

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

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In the Matter of the Inquiry of

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ADVISORY OPINION

No. AO-2015-17

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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 Suffolk County Board of Ethics has received a request from a County employee in a supervisory capacity seeking an opinion as to whether it would violate the Suffolk County Code of Ethics for Suffolk County employees to accept gifts from Suffolk County employees (*Requestor's Exhibit #1*).

2. *Conclusion:* Based on the facts before the Suffolk County Board of Ethics, it is the opinion of the Board there are no co-worker gifting prohibitions in the current law and as such it would not violate the Suffolk County Code of Ethics for Suffolk County employees to accept gifts from Suffolk County employees.

INTERPRETED LAWS

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

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 12/17/2015. (*Requestor's Exhibit #1*)
5. Standing vote occurred on 1/6/2016.
6. The Board voted on this Advisory Opinion on 1/20/16.

STANDING

7. 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 [REDACTED] [REDACTED] which mandates compliance with the Suffolk County Ethics Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*).

INFORMATION PRESENTED TO THE BOARD

8. The Requestor is a County employee in a supervisory capacity seeking an opinion as to whether it would violate the Suffolk County Code of Ethics for Suffolk County employees to accept gifts from Suffolk County employees (*Requestor's Exhibit #1*).

APPLICABLE LAW

9. Suffolk County Code, Chapter 77 "Ethics and Accountability" provides, in pertinent part:

§ 77-3. PROHIBITED CONDUCT.

- C. 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 himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has

received a gift or any goods or services for less than fair market value, during the preceding 12 months;

- E. No public servant shall solicit or accept any gift having a value of \$75.00 or more from any person or firm which such public servant knows or intends to become engaged in business dealings with the County;
- F. No public servant shall receive compensation for performing any official duty except from the County or accept or receive any gift or gratuity from any person or entity whose interests will be affected by the public servant's official action or whose interests have been affected by the public servant's official action.

OPINION AND CONCLUSION

10. Under § 77-3(E), the Board must find two elements present for the law to be applicable: 1) the gift having a value of \$75.00 or more and 2) that the gift was given from any person or firm which such public servant knows is or intends to become engaged in business dealings with the County. In the case before us, the Board finds that these elements are not present because employment by the County does not constitute “business dealings with the County”. (See, *COIB Advisory Opinion No. 2013- 1*.holding, “employment by the City does not constitute business dealings with the City”.)

11. In furtherance, under § 77-3(C), a County employee is prohibited from using his official position or office in a manner which he has reason to know “*may result in a personal financial benefit to himself or herself*”. As applied, the Board finds that while the receipt of a gift from a co-worker does not violate the gifting laws, solicitation of gifts from co-workers would be a misuse of such official position resulting in a prohibited personal financial benefit to the employee.¹

¹ In *COIB v. Kerik*, COIB Case No. 2001-569 (2002), the Board fined the then former Police Commissioner \$2,500 for, among other things, violating Charter Section 2604(b)(3), “No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain”, by asking a

12. As applied to § 77-3(F), no public servant shall receive compensation for performing any official duty except from the County or accept or receive any gift or gratuity from any person or entity whose interests will be affected by the public servant's official action or whose interests have been affected by the public servant's official action. Although a supervisor would be prohibited from providing additional compensation to a County employee for their official duties, the Board does not categorize gifts of appropriate value for the occasion that are not cash between co-workers as “compensation”. Similarly, in NYC COIB Advisory Opinion No. 2013- 1 the Board held, “Accordingly, on the occasion of the birth of a child to a superior, the Board has advised subordinates that they may purchase baby gifts of an appropriate value for their boss. The Board has similarly advised superiors who are marrying that they may invite subordinates to their wedding and may accept wedding gifts from these subordinates of a type and value appropriate to the occasion. For occasions that are more frequent, including such annual events as birthdays and the holidays, superiors may accept gifts of smaller value, in essence gifts where the “thought of giving” has greater value than the gift itself”.²

13. As set forth above, barring cash and cash value gifts (gift cards and checks), the Board does not find that the County ethics laws prohibits gifting between County co-workers.

New York City Police Department sergeant, who was also a close personal friend of the Commissioner, to perform uncompensated research for him related to his autobiography on the sergeant’s personal time.

²“In the case of invitations to weddings and other events where it is customary for the invited guests to bring a gift, a superior who extends such an invitation to subordinates might include a “no gifts, please” request. And subordinates who propose to make a gift to their superior on a special occasion when gifts are customary might choose to purchase a group gift, mindful that the group gift’s value should be no greater than the combined value of the gifts that each subordinate could permissibly give separately.

The federal regulations reach a similar result, permitting gifts “appropriate to the occasion” on such “special, infrequent occasions” as marriage or the birth or adoption of a child, but not at Christmas, noting that “Christmas occurs annually and is not an occasion of personal significance.” That said, the federal regulations would permit a nominal Christmas gift to a superior under a general exception for gifts on occasions on which gifts are typically given if the gift has a value of \$10 or less. See 5 C.F.R. Sections 2635.304(a)(1) and (b)(1)”. See, *COIB Advisory Opinion No. 2013- 1*.

BOARD DIRECTIVES

14. Unsolicited gifts exchanged between co-workers would not violate the County conflicts laws.

15. Annual gifts exchanged between superiors and subordinates of a nominal value would not violate the County conflicts laws.

16. 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.

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
January 20, 2016

Linda A. Spahr - Chair