

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-2015-14

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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. **Inquiry:** Does an employee who has recused herself from an RFQ selection process have to take any additional steps under the Suffolk County recusal laws?
2. **Conclusion:** The Board finds that under § 77-7(A) that the Requestor must file with the Board a signed statement disclosing the nature and extent of the conflict; and immediately refrain from participating further in the particular matter.

LAWS ANALYZED

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Section 77-7.

PROCEDURAL HISTORY

4. This Advisory Opinion was requested 9/1/2015.
5. Fact finding was concluded on 9/9/2015.
6. The Board deliberated on this Advisory Opinion on 9/16/2015.
7. The Board voted on this Advisory Opinion request on 9/16/2015.

INFORMATION PRESENTED TO THE BOARD

8. The Requestor is a Suffolk County employee in the Department [REDACTED] holding the title “[REDACTED]” (*Requestor’s Exhibit#1*).
9. On [REDACTED], 2015 the Requestor served on an 8 person Departmental RFQ screening committee and verbally recused herself from 3 of the applications before the Committee.
10. To date, the Requestor has not filed notice of this recusal activity with the Suffolk County Board of Ethics.

OPINION AND ANALYSIS

11. 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 has to take any additional steps to fulfill the procedural requirements under the Suffolk County recusal law.

STANDING

12. 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] 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

13. 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.

14. The Board determined that as the recusal activity occurred on [REDACTED] 2015, prior to this opinion request, the recusal itself is not future conduct and cannot be addressed by an Advisory Opinion. The Requestor's inquiry as to if she needs to take any additional steps is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

15. The Law States in pertinent part:

§ 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 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.

16. As applied, the Suffolk County Board of Ethics finds that the Requestor must follow all three the steps in § 77-7(B) and promptly inform his or her immediate supervisor, promptly file with the Board a signed statement disclosing the nature and extent of the conflict, and immediately refrain from participating further in the particular matters.

CONCLUSION

17. As set forth above, the Board finds the Requestor must follow all three the steps in § 77-7(B) and promptly inform his or her immediate supervisor, promptly file with the Board a signed statement disclosing the nature and extent of the conflict, and immediately refrain from participating further in the particular matters.

18. 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.

19. The forgoing is the opinion of the Board.

Dated: Great River, New York
9/16/2015

Linda A. Spahr, Esq. – 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.