

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-2015-8

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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

- Inquiry:** Does a Suffolk County Legislator who serves as a Board Member to the ██████████ ██████████ (hereinafter “██████████”) have to recuse himself on any of his future applications for ██████████ Grant Applications when the staff of the ██████████ is responsible for the review and approval of such applications?

- Conclusion:** The Board finds that the supervisory capacity of the Board over the staff would constitute a personal financial benefit to the Requestor if he was involved in his own application and it is a clear conflict of interest. As such, the Board, under § 77-7(A) and § 77-7(B), finds that a recusal is necessary.

LAWS ANALYZED

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

PROCEDURAL HISTORY

- This Advisory Opinion was requested 6/6/2015.
- Fact finding was concluded on 7/27/2015.

6. The Board deliberated on this Advisory Opinion on 8/5/2015.
7. The Board voted on this Advisory Opinion request on 8/5/2015.

INFORMATION PRESENTED TO THE BOARD

8. The Requestor is a Suffolk County Legislator. (*Requestor's Exhibit#1*).

9. The Requestor is a Suffolk County Legislator who serves on the Board of the [REDACTED] [REDACTED] (hereinafter "[REDACTED]") (*Requestor's Exhibits# 1*).

10. The Requestor owns a [REDACTED] and may apply for future [REDACTED] [REDACTED] Grant Applications. (*Requestor's Exhibit# 1*).

11. The staff of the "[REDACTED]" reviews and approves the [REDACTED] Grant Applications. The Board of the "[REDACTED]" addresses policymaking for the "[REDACTED]".

OPINION AND ANALYSIS

12. 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 position as a Board member of the [REDACTED] is a conflict with a pending application before the [REDACTED] for [REDACTED] [REDACTED] Grant Applications.

STANDING

13. 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

14. 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.

15. The Board determined that as the Requestor does not have a pending application for [REDACTED] Grant money with the “[REDACTED]” at the time of the Advisory Opinion request, therefore the request is regarding proposed future conduct and is within the Board’s jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

16. 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.

17. As applied, the Suffolk County Board of Ethics finds that the Requestor's future "██████████ Grant application" would constitute a personal financial benefit to the Requestor. As such, his participation as an overseeing Board member to the staff who reviews and approves the applications would be a clear conflict of interest. The Board finds under § 77-7(A) and § 77-7(B), finds that a recusal is necessary as applied to the Requestor's role. Specifically, the Requestor is hereby directed to disclose this conflict in writing pursuant to the steps in §77-7(B) to the "██████████" prior to any future ██████████ Grant application. This disclosure should be written correspondence inclusive of the nature of the application and the history of any past applications prior to his service of the Board. Additionally, the Requestor shall advise that "██████████" that he will recuse himself from any potential discussions or Board/Staff communications regarding his application.

(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).

CONCLUSION

18. As set forth above, the Board finds that pursuant to § 77-3(C) and § 77-7(A) that the Requestor's failure to recuse and disclose under the specific facts set forth to the Board 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 and disclosure is necessary as applied to the Requestor's role as a Board member with oversight

to the Staff of the “[REDACTED]”.

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

20. 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.

21. The forgoing is the opinion of the Board.

Dated: Great River, New York
8/5/2015

Linda A. Spahr, Esq. – Acting 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.