

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

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In the Matter of the Inquiry of

██████████

ADVISORY OPINION

No. AO-2013-9

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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. *Advisory Opinion Inquiry:* The Suffolk County Board of Ethics has received a request from a Suffolk County Legislator seeking an opinion as to whether it would violate the Suffolk County Code of Ethics (Suffolk County §77-3(c) and §77-3(f)) for the Legislator to accept a gift of travel ██████████ from ██████████ Foundation (the “Foundation.”).
(Requestor’s Exhibit #1)

2. *Conclusion:* Based on the facts before the Suffolk County Board of Ethics, it is the opinion of the Board that it would violate §77-3(c) and §77-3(f) for the Legislator to accept the gift of travel from the Foundation.

GOVERNING AUTHORITY

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, §77-3(c) and §77-3(f).

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 5/22/2013. (*Requestor's Exhibit #1*)
5. Fact Finding was concluded on 6/11/2013.
6. The Board voted on this Advisory Opinion on 6/11/2013.

STANDING

7. 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 Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*).

INFORMATION PRESENTED TO THE BOARD

The Foundation

8. The Foundation is a not-for-profit organization incorporated in [REDACTED] that seeks to support and promote social equity. According to the Foundation's website, the Foundation supports projects and initiatives that improve early care and education, strengthens families and supportive communities and/or builds public and political will to achieve these goals. The Foundation's primary focus is funding on Long Island.¹ According to the Foundation's website, one of the Foundation's purposes is to foster good relations with the immigrants who move to Long Island.¹ Specifically, the Foundation offers financial support to local organizations that participate in, among other things:

- Alliance building that fosters improved relations between long-time residents and newly arrived immigrants;

¹ [REDACTED]

- Advocacy and education that help empower immigrants to be engaged members of their communities;
- Civic participation campaigns that encourage immigrants to become fully involved in the American democratic process;
- Public information campaigns that challenge and dispel inaccurate perceptions of immigrants and emphasize immigrants' contributions to Long Island;
- Collaborations, including those between the public and private sectors that ease tensions stemming from immigration - and responses to it - in local communities.²

9. In 2007, the Foundation has testified before the Economic Development, Higher Education and Energy Committee of the Suffolk County Legislature in regard to a research report funded by the Foundation entitled [REDACTED]

[REDACTED]³ The Foundation further testified on September 22, 2009 [REDACTED] [REDACTED] (the current Immigration Program Director at the Foundation)⁴ before the Hate Crimes Task Force of the Suffolk County Legislature. This testimony in pertinent part in relation to this Advisory Opinion request reads,

“Good evening. My name is [REDACTED]. I'm the Immigration Program Officer at [REDACTED], and I appreciate the opportunity to be here tonight. I'm here tonight just to call upon you, as members of the Hate Crimes Task Force, to please let Suffolk officials know in the Police Department, in the County Executive's Office, and in the Legislature, and let community leaders know that you have – the communities leaders that you have contact with and that you may have some influence with, that this is the time to stop focusing on how bruised or how stung or how wounded some might be feeling about this report and to start focusing on not what the report has neglected to mention, but start focusing on the stories that we have read in the report and that leave some of us feeling completely clobbered every time we read it. I think that is the appropriate reaction”.⁵

² *Id.*

³ See Testimony of [REDACTED], Higher Education and Energy Committee of the Suffolk County Legislature, June 6, 2007.

⁴ See Foundation letter to Legislator dated May 2, 2013.

⁵ See Testimony of [REDACTED], and Minutes of the Hate Crimes Task Force of the Suffolk County Legislature, September 22, 2009.

Invitation to [REDACTED]

10. On May 2, 2013 the Foundation sent the Legislator a letter invitation “to join a delegation of community leaders from Long Island who will travel to [REDACTED] in July 2013 to learn about the economic and political realities facing the home communities of Long Island immigrant residents.”⁶ The Foundation offered to arrange payment for an eight day trip to [REDACTED] with payment for “all travel, accommodations, and on-the-ground costs” for participants.⁷ The letter reads,

“A grant from the [REDACTED] Foundation to [REDACTED] provides the funding for all travel, accommodations, and on the ground costs for this delegation. The [REDACTED] Foundation is aware of county policies prohibiting the acceptance of gifts above a certain dollar amount. We do not regard participation in the delegation as a gift but rather an invaluable educational experience. We do, however, encourage you to request an advisory opinion of the county’s Board of Ethics”.

