

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2017-2
April 5, 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: It is not a violation of the Ethics Code for an Automated External Defibrillators vendor (hereinafter “AED”) on the New York State Contract list to be awarded a County vendor contract on the grounds that the proposed vendor’s child is a County employee whose job duties do not involve procurement or oversight of the proposed vendor. As an approved State vendor, there is not an additional County RFP process. The Board recommends that the Department advise the County employee of this issued Advisory Opinion and of the recusal laws set forth in § 77-7(A) and § 77-7(B). (*see SCBE AO 2016-23*)

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

Procedural History: This Advisory Opinion was requested on 2/10/17. Fact-finding concluded on 3/27/17. The Board voted on this Advisory Opinion request on 4/5/17 determining there is no conflict of interest under the facts presented.

Opinion: The Requestor, a Department of Health Supervisory Official, has asked if it is a conflict of interest to purchase AED’s from a vendor on the New York State Contract list, owned 100% by a County employee’s parents. The County employee, civilian EMT instructor in the Police Department, has no financial interest in the proposed firm and has not been involved in the procurement or oversight of the proposed vendor submission of prices. (*SCBE - Exhibit #1*).

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 in procurement due to familial “associated” person working in a different Department from the Department awarding a vendor contract.

The Board determined that standing exists for this Advisory Opinion request due to the requestor’s position as a Suffolk County Department [REDACTED] awarding the vendor contract which mandates compliance with the Suffolk County Ethics Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*). The Board further determined as the contract had not been awarded yet, that the request is regarding proposed future conduct and is within the Board’s jurisdiction².

As to prohibited interests, the County law states at 77-2(B), “No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County”. Ownership interest is defined under the County law as, “An interest in a firm held by a public servant, or the public servant’s spouse, domestic partner or unemancipated child, which exceeds 5% of the firm or an investment of \$25,000 in cash or other form of commitment, whichever is less”. As applied, the County employee here does not have an ownership interest in the firm owned by his parents. Therefore there is no prohibited interest by a

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public servant with this proposed vendor.

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 associated³ 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”⁴.

As applied, the Board finds that the County employee’s parents’ company is in consideration to be a County vendor due to their qualifying status in the State contract list. As the facts as presented show no interest owned by the County employee, and no job duties related to procurement or vendor oversight, there is no prohibited conflict of interest for this employee. Under § 77-3(C) and § 77-7(A), the Board finds that awarding a vendor contract to a County employee’s parents who own a firm listed on the New York State contracting list, does not constitute a conflict of interest.

In the event that job duties, or a job title changes occurs resulting in procurement or vendor responsibilities, the Board, under § 77-7(A) and § 77-7(B), finds that recusal is necessary on all official actions relating to the employee’s associated person. (*See NYC Conflicts of Interest Board Advisory Opinion No. 90-04, Peterson v. Corbin*, 713 N.Y.S.2d 361 (2nd Dept. 2000).

Conclusion: As set forth above, the Board finds that pursuant to § 77-3(C) and § 77-7(A) it is not a conflict for an AED vendor on the New York State Contract list to be awarded a County vendor contract solely because the vendor is an “associated person” to a County employee whose job duties do not involve procurement or oversight of the proposed vendor.

As this is a supervisory official request versus a direct employee request, the Board recommends that the Department advise the County employee of this issued Advisory Opinion and of the recusal laws set forth in § 77-7(A) and § 77-7(B).

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.

The forgoing is the opinion of the Board.

Dated: Great River, New York
4/5/17

Linda A. Spahr - Chair

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¹ N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions

² § A30-3 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

³ § 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.

⁴ 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.