

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-2015-13

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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. **Question Presented:** Does a Suffolk County Legislator have to recuse himself on all matters that come before the Suffolk County Legislature pertaining to the ██████████ ██████████ where the Legislator's child is employed by the ██████████, and if not all issues, which issues require recusal?

Board Conclusion: A Suffolk County Legislator must recuse himself from taking part in any action concerning the salary and terms and conditions of employment of the child and any other action in which there is a conflict of interest or an appearance of a conflict of interest.

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 8/28/2015.
4. Fact finding was concluded on 9/4/2015.
5. The Board deliberated on this Advisory Opinion on 9/16/2015.
6. The Board voted on this Advisory Opinion request on 9/16/2015.

INFORMATION PRESENTED TO THE BOARD

7. The Requestor is a Suffolk County Legislator. (*Requestor's Exhibits#1, and 2*).
8. The Requestor's child is employed at the [REDACTED] which receives funding from the County and delegations of authority from the County Legislature. (*Requestor's Exhibits# 1*).
9. Historically, the Suffolk County Legislature has voted on resolutions that impact the funding and operations of the [REDACTED] inclusive of appointing its' Board Members and approval of purchases funded by County bonds. (*SCBE Exhibit# 1*).
10. The Requestor has inquired if recusal is necessary on all resolutions regarding the [REDACTED] [REDACTED] office due to a familial associated person relationship. (*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 [REDACTED] resolution when the [REDACTED] is served by an associated person 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 request is regarding proposed future conduct it 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.

Public officers have responsibility to exercise their official duties solely in the public interest. 1986 Op.Atty.Gen (Inf.) 101. They should avoid circumstances which compromise their ability to make impartial judgments and must avoid the appearance of impropriety in order to maintain public confidence in government. Informal Opinion No. 94-12. (1994 Op.Atty.Gen [Inf] 1019). As such, the Attorney General of the State of New York has issued informal opinions on several occasions concerning the issue of whether a husband and wife may serve the same local government (*synonymous to a child as a category of an associated person as defined under the Suffolk County law*). While he has held that that "there is no general prohibition on a husband and wife serving the same local government", the Attorney General has also held that there are ". . . special considerations that apply in light of the marital relationship." Informal Opinion No. 94-12 (1994 Op.Atty.Gen [Inf] 1019).

Accordingly, members of local legislative bodies should recuse themselves from taking part in any actions concerning the salary or terms and conditions of employment of spouses, family members or associated persons employed by the same local government. 1996 Op.Atty.Gen. (Inf.) 1043; 1988 Op.Atty.Gen (Inf.) 123; 1986 Op.Atty.Gen. (Inf.) 101.¹ These are matters in which the legislator would have a personal, rather than governmental, interest. See also 1996 Op.Atty.Gen. (Inf.) 1019 (actions by a town board member concerning the terms and conditions of employment of a spouse who serves as the chairperson of the board of assessment review requires recusal because the spouse has a personal interest by reason of the marital relationship).

The Suffolk County Board of Ethics found in Advisory Opinion 2013-7 consolidated with 2013-8 that the Requestor's son was an associated person under § 77-1. As such, this opinion The Board determined under § 77-3(C) and § 77-7(A), 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 applied, the Board, under § 77-7(A) and § 77-7(B), found that a recusal is necessary as applied to the funding of the [REDACTED] served by the son (*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).

In contrast, a legislator may act with respect to other governmental matters even though there may be an impact on the [REDACTED] where the son serves For example, the Attorney General opined that once a contract has been approved defining the terms and conditions of employment of a town supervisor's son who serves as police sergeant, the supervisor would not

¹ "Associated persons" is defined in the Suffolk County Code at §77-1.

be limited in deliberating on the town budget because other areas of the police department's budget are governmental matters "in which the supervisor may participate freely." 1996 Op.Atty.Gen. (Inf.) 1043. Similarly, the Attorney General authorized the same supervisor to deliberate and act on litigation regarding the hiring of police officers where her son serves as a police sergeant because these determinations fall under the category of governmental decisions and will have no effect on the salary or terms and conditions of employment of the supervisor's son. Id.

Aside from decisions concerning salary and terms and conditions of employment, however, other issues may require recusal if an appearance of impropriety will be created. For example, it was held that a member of a town board should recuse herself from deliberations and voting on legal actions against a town's board of assessment review where the board member's husband serves as chairperson on such board. 1996 Op.Atty.Gen. (Inf.) 1019. The Attorney General's office found such a determination distinguishable from ordinary governmental decisions. The town board member "should not place herself in the position of having to determine whether the actions of a town agency of which her husband is chairperson, were proper" because at the very least, this creates an appearance of impropriety. Id. "Government officials should exercise their responsibilities free from any question that they are solely representing the public interest." Id.

Lastly, the Attorney General has found that a County Legislator may be required to recuse on issues of a county budget, even apart from the establishment of a salary scale for categories of employees of which his wife (synonymous to a child as a category of an associated person as defined under the Suffolk County law) is a member, if circumstances create a conflict of interest or an appearance of a conflict of interest. 1986 Op.Atty.Gen

(Inf.) 101. For example, if funds are included in a personal account, which includes his wife's position, in anticipation of raising salaries in a future revised salary schedule, a conflict of interest may be found. In addition, if actions on non-management salary scales serve as models for management compensation, the legislator should recuse himself from these determinations as well. Id.; see also NYC Conflicts of Interest Board Advisory Opinion No. 90-04 (recusal by the Mayor is required on consideration of contract and franchise issues that impact his son's financial interests).

As applied to the underlying question presented, the Board first finds that the Requestor's child is an associated person under Section 77-1 of the Suffolk County Code. Under Sections 77-3(C) and 77-7(A), the Board finds that the direct salary paid by the County of the Requestor's child 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 Section 77-7(A) and Section 77-7(B) and the opinions of the Attorney General of this State, finds that a recusal is necessary as applied to the personal salary and terms and conditions of employment of the associated person. As such, the Requestor would be required to recuse from deliberations or voting on Resolutions or Budget that impact the associated person's salary or the terms and conditions of the associated person's employment.

Accordingly, absent any other impact on the terms and conditions of the associated person's employment, the Requestor's recusal would not be required on a resolution. The Requestor is cautioned to consider future resolutions concerning his son's [REDACTED] to determine whether an actual conflict or appearance of impropriety will be created and whether recusal of the specific resolution is required.

CONCLUSION

17. As set forth above, the Board finds that pursuant to Sections 77-3(C) and 77-7(A)

that the Requestor's failure to recuse on the associated person's salary would be a violation of the County's ethics law. As such, the Board, under Sections 77-7(A) and 77-7(B), finds that a recusal is necessary as applied to the associated person's salary and terms and conditions of employment.

18. The Board hereby sets forth that the Requestor shall comply with the recusal procedures set forth in Sections 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: Great River, New York
9/16/2015

Linda A. Spahr, 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.