

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-2014-4

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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 following advisory opinion is issued in response to an inquiry from a Suffolk County Assistant County Attorney as to whether it would be a violation of the Ethics Laws to serve as a Board member of the ██████████ Planning Board. (*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 not be a direct conflict of the Ethics Laws for a Suffolk County Assistant County Attorney to serve as a Board member of the ██████████ Planning Board.

LAWS INTERPRETED

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

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 3/31/2014. (*Requestor's Exhibit #1*)
5. Fact finding was commenced on 4/1/2014.
6. Fact finding was concluded 5/1/2014
7. The Board voted on this Advisory Opinion on 5/7/2014.

STANDING

8. 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 Law Department which mandates compliance with the Suffolk County Ethics Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1,*).

INFORMATION PRESENTED TO THE BOARD

9. The Requestor is a Suffolk County Assistant County Attorney who works exclusively in the Torts department. The Requestor does not work in the Municipal Law Department. (*Requestor's Exhibit #1*).

10. The Requestor is intending on becoming a Board member of the [REDACTED] Planning Board. The Board members receive a \$100.00 a month stipend (*Requestor's Exhibit #1*).

11. The [REDACTED] Planning Board is responsible for approving site plans, subdivision plans and architectural drawings for both new construction and alterations that amount to more than 25% of the area of the original structure. (*SCBE Exhibit #1*).

12. The [REDACTED] Planning Board convenes on the first Wednesday of the Month at 7:00 PM in the Village Court Room (*SCBE Exhibit #1*).

13. The Requestor set forth that any matter of legal dispute or further review regarding the [REDACTED] Planning Board, would be forwarded and represented by the Village Attorney. If further legal review was required, it would then be handled by the Town [REDACTED] Attorney's Office. In the event matters came before the County Planning Commission, the matter would be represented by the Municipal Law Department of the County Law Department. (*SCBE Exhibit #2*).

14. 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 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.

15. 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” (*italics added*).

INTERPRETED LAW

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

§ 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 (*italics added*).

CONCLUSION AND DIRECTIVES

17. In assessing § 77-3(B) of the prohibited conduct laws, the Board considers (1) the likelihood that decisions made under the relevant circumstances would be unduly influenced by a secondary interest and (2) the gravity of the harm that could result from such influence. As applied to this request, the Board finds that a current Suffolk County Assistant County Attorney serving on a non-County planning Board would not be unduly influenced by his County employment. The Board also finds that the gravity of harm in the proposed future conduct would not be substantial. As the subject matter of the Village planning board does not come

before the County Law Department, the Board finds no potential harm nor does it create a conflict of interest with the proper discharge of his official County duties. (*see Suffolk County Board of Ethics AO-2013-14*).

18. The Board also finds that as the Requestor would be able to recuse himself from any unforeseen matter that could create a conflict without impacting the [REDACTED] Planning Board ability to perform their duties, that recusal from voting on any such matter would assure a conflict of interest has been avoided.

19. The Board directs that the Requestor recuse himself from any [REDACTED] [REDACTED] Planning Board matter that creates a conflict with his duties as an Assistant County Attorney.

20. As the Board's Advisory Opinion does not relieve the Requestor of Departmental, union directives, or requirements of Standard Operating Procedure A-15, the Board further directs the Requestor to inform his County Department supervisor prior to appointment for intra-departmental review of conflicts. (*see Suffolk County Board of Ethics AO-2013-22*).

21. 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.

22. 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.

23. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
May 7, 2014

Robin L. Long, Esq. - Chair