

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2017-3
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: A Suffolk County Employee may not enter into a lease with the County under the Suffolk County Aquaculture Lease Program to farm oysters.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, SCBE and COIB Advisory Opinions; the Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, Section 77-2(B) and 77-2(E), the Suffolk County Board of Ethics Rules.

Procedural History: This Advisory Opinion was requested 2/17/17. Fact finding was concluded on 3/10/17. The Board voted on this Advisory Opinion request on 4/5/17.

Opinion: The Requestor, a full time County Police Officer wants to participate in the Suffolk County Aquaculture Lease Program to farm oysters. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

The Requestor is a full time County Employee in the title Police Officer (*Requestor's Exhibits# 3*). The Requestor asks whether it is permissible to be awarded a Shellfish Aquaculture Lease, under which the County would convey rights to underwater land to the Requestor for shellfish cultivation for a fee of \$250 per year of use. (*Requestor's Exhibits#4*). The Requestor intends to remain a full time County employee at the time of entering into the Shellfish Aquaculture Lease. The proposed future lease agreement at paragraph 43 states: "Conflicts of Interests, The lessee is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue as long as the term. The determination as to whether or when a conflict may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained". (*Requestor's Exhibits#4*).

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 potential conflict, a full time County Police Officer entering into the Suffolk County Aquaculture Lease Program for a 10 acre lease to farm oysters, is in violation of the ethics laws.

The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a County employee, 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*). The Board determined that as the subject lease has not been entered into by the Requestor, the request is regarding proposed future conduct and is within the Board's jurisdiction.

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2017-3
April 5, 2017

The Law States at pertinent parts:

§ 77-1. DEFINITIONS

“Business Dealings With the County” Any transaction with the County involving the sale, purchase, *rental*, disposition or exchange of *any* goods, services, or *property*, or any license, grant or benefit, and any performance with respect to any of the foregoing, but shall not include any transaction involving the public servant's residence or any ministerial matter (*italics added*);

“Interest” A financial interest in a firm or a position with a firm held by a public servant, the public servant's spouse, domestic partner or unemancipated child;

§ 77-2. **“Prohibited Interests In Firms Doing Business with the County”**

B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

The Requestor, a Suffolk County employee, has set forth that he would be the sole lessee. Therefore, he holds an “interest” as statutorily defined under the Suffolk County Code in the firm that is looking to enter into a real property lease agreement with Suffolk County. Under New York Real Property Law § 2. Definitions, Real property”, “property” or “land” is defined as, “Land itself, above and under water, including trees and undergrowth thereon and mines, minerals, quarries and fossils in and under the same, except mines belonging to the state”. This underwater leasing proposed conduct, has been previously been held by the SCBE to be statutorily defined “business dealing with the County” as it is a transaction with the County involving the rental of property.

§ 77-2 precludes all *County employees* from having an ownership interest in a firm which such employee knows is engaged in business dealings with the County.¹ Here, as this proposed conduct would be a statutorily defined “business dealing with the County”, such a lease agreement would be prohibited. There is no exemption from this prohibition which would make the lease permissible.

As to the conflicts language in paragraph 43 of the proposed lease contract that assigns the County Attorney’s office as the ultimate decider on conflict, the Board has been apprised by the County Attorney’s office that this is applicable upon execution of the lease, not in assessing a proposed future lease conflict.

CONCLUSION

Because the County Shellfish Aquaculture Leases is not one of the exempted contracts under County Code section 77-5 “Exemptions”, the Board finds that pursuant to § 77-2(B) and (E) a County employee cannot

¹ It is noted that the proposed Shellfish Aquaculture Lease with the County of Suffolk is not a contract that falls under the contract exemptions under § 77-5(E) or § 77-5(F).

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2017-3
April 5, 2017

participate in a lease agreement with the Suffolk County Aquaculture Lease Program as it would be a prohibited conflict of interest.

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: Yaphank, New York
4/5/17

Linda. A. Spahr - Chair

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