

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

-----X
In the Matter of the Inquiry of

ADVISORY OPINION

No. AO-2015-5

-----X

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. **Question Presented:** Does a Suffolk County Department [REDACTED] [REDACTED] have to recuse himself on all matters that come before the [REDACTED] Department pertaining to Suffolk County [REDACTED] program where the Requestor's spouse serves as the Program Director for [REDACTED], and if not all issues, which issues require recusal?

Board Conclusion: A Suffolk County Department [REDACTED] [REDACTED] must recuse himself from any responsibilities concerning the [REDACTED] program's contract with the County and any other action in which there is a conflict of interest or an appearance of a conflict of interest.

GOVERNING AUTHORITY

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

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 5/8/2015.
4. Fact finding was concluded on 5/29/2015.
5. The Board deliberated on this Advisory Opinion on 6/3/2015.
6. The Board voted on this Advisory Opinion request on 6/3/2015.

INFORMATION PRESENTED TO THE BOARD

7. The Requestor has been the [REDACTED] in the Suffolk County Department [REDACTED] for the last [REDACTED] years. Among his responsibilities is the administration of State and Federal grants that are awarded to the County for [REDACTED] projects. (*Requestor's Exhibit#1at p.1*). When administering grants, the Requestor is responsible for filing timely evaluation reports, communicating with the granting agency concerning possible changes to the use of funds or changes in the scope of work, and signing vouchers regarding completeness of work. (*Requestor's Exhibit#1at pp.1-2*).

8. The Requestor's spouse is the Program Director for the Suffolk County [REDACTED] [REDACTED] Program run by the [REDACTED], a not-for-profit human service agency. (*Requestor's Exhibit#1at p.1*). The [REDACTED], and the [REDACTED] program specifically, receive funding from the County from Federal and State grants for administration of the [REDACTED] program. (*SCBE Exhibit # 1*).

9. The [REDACTED] program receives funds from two grants pertinent to the inquiry here. The first is a Federal grant to Suffolk County entitled the [REDACTED] Grant, which provides funds to support services in the County's [REDACTED]. The grant is for [REDACTED] over a [REDACTED]-year period and it was awarded in [REDACTED]. The Requestor has reported that 10% of his wife's time is spent supervising grant staff and she receives funding from the County for this work. (*Requestor's Exhibit#1at p.1*).

10. The second grant at issue is a [REDACTED]-year State grant to the [REDACTED] to assist [REDACTED]. "Eight County agencies have some role in the program, one of which is [REDACTED]. It has a [REDACTED] contract for [REDACTED]. The grant was first awarded in [REDACTED], and was renewed in [REDACTED]; it is for approximately [REDACTED] a year in total". (*Requestor's Exhibit#1at p.1*).

11. The Requestor has inquired if recusal is necessary on all matters regarding the [REDACTED] program due to his spousal relationship. The Requestor asserts that he would not be evaluating the [REDACTED] program and will not be in a position to favor it over other programs; he asserts that his responsibilities will be essentially ministerial. (*Requestor's Exhibit#1 at p.2*).

OPINION AND ANALYSIS

12. 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 Requestor acting on matters involving the [REDACTED] program when the Program is served by his spouse is a violation of the ethics laws?

STANDING

13. 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] which mandates compliance with the Suffolk County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

14. 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.

15. The Board determined that as the Requestor has recused himself from all activities involving [REDACTED] at the time of the Advisory Opinion request, that the request is regarding proposed future conduct and is within the Board's jurisdiction. This opinion does not relate to conduct that occurred before the date of Board request, 5/6/15.

POTENTIAL CONFLICTS OF INTEREST

16. The Law states in pertinent part:

§ 77-3. PROHIBITED CONDUCT

A. A public servant who has an interest in a firm which is not prohibited by § 77-2 shall not take any action as a public servant particularly affecting that interest.

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.

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;

§ 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.

§ 77-1. DEFINITIONS.

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.