During the trip, participants will, among other things:

- Hear from [REDACTED] economists and experts on the impacts of the North American Free Trade Agreement on migration flows;
- Meet with [REDACTED] government and civic leaders across different sectors,
- Visit and stay in the homes of families in a rural community in [REDACTED] [REDACTED] that has faced large-scale out-migration to U.S. communities such as Suffolk and Nassau counties; and
- Think together as a group about how to relate their experiences in [REDACTED] to the realities of recently-arrived immigrants on Long Island and the crucial work of easing tensions in our communities.⁸

⁶ See Foundation letter to Legislator dated May 2, 2013.

⁷ *Id.*

⁸ *Id.*

APPLICABLE LAW

11. Suffolk County Code, Chapter 77 “Ethics and Accountability” provides, in pertinent part:

§ 77-3. 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;*
- F. *No public servant shall receive compensation for performing any official duty except from the County or accept or receive any gift or gratuity from any person or entity whose interests will be affected by the public servant's official action or whose interests have been affected by the public servant's official action.*

OPINION AND CONCLUSION

12. The Board finds that a grant from the Foundation to [REDACTED] providing all the funding for all travel, accommodations, and on the ground costs for this delegation in substance over form is a gift from the Foundation. In furtherance, under § 77-3(C), the requestor is prohibited from using [REDACTED] official position or office in a manner which [REDACTED] has reason to know may result in a personal financial benefit to [REDACTED]. It is evident from the Foundation letter which is addressed to “Hon. [REDACTED]”, at the Legislator’s District office of “[REDACTED]”, with the salutation “Legislator” inviting [REDACTED] “to learn about the economic and political realities facing the home communities of Long Island immigrant residents”, that the invitation is being extended due to the Requestor’s official position in Suffolk County Government (*Requestor’s Exhibit #1*). As applied, the acceptance by

a Legislator of “all travel, accommodations, and on the ground costs” would clearly be a personal financial benefit to ██████ due to ██████ official position or office and is prohibited under § 77-3(C). Additionally, the Legislator is prohibited from any action or failing to take any action, in a manner which ██████ has reason to know may result in a personal financial benefit to any person from whom ██████ has received a gift or any goods or services for less than fair market value, during the preceding 12 months. As such, accepting this gift would have the collateral effect of precluding this requesting Legislator from any discussions, votes, or committee meetings regarding the Foundation and ██████████ which in turn would be denying ██████ constituents ██████ vote and involvement in a broad spectrum of matters in Suffolk County.

13. As applied to § 77-3(F) no public servant shall receive compensation for performing any official duty except from the County or accept or receive any gift or gratuity from any person or entity whose interests will be affected by the public servant's official action or whose interests have been affected by the public servant's official action. Clearly, as the Foundation’s appearance before the Suffolk County Legislature in the past and potential future constitutes an entity whose interests will be affected by the public servant's official action or whose interests have been affected by the public servant's official action, the requesting Legislator is prohibited from accepting this gift.

14. In furtherance, the acceptance of this would result in an appearance that the Foundation is attempting to influence the Suffolk County Legislature through gifts. The Foundation’s testimony on matters before committees of the Legislature presents a clear nexus between the Foundation and the Suffolk County Legislature, therefore the Board is of the opinion that the acceptance of the trip would create a reasonable inference that the gift of travel

was intended to influence the Legislator in future applications or appearances before the Legislature.

15. As set forth above, the Board finds that the 2013 invitation to the Suffolk County Legislator to be a gift from which the acceptance would be in violation of §77-3(c) and §77-3(f).

16. The opinion rendered herein, until and unless amended or revoked, is binding upon the Ethics Board in any subsequent proceeding concerning the person who requested it and who acted in good faith in reliance upon it, unless material facts were omitted or misstated by the person in the request for the opinion or in any related supporting documentation.

16. 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.

17. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
June 11, 2013

Robin L. Long, Esq. - Chair