

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

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In the Matter of the Inquiry of



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ADVISORY OPINION
No. AO-2015-11

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. Issue: Is there a prohibited interest under Suffolk County Code Section 77-2 if a full time employee’s spouse is awarded a contract by the RFP/RFQ Committee of the department served by the current employee?

Conclusion: The Board, under § 77-2(A) and (B) finds that as the Requestor is a County employee, she is precluded from having an ownership interest in a firm that is engaged in business dealings with the Department served and with the County. The statutory definition of “ownership interest” includes ownership interests of the public servant’s spouse exceeding 5% of the firm. As such, an independent contractor contract with the County entered into by a spouse would be a prohibited ownership interest for the current County employee.

GOVERNING AUTHORITY

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

PROCEDURAL HISTORY

- 3.** This Advisory Opinion was requested on 8/10/2015.
- 4.** Fact finding was concluded on 8/25/2015.

5. The Board deliberated on this Advisory Opinion request on 9/2/2015.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor is a full time employee of the Suffolk County Department [REDACTED]
[REDACTED], holding the title [REDACTED]
(Requestor's Exhibits# 1).
7. The Requestor's spouse applied via a County RFP/RFQ process and interviewed for such part-time [REDACTED] position in the Department. This position would be paid as an independent contractor by the County. (SCBE Exhibit #1, Fact Finding Memorandum).
8. The Requestor is requesting if a conflict exists for her position if her spouse enters into this employment contract with the County.

OPINION AND ANALYSIS

9. 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 potential independent contractor position of an employee's spouse with Suffolk County is a conflict of interest to the employment status of the current full-time employee of Suffolk County?

STANDING

10. 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 Department [REDACTED]
[REDACTED] which mandates her to comply 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

11. 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.

12. The Board determined that as no contracts were effectuated between the Requestor's spouse and Suffolk County at the time of the Advisory Opinion request, that the request is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

13. The Law States 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.*

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

Suffolk County Code Definitions

OWNERSHIP INTEREST 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, and any lesser interest in a firm

when the public servant, or the public servant's spouse, domestic partner or unemancipated child, is an officer of the firm or exercises managerial control or responsibility regarding such firm, but shall not include interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse, domestic partner or unemancipated child.”

FIRM A sole proprietorship, joint venture, partnership, corporation or any other form of business enterprise.

14. The Board, under § 77-2 (A) and (B) finds that the Requestor is a County employee, therefore she is precluded from having an ownership interest in a firm that is engaged in business dealings with the County. As per the statutory definition of “ownership interest,” this includes a spousal firm. A “firm” is defined in Section 77-1 as a “sole proprietorship, joint venture, partnership, corporation or any other form of business enterprise.” For purposes of Chapter 77, an individual seeking business on behalf of himself is a sole proprietorship and therefore, a “firm” pursuant to § 77. Accordingly, the Board finds that the proposed spousal contract would create an impermissible ownership interest for the current full time employee.

15. As applied to § 77-2(E) the Board finds as the conduct is only proposed at this time, a divestiture order or mitigation order not applicable³

CONCLUSION

16. As set forth above, the Board finds that pursuant to § 77-2(A) and (B) that as per the statutory definition of “ownership interest” this includes a spousal firm. The Board finds that the proposed spousal contract would create an impermissible ownership interest for the current full time employee.

17. 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.

18. The forgoing is the opinion of the Board.

Dated: Great River, New York
09/02/2015

Linda A. Spahr, Chairperson

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.

³ E. § 77-2(E) When an individual discloses an ownership interest to the Board pursuant to Subsection C of this section, or a public servant requests that the Board make a determination regarding an ownership interest pursuant to Subsection D, the Board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the Board shall take into account the nature of the public servant's duties, the manner in which the interest may be affected by any action of the County, the appearance of conflict and such other factors as the Board deems appropriate. If the Board determines a conflict exists, the Board's order shall require divestiture or such other action as it deems appropriate which may mitigate such conflict.