Interest: A financial interest in a firm or position with a firm held by a public servant, **the public servant's spouse**, domestic partner or unemancipated child.

17. Section 77-3(A) provides that “[a] public servant who has an interest in a firm which is not prohibited by § 77-2 shall not take any action as a public servant particularly affecting that interest.”¹ Section 77-1 of the Code defines an “interest” as a “financial interest in a firm or position with a firm held by a public servant, **the public servant's spouse**, domestic partner or unemancipated child. *Suffolk County Code Chapter 77, §77-1.*

Accordingly, the Requestor has an imputed interest in the position held by his wife in the not-for-profit [REDACTED] and the [REDACTED] program position. Pursuant to the Code restriction, the Requestor may not take any action affecting this interest. *Suffolk County Code Chapter 77, §77-3(A).* Acting as administrator for the Federal and State grants that contract with [REDACTED] for services would constitute taking action affecting a personal interest. As administrator of these grants, the Requestor would be

¹ An interest prohibited by Section 77-2 of the Suffolk County Code is an “ownership interest” in a firm which is engaged in business dealings with the County or the agency served by the County employee, depending on whether the individual is a public servant or County employee. *See Suffolk County Code Chapter 77, §77-2(A).* While the Code does provide for imputing ownership interest of one’s spouse to a public servant, *see* Section 77-1 definition of ownership interest, the Board need not determine at this time whether the Requestor’s spouse’s position as a Program Director for [REDACTED] constitutes an imputed “ownership interest” to the Requestor because the proposed conduct would be barred by Section 77-3(A) of the Code concerning “Prohibited Conduct.”

making decisions regarding compliance with grant requirements that affect his wife's firm and the [REDACTED] program for which she works. As a grant recipient, [REDACTED] is required to perform services in accordance with certain parameters and limitations, and the Requestor would be the County employee charged with supervising such performance. Indeed, the Requestor notes that in the normal course of his duties, he would be required to file "evaluation reports" of the [REDACTED] program. In addition, the Requestor would be communicating with the granting agency concerning possible changes to the use of funds or changes in the scope of work to be done by the [REDACTED] program, which may occur at the request of [REDACTED], and signing vouchers regarding completeness of work performed by [REDACTED], his wife and other [REDACTED] employees. (*Requestor's Exhibit#1at pp.1-2*). Because the Requestor would in effect be administering and supervising the work done by his wife as Program Director of [REDACTED], the proposed work would violate Section 77-3(A) of the Code.

Other sections of the Code that could be implicated by the Requestor's proposed conduct are Section 77-3(B) which provides that "[n]o 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" and Section 77-3(C) which provides that "[n]o 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, . . ." Thus, the proposed action could lead to a conflict of interest or potential divided loyalties or at the very least an appearance of impropriety.

Accordingly, as applied to the underlying question presented, the Board first finds that the Requestor's spouse is an associated person under Section 77-1 of the Suffolk County Code. Under Sections 77-3 and 77-7(A), the Board finds that the proposed activity does constitute a conflict of interest under the Suffolk County Code of Ethics. As such, the Board, under Section 77-7(A) and Section 77-7(B) of the Code, finds that a recusal is necessary as applied to any

activity by the Requestor concerning his wife's not-for-profit firm and the [REDACTED] program for as long as his wife is the Program Director for [REDACTED] and [REDACTED] is under contract to perform services for the County that are administered by the Respondent's Department.

CONCLUSION

18. As set forth above, the Board finds that pursuant to Sections 77-3 and 77-7(A) that the Requestor's failure to recuse on matters involving [REDACTED] would be a violation of the County's ethics law. As such, the Board, under Sections 77-7(A) and 77-7(B), finds that a recusal is necessary.

19. The Board hereby sets forth that the Requestor shall comply with the recusal procedures set forth in Sections 77-7(A) and 77-7(B).

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: June 3, 2015
Great River, New York

Linda A. Spahr
Acting 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.