

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

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In the Matter of the Inquiry of
[REDACTED] in capacity as a public servant

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2018-20
December 5, 2018

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 Requestor is a current County employee in the Labor Relations department. The Requestor has asked whether it would violate the Code of Ethics to enter into a contract with a County golf course as an officer of a not-for-profit. The contract is proposed between Timber Point Golf Course and the [REDACTED] [REDACTED]¹ specifically for the upcoming event entitled, [REDACTED] [REDACTED]. Upon review of the facts presented, the Board was advised by the requestor that appropriately no discounted rate has been offered and that the not for profit provides their donation to various causes.²

In addition to the 77-2 (B) prohibitions that, “no County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County” public servants who are officers in not for profits are also reviewed for conflicts under § 77-5(D)³ and cannot have direct or indirect business dealings⁴ with the County. Here, the requesting public servant is the individual currently assigned by the not for profit to arrange all aspects of the proposed business dealing and event. As such, the Board finds this proposed

¹ [REDACTED]

² [REDACTED]

³ § 77-5. **EXEMPTIONS. This article shall not prohibit:**
D. A public servant or public servant's spouse from acting as an attorney, agent, broker, officer, director or consultant for any not for-profit corporation or other entity which operates on a not-for-profit basis, which has business dealings with the County, provided that such public servant takes no direct or indirect part in such business dealings and that the public servant receives no salary or other compensation for such activities.

§ 77-1. **DEFINITIONS. “BUSINESS DEALINGS WITH THE COUNTY** Any transaction with the County involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, or any license, grant or benefit, and any performance with respect to any of the foregoing, but shall not include any transaction involving the public servant's residence or any ministerial matter”.

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future conduct of the public servant being the officer of the not-for-profit designated to have business dealings with the County on behalf of the not-for-profit, *is not permissible*. The Board further finds that this does not preclude the entity from having permissible not for profit business dealing with the County, and that it is not a conflict of interest for a Board member who is not a public official to arrange the golf outing.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions, and Suffolk County Board of Ethics Advisory Opinions.

Procedural History: This Advisory Opinion Standing vote occurred on 11/21/2018 and the Board has determined that the requested future conduct performed by the public servant is not permissible under the County Code of Ethics, but a Board member who is not a County public servant may arrange and coordinate the not-for-profit event.

Opinion: The Requestor is a current employee of the County in the Labor Relations Department. The Requestor has asked whether it would violate the Code of Ethics to enter into a contact as an officer of a not-for-profit corporation with the Timber Point Golf Course, a Suffolk County Golf Course which is run by a licensee.

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 an impermissible conflict of interest exists.

The Board determined that County employees have standing for this Advisory Opinion, deeming the Requestor a “public servant” and binding the Requestor to the Suffolk County Ethics Laws (*People of the State of New York v. Adolphus Ebuzome* 435 N.Y.S.2d 243, NYC COIB Advisory Opinion 2009-4). Additionally, the Board finds under § 77-2(D)(3), that the Requestor, who is a public servant, did comply with the directives set forth in this subsection by asking the Board in a timely manner as required to determine if there was a conflict.

As to prohibited firms doing business with the County a County employee t must comply with § 77-2 which states:

§ 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY.

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

As to potential exemptions in the above conflicts of interest prohibition, a not for profit entity exemption and additional restriction is further stated at § 77-5 (D). Specifically as related to a public servant being an officer or director of a not-for-profit, it states at

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§ 77-5(D):

EXEMPTIONS. This article shall not prohibit:

“A public servant or public servant's spouse from acting as an attorney, agent, broker, officer, director or consultant for any not-for-profit corporation or other entity which operates on a not-for-profit basis, which has business dealings with the County, *provided that such public servant takes no direct or indirect part in such business dealings and that the public servant receives no salary or other compensation for such activities*”. (*emphasis added*)

Here, the requestor has confirmed that she will be taking, “no salary or other compensation for such activities” as required under the 77-5(D) exemption. This leaves the Board with the additional limitation under § 77-5(D), that a public servant who is an officer of a not-for-profit shall take no part in, “direct or indirect part in such business dealings” involving the County. As the requesting public servant is currently designated as the officer arranging the contract and communications with the County golf course run by a licensee, the Board has concluded that the proposed activity under the facts presented is not permissible for a public servant under the County Code of Ethics.

Conclusion: As set forth above, the Board finds the proposed future conduct is not permissible for a County public servant under the County Ethics Code. Additionally, a Board member who is not a public servant can arrange the golf outing on behalf of the not for profit.

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
12/5/2018

Linda A. Spahr, Vice Chair