

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

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In the Matter of the Inquiry of

██████████

ADVISORY OPINION

No. AO-2013-7 consolidated with
AO-2013-8

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NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL. Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

ADVISORY OPINION REQUEST

1. Does a Suffolk County Legislator have to recuse ██████████ on any matter before the Suffolk County Legislature that may have a financial benefit to a relative directly or by way of employment?

GOVERNING AUTHORITY

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Sections 77-3(C) and 77-7.

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 4/15/2013.
4. The Board deliberated on this Advisory Opinion on 4/24/2013.
5. Fact finding was concluded on 4/25/2013.
6. The Board voted on this Advisory Opinion request on 5/8/2013.

INFORMATION PRESENTED TO THE BOARD

7. The Requestor is a Suffolk County Legislator. (*Requestor's Exhibits#1, and 2*).
8. The Requestor's [REDACTED] emancipated son works part-time at the [REDACTED] [REDACTED] which receives funding from the County. (*Requestor's Exhibits# 1*).
9. The [REDACTED] receives funding from the County for various projects which are before the Suffolk County Legislator that will require the Requestor voting on resolutions that impact their funding. (*Requestor's Exhibits# 1*).
10. The Requestor's relative, a cousin, will be an applicant on [REDACTED] applications which will require the vote of the Legislature in the normal course of business. The Requestor does not have a business or other financial interest with the aforementioned cousin. (*Requestor's Exhibits# 2*).

OPINION AND ANALYSIS

11. 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 Requestor voting on a relative's [REDACTED] application or on the [REDACTED] funding is a violation of the ethics laws?

STANDING

12. 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 Legislature which mandates compliance with the Suffolk County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*).

PROPOSED FUTURE CONDUCT

13. The Law States in Pertinent Part²:

§ 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.

14. The Board determined that as the Requestor had not voted on an application by a relative or the [REDACTED] funding at the time of the Advisory Opinion request, that the request is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

15. The Law States in pertinent part:

§ 77-3(C). PROHIBITED CONDUCT

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;

§ 77-7(A). RECUSAL AND DISCLOSURE.

A public servant shall promptly recuse himself or herself from acting on any matter when acting on the matter, or failing to act on the matter, would constitute prohibited conduct under the Code of Ethics or would financially benefit the public servant, a person or firm associated with

the public servant, a customer or client or any person from whom the public servant has received a gift, or any goods or services for less than market value in the preceding 12 months.

B. Whenever a public servant is required to recuse himself or herself under the Code of Ethics, he or she shall:

- (1) Promptly inform his or her immediate supervisor, if any;
- (2) Promptly file with the Board a signed statement disclosing the nature and extent of the conflict; and
- (3) Immediately refrain from participating further in the particular matter.

§ 77-1. DEFINITIONS.

Associated: A person or firm associated with a public servant includes a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial interest; and each firm in which the public servant has an interest.

16. Given an elected official's statutorily proscribed duty to represent his or her constituents, recusal from deliberations should only be required in cases where there is a clear conflict of interest or a clear appearance of a conflict.

As applied, the Board finds that the Requestor's son is an associated person under § 77-1. Under § 77-3(C) and § 77-7(A), the Board finds that the employment status of the Requestor's son in an organization receiving Suffolk County funding, does constitute a personal financial benefit to a person associated with the Requestor and is a clear conflict of interest. As such, the Board, under § 77-7(A) and § 77-7(B), finds that a recusal is necessary as applied to the funding of the [REDACTED] (*See NYC Conflicts of Interest Board Advisory Opinion No. 90-04, Peterson v. Corbin*, 713 N.Y.S.2d 361 (2nd Dept. 2000), which reversed a lower court preliminary injunction prohibiting legislator from voting on a matter in which it was alleged he had a conflict).

The Board further finds that as the Requestor has no business or other financial interest with his cousin, under § 77-3(C) and § 77-7(A), that a cousin who is an applicant

receiving Suffolk County funding does not constitute a personal financial benefit to a person or firm associated with the public servant. As such, the Board, under § 77-7(A) and § 77-7(B), finds that a recusal is not necessary as applied to the funding of the [REDACTED] applications.

CONCLUSION

17. As set forth above, the Board finds that pursuant to § 77-3(C) and § 77-7(A) that the Requestor's failure to recuse under the specific facts set forth to the Board as to [REDACTED] son's employment status would be a violation of § 77-3(C) and § 77-7(A). As such, the Board, under § 77-7(A) and § 77-7(B), finds that a recusal is necessary as applied to the funding of the [REDACTED]

18. The Board hereby sets forth that the Requestor shall comply with the recusal procedures set forth in § 77-7(A) and § 77-7(B).

19. Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the requester 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.

20. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
5/13/2013

Robin L. Long, Esq. - Chair

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

² N.Y. Gen Mun. Law § 800: Article 18 of the New York General Municipal Law establishes standards of ethical conduct that are mandatory for officers and employees within the State of New York.