

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2017-9
June 21, 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:

The Board finds that it is impermissible under the County conflicts laws for a third party to direct pay or reimburse a county employee for job related activities while taking vacation accruals. The Board further finds that a third party cannot direct pay or reimburse a public servant's family members' travel expenses due to the public servants official job title.

The Board finds that travel and accommodations being paid by a non-governmental entity, is permissible when conducting official business. A County department head appointed by the County Executive can accept direct pay or reimbursed airfare and related accommodations when such travel and the acceptance includes travel that could be purchased by the Department. Accordingly, travel must be approved in advance in writing by a Deputy County Executive¹. These travel costs are reportable on the annual County Financial Disclosure form as a non-governmental entity source of payment at question 7, "Payments for County-Related Travel" and are assessed by the Suffolk County Board of Ethics annually for conflicts.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code

¹ See analogous NYC COIB opinion 2016-1 citing New York City Conflicts of Interest Board Rules Section 1-01(h) provides as follows:

(1) For the purposes of Charter § 2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
- (ii) the travel arrangements are appropriate to that purpose; and
- (iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

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XXX, Advisory Opinions; and Suffolk County Code Chapter 77, 77-3(C), 77-3 (E), 77-3 (F), 77-3(H) and the Suffolk County Board of Ethics Rules.

Procedural History: This Advisory Opinion Standing vote occurred on 5/17/17, with fact finding concluding on 5/24/17.

Opinion: The County ██████ Commissioner has requested an opinion if direct payment for travel and accommodations out of state by a non-governmental entity is permissible under the County conflicts laws for himself and family members. This travel is intended for the Commissioner to be a panelist out of state on the topic of opioid use and heroine addition, which he lectures on regularly as part of his job duties. The requestor asked if means of travel impacts the analysis of potential conflict (commercial versus private airline).

The topic of County public servant/County employee travel expenses has previously been presented to the Suffolk County Board of Ethics and is addressed annually in the County Financial Disclosure Statements². As applied, the County Financial Disclosure Statement at question 7, “Payments for County-Related Travel”, require, filers to annually, “report if a non-governmental entity or person or a foreign government either paid directly or reimbursed you for travel-related expenses, in an amount of \$1,000 or more, for activities related to your official duties with the County”. The Suffolk County Board of Ethics reviews these disclosures annually.

Additionally, travel has been addressed previously in Board Advisory Opinions. In SCBE Advisory Opinion 2013-9, the Suffolk County Board of Ethics concluded that a Suffolk County Legislator could not accept a gift of travel to Mexico from a not for profit, “to join a delegation of community leaders from Long Island who will travel to Oaxaca, Mexico in July 2013 to learn about the economic and political realities facing the home communities of Long Island immigrant residents.” The “Foundation” offered to arrange payment for an eight day trip to Mexico with payment for “all travel, accommodations, and on-the-ground costs” for participants. Due to § 77-3(C) and (F), the requestor was prohibited from using his official position or office in a manner which he has reason to know may result in a personal financial benefit and from

² see Suffolk County Financial Disclosure Forms at question 7 “Payments for County-Related Travel”, and SCBE Advisory Opinion, 2013-12, issued to a County Legislator, holding that vacationing in a pre-electoral friend’s home, who is not engaged in statutorily defined business dealings with the County, is not a gift and permissible under §77-3(e). In Advisory Opinion 2013-11, the Board found that a Legislator’s acceptance of an individual complimentary invitation to a not for profit fundraiser is not a gift that violates the Suffolk County Ethics Laws.² However, activities, raffles, door prizes, silent auctions and any gifts that occur during the aforementioned events must be assessed in value and as gifts to the invitees. Under § 77-3(C) and (F), the requestor 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 and from receiving a 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.

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receiving a 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. As the "Foundation" appeared before the Suffolk County Legislature in the past and potentially in the future, it created an 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. Thus, the Board concluded the requesting Legislator was prohibited from accepting this travel gift.

Travel costs and payments have also been extensively analyzed by the New York City Conflicts of Interest Board. In the Matter of Marty Markowitz (COIB CASE NO. 2009-181, OATH Index No. 1400/11), the Board, "adopted the Report and Recommendation of an Administrative Law Judge fining, after a full trial, the Brooklyn Borough President \$20,000 for accepting free foreign travel and related accommodations for his wife on three occasions: a trip to Turkey in May 2007, a trip to the Netherlands in March 2009, and a second trip to Turkey in November 2009. For each of these trips, it was undisputed that the Brooklyn Borough President was conducting official business and thus could accept free airfare and related accommodations for himself. However, at no time was the Brooklyn Borough President's wife an employee of the Borough President's Office or of any other City agency. Therefore, her travel was not an expense that could have been properly paid for with City funds; and, thus, if the Borough President wished to have his wife accompany him, he was required to pay for her travel expenses himself. As stated in the Board's Order, the Brooklyn Borough President was so advised by the Board in writing of this requirement prior to the first of the three trips at issue".

Additionally, regarding travel, the New York City Conflicts of Interest Board held in Advisory Opinion 2016-1, that, "an elected official may not accept as a "gift to the City" payment from a third party for the entire cost of out-of-town travel that includes political as well as governmental activities, even where the political activity adds no cost to the travel expenses. Instead, the cost of the trip must be allocated on a reasonable basis between its governmental and political purposes and the official may accept payment only for costs allocated to the governmental purposes. To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor".

In coming to this conclusion, the New York City Conflicts of Interest Board Rules analyzed their rules at Section 1-01(h) which provides as follows:

(1) For the purposes of Charter § 2604(b)(5), a public servant's acceptance of travel-related expenses from a private entity can be considered a gift to the City rather than to the public servant, when:

- (i) the trip is for a City purpose and therefore could properly be paid for with City funds;
- (ii) the travel arrangements are appropriate to that purpose; and

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(iii) the trip is no longer than reasonably necessary to accomplish the business which is its purpose.

(2) To avoid an appearance of impropriety, it is recommended that for public servants who are not elected officials, each such trip and the acceptance of payment therefor be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor.

The Suffolk County Board of Ethics finds the above opinions relevant and persuasive to the request before them. Therefore, the Board concludes that a non-elected official public servant should have each travel, trip, and the acceptance of payment thereof, be approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a Deputy County Executive. The Board further concludes that entities whose interests will be affected by the public servant's official action, cannot make such travel payments. All such travel payments are required to be disclosed annually on the County Financial Disclosure Form.

Conclusion: Under the facts presented, the Board finds that the requested future conduct, as described herein, is permissible for the █████ Commissioner only when conducting official business. Thus, as related to job duties, the requestor can accept free airfare and related accommodations for himself, upon each such trip and the acceptance of payment therefor should be approved in advance and in writing by a Deputy County Executive. This payment is reportable for a conflicts check on the annual County Financial Disclosure form at question 7, "Payments for County-Related Travel". Family members travel expenses for work functions remains not permissible under the County ethics laws.

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
6/21/17

Linda A. Spahr, Esq. - Chair