

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-2015-19*

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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:* Is the spouse of a Department of Social Services employee prohibited from receiving funds for their grandchild’s “legally exempt in home provider”.

SUMMARY

2. *Conclusion:* The spouse of a Suffolk County Department of Social Services employee is not prohibited from receiving funds for their grandchild’s “legally exempt in home provider”. The employee must recuse herself from the application and approval process of her spouse.

GOVERNING AUTHORITY

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-2(A), Section 77-3(B), (C), and (D).

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 12/21/15.
5. Standing was voted and approved on 1/6/2016.
6. Fact finding was concluded on 1/14/2016.
7. The Board voted on this Advisory Opinion request on 1/20/2016.

INFORMATION PRESENTED TO THE BOARD:

8. The Requestor, is an [REDACTED] in the Department of Social Services [REDACTED].
9. The Requestor asserts that she and her spouse have been awarded custody of their grandchild. The Requestor asserts that the Court requires all benefit checks, including daycare, to be made payable to only one guardian, namely her spouse. As such, child care has been applied for as a legally exempt provider in her spouse's name for an in-home child care provider. The State defines "In-Home Child Care" to occur when it is furnished in the child's home by a provider who is chosen and monitored by the child's parent or guardian. In-Home Providers are required to be at least 18 years of age, or if they are less than 18 years of age will meet the requirements for employment of minors. The child care units in each county's department of social services will pay a child care subsidy for working parents and/or parents who are in school when the child care provider is approved and enrolled as a legally exempt provider.

OPINION AND ANALYSIS

10. 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 such payments to a spouse of a DSS employee would be in conflict with the County ethics laws?

STANDING

11. The Board determined that standing exists for this Advisory Opinion request due to the Requestor's position as a public servant. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

12. The Law States in Pertinent Part:

§ 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.

13. The Requestor seeks guidance regarding the subject future conduct. The Board has determined that since the subject request has not yet been determined, the request is within the Board’s jurisdiction.

ANALYZED SECTIONS OF LAW

14. The analyzed laws state in pertinent part:

§ 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY

A. No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.

§ 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.

OPINION AND ANALYSIS

15. The Suffolk County Ethics law provides that, “[n]o public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.” *Suffolk County Code*, § 77-2(A). The

Administrative Code defines the word “firm” broadly to include a sole proprietorship, joint venture, partnership, corporation, or “any other form of business enterprise.” *Id. at § 77-1.*

16. In the issue presented here, the submission of a request to the County social services department to provide funds to an in home provider does not fall into the definition of the word “firm” even applied broadly. *at § 77-1.*

17. Therefore, such employee spousal conduct does not constitute a violation of Section 77-2(A) of the Suffolk County Code.

18. In addition, it bears important mention that public servants are prohibited from using their positions to obtain a financial benefit, *Suffolk County Code § 77-3(C)*, and at section 77-3(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”. As such, being that the benefits are administered in the Department that the requestor is employed, the requestor must recuse herself from all application approvals.

CONCLUSION

19. Accordingly, the Board finds that pursuant to Suffolk County Code the requested future conduct is permissible under the County Code.

20. The Board directs that the Requestor recuse herself from all approvals necessary to her spouse’s application and file such recusal with her Department Head and the Suffolk County Board of Ethics pursuant to *Suffolk County Code §77-7(B)*.

21. 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.

22. The forgoing is the opinion of the Board.

Dated: Great River, New York
January 20, 2016*

Linda A. Spahr - Chair

*Note: Scrivener's error at paragraph 11 corrected by Board on July 6, 2016.