

STATE OF NEW YORK: COUNTY SUFFOLK  
COUNTY BOARD OF ETHICS  
Advisory Opinion 2016-27  
January 4, 2017

**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.*

**Summary:** Under the facts presented, recusal of a Suffolk County Planning Commissioner regarding the “Heartland Project” under Suffolk County Code Section 77-7 is not necessary for the Planning Commissioner whose Town is the geographic location of the project.

**Analyzed Laws and Rules:** The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Sections § 77-2(A), 77-2 (B), 77-3(C), § 77-2(D)(3), the Suffolk County Board of Ethics Rules, and 77-7.

**Procedural History:** This Advisory Opinion Standing vote occurred on 12/12/16, with fact finding concluding on 12/29/16 determining there is no conflict of interest under the facts presented.

**Opinion:**

The Requestor is the Suffolk County Planning Commissioner for the Town of Islip. He has inquired with the Board regarding the “Heartland Project”. His request asks if his recusal is necessary under Suffolk County Code 77-7 due to the geographic location of the project being in the Town of Islip.

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 a conflict of interest automatically exists requiring recusal from the “Heartland Project”.

The Board determined that as Planning Commission members are appointed by the County Executive, standing exists for this Advisory Opinion due to the Requestor’s position as a member of the Suffolk County Planning Commission, deeming the Requestor a “public servant” and binding the Requestor to the Suffolk County Ethics Laws (*People of the State of New York v. Adolphus Ebuzome* 435 N.Y.S.2d 243, NYC COIB Advisory Opinion 2009-4). As set forth on the Suffolk County Planning Commission website, the Requestor is now the President of Iron Workers Local 361, which has 850 active members. He is also the Assistant Apprentice Coordinator, involved in the training of 250 Apprentices and 500 Journeymen.

**§ C35-2. Powers and duties.**

Except as otherwise provided in the Charter or by local law, the Department of Economic Development and Planning shall have the following powers, duties and responsibilities:

- A. To concern itself with any and all matters pertaining to the economic development, planning, and environment of the County, its agriculture, farming, fisheries, sustainability, housing, health-care industry, and an innovative Suffolk.

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§ C35-3. Membership of Planning Commission.

A. The Planning Commission shall consist of 15 members, as follows: one member from each of the 10 towns in Suffolk County, one member from an incorporated village of under 5,000 population, one member from an incorporated village of over 5,000 population and three members from the County at large, subject to the qualifications set forth in § C35-5 of this article.

§ C35-4. Appointment of members of Planning Commission

The members of the Planning Commission shall be appointed by the County Executive with the approval of the County Legislature.

As to potential conflicts of interest, the law states in pertinent part at § 77-3(C), Prohibited Conduct, “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 a person associated<sup>1</sup> with the public servant. Under § 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 ... financially benefit ... a person or firm associated with the public servant”<sup>2</sup>. The Requestor has represented to the Suffolk County Board of Ethics that there are no union agreements in place with the Iron Workers Local 361.

As applied, the Board finds that under § 77-2(A) that the Requestor does not have an interest in a firm which engages in business dealings with the department or agency served by the public servant (the Planning Commission). The Board finds under § 77-2(B), that the Requestor is not a County employee therefore, this section of law is not applicable. The Board finds under § 77-2(C), that prior to becoming a public servant, there was no ownership interest in a firm that does business with the County therefore, this section of law is not applicable. The Board finds under § 77-2(D)(3), that the Requestor, who is a public servant, did comply with the directives set forth in this subsection by asking the Board in a timely manner as required to determine if there was a conflict.<sup>1</sup>

**Conclusion:** As set forth above, the Board finds it is not a conflict of interest a Suffolk County Planning Commissioner to vote regarding the “Heartland Project” whose Town is the geographic location of the project. Given the Planning Commissioner’s proscribed duty to represent his or her population, recusal from voting should only be required in cases where there is a clear conflict of interest.

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.

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<sup>1</sup> See SCBE Advisory Opinion 2012-2 holding under § 77-2(E), that although there is no conflict with a public servant being a Member of the Planning Commission and the Executive Director of a not for profit receiving County grant funding, that due to an ongoing appearance of a conflict, that the Requestor, under §77-7, must recuse herself on matters before the Suffolk County Planning Commission that are based out of current or prospective activities under the approved Fund 477 Grant, and with respect to any matters under the Suffolk County Administrative Code Article 14 §14-1 through §14-26 regarding the activities of the Fund 477 Grant.

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The forgoing is the opinion of the Board.

Dated: Great River, New York  
1/4/2017

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Richard Halverson – Vice Chair

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<sup>1</sup> § 77-1. Definition of 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.

<sup>2</sup> 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.