

INFORMATION PRESENTED TO THE BOARD

6. The Requestor is a full time County Employee in the title [REDACTED] (*Requestor's Exhibits# 3*).

7. The Requestor is a managing member (50%) of [REDACTED] (Federal Tax ID# [REDACTED]), the named company to enter into the Shellfish Aquaculture Lease with the County of Suffolk, New York. (*Requestor's Exhibits# 2, SCBE Exhibit 1 – Resolution 646-2009, Adopting Local Law No. 25-2009, A Local Law Establishing the Suffolk County Shellfish Aquaculture Lease Program in Peconic Bay and Gardiners Bay*). The Requestor is the County employment superior to the person holding the remaining 50% interest of [REDACTED]. (*SCBE Exhibit #1*).

8. If awarded the Shellfish Aquaculture Lease, the County would convey up to 60 acres of underwater land to the Requestor for shellfish cultivation for an initial lease of \$100, and an annual lease rental fee of \$200 plus \$5 per acre is required at the beginning of each year during the 10 year lease on public land. (*Requestor's Exhibits#4*).

9. The Requestor intends to remain a full time County employee at the time of entering into the Shellfish Aquaculture Lease.

OPINION AND ANALYSIS

10. 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, a full time County [REDACTED]

[REDACTED] entering into the Suffolk County Aquaculture Lease Program for a

10 acre lease to farm oysters, is in violation of the ethics laws.

STANDING

11. 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 [REDACTED] 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

12. 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.

13. The Board determined that as the subject lease has not been entered into by the Requestor, the request is regarding proposed future conduct and is within the Board’s jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

14. The Law States at pertinent parts:

§ 77-1. DEFINITIONS

“Business Dealings With the County” Any transaction with the County involving the sale, purchase, *rental*, disposition or exchange of *any* goods, services, or *property*, or any license, grant or benefit, and any performance with respect to any of the foregoing, but shall not include any transaction involving the public servant's residence or any ministerial matter (*italics added*);

“Interest” A financial interest in a firm or a position with a firm held by a public servant, the public servant's spouse, domestic partner or unemancipated child;

§ 77-2. **“Prohibited Interests In Firms Doing Business with the County”**

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

15. As applied to the definitions above, the Requestor, a public servant, has set forth that ■ holds 50% of a financial interest with ■. Therefore, as a public servant holding 50% of the financial interest, ■ holds an “interest” as statutorily defined under the Suffolk County Code. In furtherance, as owner of this company, ■ is looking to enter ■, into a real property lease agreement with Suffolk County. This proposed conduct would be a statutorily defined “business dealing with the County” as it is a transaction with the County involving the rental of property. As such, the Board must analyze § 77-2(B) to determine if this interest in a firm doing business with the County is Prohibited.

16. § 77-2, precludes all County employees from having an ownership interest in a firm which such employee knows is engaged in business dealings with the County¹. Here, as this proposed conduct would be a statutorily defined “business dealing with the County”, such a lease agreement would be prohibited.

17. Additionally, the Board is obligated under § 77-2(E) to assess if such ownership interest would be in conflict with the proper discharge of the public servant’s duties, inclusive of assessing “the appearance of conflict and such factors as the Board deems appropriate”. Here, the Board finds that any and all financial agreements between a superior and subordinate of the same County Department would constitute an appearance of conflict in the proper discharge of duties which would be in violation of § 77-2(E).²

¹ It is noted that the proposed Shellfish Aquaculture Lease with the County of Suffolk is not a contract that falls under the contract exemptions under § 77-5(E) or § 77-5(F).

² It is noted that although the prohibited conduct laws, “shall not prohibit a public servant from accepting or receiving any County benefit which is provided for or made available to residents” this does not circumvent the appearance of conflict between a financial agreement of a County superior and subordinate. § 77-5(B).

CONCLUSION

18. As set forth above, the Board finds that pursuant to § 77-2(B) and (E) a public servant holding an interest in a firm which will secure a real property lease agreement with Suffolk would be a conflict of interest and is prohibited. The Board further finds that any and all financial agreements between a superior and subordinate of the same County Department would constitute an appearance of conflict in the proper discharge of duties which would be in violation of § 77-2(E).

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
3/26/2014

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.