

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

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In the Matter of the Inquiry of

ADVISORY OPINION
No. AO-2016-19

██████████ in capacity of Supervisory Official
of the Department of Social Services

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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:* Is a Department of Social Services employee prohibited from accepting a \$200 rent payment from an associated person who is the recipient of \$37.00 a month in Federal funds for the “SNAP” supplemental food program?

SUMMARY

2. *Conclusion:* The Suffolk County Department of Social Services employee is not prohibited from receiving a \$200 rent payment from an associated person who is the recipient of \$37.00 a month in Federal funds for the “SNAP” supplemental food program.¹

GOVERNING AUTHORITY

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-2(C), Section 77-5(B).

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 9/6/16.
5. Standing was voted and approved on 9/7/16.
6. Fact finding was concluded on 9/19/16.
7. The Board voted on this Advisory Opinion request on 9/20/16.

INFORMATION PRESENTED TO THE BOARD:

8. The Requestor is a County Employee in the Supervisory Official Capacity.
9. The Employee is an [REDACTED] in the Department of Social Services [REDACTED] [REDACTED]. The Employee's daughter resides with her for \$200 a month in rent and is receiving \$37.00 a month in "SNAP" funding which is a 100% federally funded food supplemental program. The benefit paperwork is prepared in the employees division and the department has system wide safeguards that employees cannot process family members benefit applications (*See SCBE Advisory Opinion 2015-19 holding the spouse of a Suffolk County Department of Social Services employee is not prohibited from receiving funds for their grandchild's "legally exempt in home provider". The employee must recuse herself from the application and approval process of her spouse.*).

OPINION AND ANALYSIS

10. 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 such acceptance of \$37 in Federal money of a family renter of a DSS employee be in conflict with the County ethics laws?

STANDING

11. The Board determined that standing exists for this Advisory Opinion request due to the Requestor’s position as a supervisory official of a public servant. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

12. The Law States in Pertinent Part:

§ 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.

13. The Requestor seeks guidance regarding the subject future conduct. The Board has determined that since the subject request has not yet been determined, the request is within the Board’s jurisdiction.

ANALYZED SECTIONS OF LAW

14. The analyzed laws state in pertinent part:

§ 77-1 DEFINITIONS.

When used in this Part 1, the following terms shall have the meanings indicated:

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.

§ 77-3(C)

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.

§ 77-5(B). This article (prohibited conduct) shall not prohibit:

“B. A public servant from accepting or receiving any County benefit which is provided for or made available to residents generally, or a substantial class of residents to which the public servant belongs.”

OPINION AND ANALYSIS

15. The Suffolk County prohibited conduct law provides that, “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” (Suffolk County Code § 77-3(C)). This prohibited conduct law includes enumerated exemptions and does not prohibit, “A public servant from accepting or receiving any County benefit which is provided for or made available to residents generally, or a substantial class of residents to which the public servant belongs.” (Suffolk County Code § 77-5(B)). If such 77-3 (C) action is foreseeable, the public servant must properly recuse themselves under Suffolk County Code § 77-3, to their Department supervisor and file a recusal with the Board. ¹

¹ § 77-7. RECUSAL AND DISCLOSURE.

A. 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;

16. In the issue presented here, it is the public employee's daughter, not the public employee, receiving a federal benefit administered by Suffolk County Department of Social Services. As such, § 77-5(B) is not applicable.

17. As to the applicable § 77-3(C) prohibition that, "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", the County employee holds a position that does process the SNAP benefit application. The Requestor has set forth that the Department has a long standing policy that employees cannot process family benefit applications. Accordingly, this recusal mechanism, in addition to the County recusal laws, must be followed to avoid a conflict of interest.

CONCLUSION

18. Accordingly, the Board finds that pursuant to the Suffolk County Code, contingent on the employee recusing herself on benefit applications of an "associated" person, the requested future conduct, is permissible under the County Code.

19. The Board directs that the Requestor recuse herself from all such benefit applications and file such recusal with her Department Head and the Suffolk County Board of Ethics pursuant to *Suffolk County Code §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.

and

(3) Immediately refrain from participating further in the particular matter.

21. The forgoing is the opinion of the Board.

Dated: Great River, New York
9/21/2016

Linda A. Spahr - Chair

¹ Due to the benefit being received by the associated person is a nutritional subsidy versus a housing subsidy, this holding is distinguishable from SCBE AO 2014-16. In SCBE AO 2014-16, the Board reviewed the Department's policy that, "[A] Department of Social Services employee shall not rent housing quarters to Public Assistance recipients. This would be a violation of the Code of Ethics. You may also not be a vendor connected with Public Assistance Housing . . ." . The Requestor has advised the SCBE that this rental policy prohibition is limited to Public Assistance recipients of housing funds".