

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

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In the Matter of the Inquiry of

██████████ in capacity of Supervisory Official
of the Suffolk County ██████████

ADVISORY OPINION
No. AO-2015-18

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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

Advisory Opinion Inquiry: The Suffolk County Board of Ethics has received a request from a County ██████████ Commissioner seeking an opinion as to whether it would violate the Suffolk County Code of Ethics for ██████████ employees to have their meals valued under \$75.00 paid for by County vendors or prospective vendors while in ██████████ with other governments attending a ██████████ Conference in the course of their job duties. (*Requestor's Exhibit #1*)

SUMMARY

1. Conclusion: Based on the facts before the Suffolk County Board of Ethics, Suffolk County employees are prohibited from receiving meals from lobbyists, County employees are limited to the \$75.00 gift threshold on an annual basis for gifts from one source, and no gifts or gratuity (inclusive of meals) can be accepted from a person or entity whose interests will be, or have been, affected by a public servant's official action.

INTERPRETED LAWS

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

PROCEDURAL HISTORY

- 3. This Advisory Opinion was requested on 12/17/2015. (*Requestor’s Exhibit #1*)
- 4. Standing vote occurred on 1/6/2016.
- 5. The Board voted on this Advisory Opinion on 3/2/2016.

STANDING

6. 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 [REDACTED] [REDACTED] which mandates compliance with the Suffolk County Ethics Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*).

INFORMATION PRESENTED TO THE BOARD

7. The Requestor, in his supervisory capacity, anticipates that during the course of official job duties, County employee meals valued under \$75.00 may be offered to be paid for by County vendors or prospective vendors while the employees are working in [REDACTED] attending a [REDACTED] Conference.

ANALYZED LAW

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

§ 77-1 Definitions

“**AGENCY SERVED BY A PUBLIC OFFICIAL**” A. In the case of a County employee, the agency employing such employee.

“**APPEAR**” To make any communication, for compensation, other than those involving ministerial matters.

LOBBYIST A person or firm registered as a lobbyist with the County of Suffolk pursuant to Chapter 580 of the Suffolk County Code or any successor statute thereto.

“SUPERVISOR” Any person having the authority to control or direct the work of a public servant.

§ 77-3. PROHIBITED CONDUCT.

- E. No public servant shall solicit or accept any gift having a *value of \$75.00 or more from any person or firm which such public servant knows or intends to become engaged in business dealings with the County.*
- 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.*
- G. No public servant shall solicit, accept or receive any gift or gratuity from a lobbyist.

OPINION AND ANALYSIS

9. Under § 77-3(E) the Board finds that the plain language of the law prohibits the acceptance of any gift having a value of \$75.00 or more from any person or firm which such public servant knows is or intends to become engaged in business dealings with the County. It has been consistently held that gifting prohibitions are based on the annual cumulative amount from the same person or entity¹. As such, multiple meals in a 12 month period from any person or firm which such public servant knows is or intends to become engaged in business dealings with the County costing over \$75.00 is prohibited conduct. ²

¹ See *COIB Case No. 93-282* finding a City employee in violation for accepted meals worth more than \$50 per year from a vendor while working on the City matter involving the vendor, See *COIB Case No. 2012-828* finding a City employee in violation for the acceptance of two or more gifts if valued in the aggregate at \$50.00 or more during any twelve-month period from the same person or firm.

² On November 13, 2015 the Suffolk County Board of Ethics conducted an annual training attended by 14 County Departments which included training on the gift laws. On that day, the training consultant informed the attendees that the New York State Public Officers Law as amended by the Public Employee Ethics Reform Act of 2007, L. 2007, c: 14, replaced the prior gift threshold of \$75 with the term "having more than a nominal value".

Attendees were informed that the change in the gift threshold from \$75 to "more than nominal

10. 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. As applied, County employees traveling for official County business cannot receive any gift or gratuity (inclusive of meals) 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.

11. Additionally, it is noted, that § 77-3(G) strictly prohibits per se all Suffolk County public servants from soliciting, accepting or receiving any gift or gratuity from a lobbyist. As such, Suffolk County [REDACTED] employees are strictly prohibited from receiving meals from any lobbyist.

CONCLUSION

12. Suffolk County employees are prohibited from receiving meals from lobbyists, and County employees may still defer to the \$75.00 gift threshold on an annual basis for gifts, and no gifts or gratuity (inclusive of meals) can be accepted from a person or entity whose interests will be, or have been, affected by a public servant's official action.

value" does not affect Suffolk County's public servants since the gift provisions of that statute are applicable only to state officers and employees (See *People v. Roos*, 118 Misc.2d 445, 462 N.Y.S.2d 99 (N.Y.C. Crim. Ct. 1983) (holding that Public Officers Law § 73(5) does not apply to NYC transit authority employees)). Accordingly, the \$75 limit may still be used as the threshold to help distinguish permissible gifts from impermissible gifts for Suffolk County employees.

However, as discussed in the training, additional County gifting prohibitions still apply. Specifically, sections 77-3(F) and 77-3(G) of County law prohibits acceptance of any gift or gratuity from a person or entity whose interests will be, or have been, affected by a public servant's official action and prohibits any gift from a lobbyist. All attendees were informed that Advisory Opinions from the Board can be requested regarding specific gifting inquiries.

13. 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.

14. 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.

15. The forgoing is the opinion of the Board.

Dated: Great River, New York
March 2, 2016

Linda A. Spahr, Esq. - Chair