

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

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In the Matter of the Inquiry of

██████████

ADVISORY OPINION

No. AO-2016-15

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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:* The following advisory opinion is issued in response to an inquiry from a Suffolk County Legislator as to whether it would be a violation of the Ethics Laws to serve as an honorary Trustee, serving as an ex-officio capacity, for the ██████████ ██████████. (*Requestor's Exhibit #1*)

2. *Conclusion:* Based on the facts before the Suffolk County Board of Ethics, it is the opinion of the Board that compliance with the Suffolk County recusal laws, and abstaining from all discussion regarding the ██████████, is necessary for a County Legislator to serve as an honorary Trustee, serving as an ex-officio capacity, for the ██████████ ██████████. The Board also finds that although a person may solicit charitable funds in their personal capacity, it would be a direct conflict of interest for an Elected Official's title to appear in solicitations for fundraising events. (*See SCBE AO 2013-14 holding it would be a direct conflict of the Ethics Laws for a County Legislator to serve as the Chair of a Board of*

Directors for a not-for-profit foundation which will be requesting legislation from Suffolk County for donation of land. The Board also finds that although a person may solicit charitable funds in their personal capacity, it would be a direct conflict of interest for an Elected Official's title to appear in solicitations for fundraising events).

LAWS INTERPRETED

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

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 7/6/2016. (*Requestor's Exhibit #1*)
5. Standing was voted on 7/6/2016.
6. Correspondence was sent to the Requestor on 7/8/2016 and 8/31/2016.
7. Telephone fact finding was conducted on 9/16/2016 with the Requestor.
8. The Board voted on this Advisory Opinion on 9/21/2016.

STANDING

9. 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 Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*).

INFORMATION PRESENTED TO THE BOARD

10. The Requestor is a Suffolk County Legislator. (*Requestor's Exhibit #2*)

11. The Requestor has asked if whether it would be a violation of the Ethics Laws to serve as an honorary Trustee, serving as an ex-officio capacity, for the [REDACTED]. (*Requestor's Exhibit #1*) As stated on their website, its mission is, “to spark imagination and foster learning for children of all backgrounds and abilities and to build strong connections within the [REDACTED] community by providing playful experiences” by presenting educational exhibits and programs and by partnering with other arts and social service organizations to address issues that concern families in the community” (*SCBE Exhibit #1*).

12. The [REDACTED] was one in fifty-seven awardees of the 2016 Cultural Omnibus Award receiving \$10,000 from the Suffolk County Office of Film and Cultural Affairs located at the H. Lee Dennison Building, 2nd Floor 100 Veterans Memorial Highway Hauppauge, NY 11788.

INTERPRETED LAW

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

§ 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 CONCLUSION

14. In assessing § 77-3(B) of the prohibited conduct laws, the Board considers (1) the likelihood that decisions made under the relevant circumstances would be unduly influenced by a secondary interest and (2) the gravity of the harm that could result from such influence. As

applied to this request, the Board finds that a current Suffolk County Legislator sitting as Chair of a Board of a not-for-profit foundation who recuses herself on cultural funding votes to such foundation would not create a conflict of interest. The Board also finds that the gravity of harm in the proposed future conduct would not be substantial. Recusals will minimize concerns among the public that the foundation receives preferential treatment over other not-for-profit organizations because of the Legislator's relationship with the foundation.

The Board further opines that recusal alone is not sufficient as the Legislator can influence other policy-makers with whom she works if favorable action is taken by the legislature toward the foundation. As such, this could raise concerns among the public that the foundation receives preferential treatment over other not-for-profit organizations because of the Legislator's relationship with the foundation. Therefore, abstaining from all discussion regarding the [REDACTED] is also required.

Accordingly, upon recusing herself and abstaining from all discussion, the Legislator's proposed service to the [REDACTED] does not create a conflict of interest with the proper discharge of her official legislative duties.

15. The Board also finds that disclosure, recusal, and abstention regarding legislation for cultural funding to the foundation is sufficient to assure a conflict of interest has been avoided due to the volume of recipients who receive the funding and the numerous trustees (24) to [REDACTED].

16. The Board is aware that public servants desire to provide contributions to their communities outside of County employment and such contributions can include membership on the Board of not-for-profit entities. The Board encourages such services so long as there is no conflict or appearance of a conflict between one's official duties and the outside activity. Here, such a conflict is avoidable.

17. As to the Requestor using her official title on fundraising materials, the Board finds it would pose a direct conflict of with the proper discharge of her official duties. In a similar request made upon the New York State Ethics Commission in Advisory Opinion No. 97-28, the Commission rendered its opinion that,

“a state employee may solicit funds in his personal capacity for a charitable purpose....he may not use his official title, position or authority in his fundraising efforts or solicit from subordinates in his unit”. *New York State Ethics Commission in Advisory Opinion No. 97-28.*

18. As set forth above, the Board finds that it would be a conflict of interest to use her official title for any fundraising.

19. 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.

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
10/5/2016

Linda A. Spahr - Chair