also subject to the following provisions:

(1) Outside employment may not involve or appear to involve a conflict of interest

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or a potential conflict of interest.

- (2) Outside employment may not be undertaken on regularly scheduled work time.
- (3) Outside employment may not be undertaken on sick time.

The Suffolk County Standard Operating Procedure A-15 paragraph 6, “Conflicts of Interest” states,

(6) “Suffolk County employees are prohibited from engaging in outside employment which would conflict, *appear* to conflict or potentially conflict with the proper performance of their official duties. Guidelines for what constitutes a conflict of interest are outlined in the Code of Ethics, Article XXX of the Suffolk County Charter. The Board of Ethics is empowered to render advisory opinions with respect to the Code of Ethics” (emphasis added).

As set forth above, the Board of Ethics, pursuant to Suffolk County Standard Operating Procedure A-15 at paragraph 6, is empowered to render advisory opinions with respect to the Code of Ethics regarding outside employment. It bears important mention that the Board’s statutorily enumerated authority is to render advisory opinions with respect to Chapter 77, Part 1, Article 1 of the Suffolk County Code or other applicable provision of law governing conflicts of interest. *Suffolk Co. Admin. Code A 30-3*. Accordingly, the Board makes no determination and gives no opinion regarding an intra-departmental determination of an appearance of conflict pursuant to the Suffolk County Standard Operating Procedure A-15 on employment.

CONCLUSION AND DIRECTIVES

The Board finds that based on the information presented, there is no outside employment, outside income, and no business dealings occurring with the employing entity, Suffolk County and the not-for profit. Therefore, the requested outside not for profit activity is not a conflict as related to the County Ethics Code.

Additionally, in an abundance of caution, the Board hereby advises the Requestor that as a County Department Head, that the continued existence of the not for profit could create in addition to an appearance of impropriety, an opportunity for conflict to arise. Specifically, the Board advises of potential conflicts regarding this County Commissioner owned not for profit and impermissible donations from County vendors or lobbyists. Should the not for profit start receiving donations while the Requestor is a County Commissioner, the Board views this conduct holding a high likelihood of susceptibility to conflicts which would interfere with the Requestor’s official discharge of duty. The Board advises such potential future conduct could rise to impermissible conduct by 1) being in conflict with the proper discharge of official duty under Suffolk County Code § 77-3(B); 2) as to the misuse of official position to impermissibly benefit the not for profit financially under § 77-3(C); and 3) creating a prohibited interest in a firm doing business with the County under sections of the Suffolk County Code § 77-2(A) and § 77-2(B), “Prohibited Interests in Firms Doing Business With the County”².

The Board advises that any donations to the not for profit from County vendors, lobbyists, or other firms or

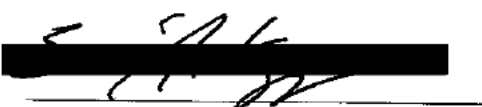
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persons doing business with the County, would be impermissible under the County Ethics Code.

Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the Requestor shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

The forgoing is the opinion of the Board.

Dated: Great River, New York
7/17/2019


Eric Kopp, Chair

¹ N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions

² § 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY.

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- B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

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- B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.
- C. No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.