

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion No. 2022-7
June 1, 2022

SUFFOLK COUNTY

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- Subject Matter:** Appearance of Impropriety
- Relevant Laws:** Laws of Suffolk County, Chapter 77, Article I, §§ 77-1, 77-3 B and C, and 77-7 A
- Summary:** In order to preserve confidence in government, public servants should strive to prevent even an appearance of impropriety. Public servants should avoid circumstances which compromise their ability to make impartial judgments.

The Suffolk County Board of Ethics (the "Board") has received a request, dated April 27, 2022, from [REDACTED], an [REDACTED] in the Suffolk County (the "County") Department of [REDACTED] (the "Department"). In his request, [REDACTED] asks for an opinion from the Board as to whether Chapter 77 of the Laws of Suffolk County, also known as the Suffolk County Code of Ethics, would require that he recuse himself from Department matters involving a former colleague.

Based on the facts presented, at its May 4, 2022 meeting the Board determined that Suffolk County Code Sections 77-3 B and 77-7 A require [REDACTED]'s recusal in both direct and indirect matters involving his former colleague.

Background

[REDACTED] has advised the Board that in his current Department position he is assigned to work on Suffolk County's Aquaculture Lease Program (the "Program"). As set forth in Article II of Chapter 475 of the Suffolk County Code, the Program was established to foster shellfish aquaculture while restoring and conserving the natural resources in Peconic and Gardiner's Bays. Through the Program, the County issues leases to publicly owned underwater lands for the purpose of shellfish aquaculture. No one is permitted to conduct shellfish aquaculture on these lands without first obtaining a lease from the County. See Suffolk County Code § 475-11. As part of his duties, [REDACTED] indicates that he is responsible for managing the Program, which includes

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collecting rental fees, as well as reviewing provisions of leases and renewing and terminating leases.

██████████ further advises that prior to his position with the County, he was employed by the New York State Department of Environmental Conservation (“NYDEC”). In this State position, ██████████ worked in the NYDEC’s Freshwater Wetlands and Tidal Wetlands Unit where ██████████ was his co-worker. ██████████ advises that ██████████ received an aquaculture lease from the County, the term of which is from January 1, 2016 through December 31, 2026.

In light of his former professional relationship with ██████████, ██████████ expresses concerns regarding his direct involvement in ██████████’s lease, specifically noting that he believes it would be inappropriate for him to regulate and collect rental fees from a leaseholder with whom he has a former professional relationship. Moreover, ██████████ expresses that he does not feel comfortable having such involvement. To this end, ██████████ is seeking advice from the Board as to whether either his direct or indirect involvement in ██████████’s County lease would be prohibited by the Suffolk County Code of Ethics.

Relevant Law

The Suffolk County Code of Ethics provides, in relevant part, 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. **See § 77-3 B.**

[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, 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. **See § 77-3 C.**

* * *

[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. **See § 77-1.**

* * *

[a] public servant shall promptly recuse himself or herself from acting on any

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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. See § 77-7 A.

Mere professional acquaintance or friendship does not constitute “associated” within the meaning of Section 77-1. However, the appearance of a conflict may exist even where the law does not expressly prohibit an action. In order to preserve confidence in government, public servants should strive to avoid even an appearance of impropriety. To that end, public servants should avoid circumstances which compromise their ability to make impartial judgments. 1994 N.Y. Op. Atty. Gen (Inf.) 1019 (finding that a husband serving as county treasurer while his wife simultaneously served as a deputy county auditor would erode fiscal checks and balances designed to maintain public confidence in government); 1999 N.Y. Op. Atty. Gen. (Inf.) 1052 (finding that a member of a village/town board of trustees should recuse herself in all respects from participating in a disciplinary proceeding in which her son may be called as a witness).

An illustration of this principle is found in New York Attorney General Informal Opinion No. 2000-22. In that opinion, the New York Attorney General’s Office considered an inquiry from the Village of Great Neck Plaza as to whether members of the village board had conflicts of interest that would require them to refrain from deciding two permit applications. The village board members had been sued in their personal capacities for both compensatory and punitive damages in a separate matter brought by the permit applicant. The Attorney General’s Office noted that even where a situation does not, as a matter of black letter law, require recusal, recusal may nevertheless still be appropriate concluding, in part, that

[i]n applying standards governing conflicts of interest . . . pending litigation against a municipal board and its members does not as a matter of law require that the board members recuse themselves in a separate application by the party that commenced the lawsuit. A case-by-case analysis is required to determine whether board members can act impartially in such circumstances. . . . Government officials must maintain public confidence in the integrity of government. . . . *[t]hey must avoid even the appearance of impropriety.* Emphasis added. 2000 N.Y. Op. Atty. Gen. (Inf.) 1058, citing Op. Atty. Gen (Inf) No. 97-19.

Discussion and Determination

██████████ and ██████████ are not “associated” within the meaning of the Suffolk County Code of Ethics. As such, ██████████’s involvement in matters involving ██████████’s aquaculture lease would not be a direct violation of Section 77-3 C of the Code of Ethics. However, in considering ██████████’s inquiry, the Board notes that ██████████, himself, expresses concern, and even

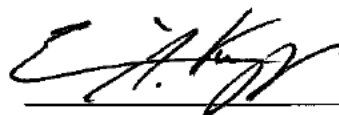
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discomfort, at having involvement in the aquaculture lease of a former colleague. His "private interest" (in this case former professional relationship) may lead to a public impression of impartiality. Because of this, Section 77-3 B would prohibit [REDACTED]'s involvement in both direct and indirect matters involving [REDACTED]'s lease. Therefore, consistent with Section 77-7 A, [REDACTED] should recuse himself from these matters in order to avoid even an appearance that his relationship with [REDACTED] would create a conflict with the discharge of his official duties.

While [REDACTED] may not have involvement directly or indirectly (e.g., preparing documents in relation to [REDACTED]'s lease) in matters involving [REDACTED], [REDACTED]'s general administration of the Program, including his involvement in drafting template lease terms and Program policies and procedures, would not be prohibited by the Suffolk County Code of Ethics.

The forgoing is the opinion of the Board.*

Dated: Riverhead, New York
June 1, 2022



Chairperson, Eric A. Kopp
Board of Ethics

*Pursuant to Suffolk County Board of Ethics Resolution 004/2013, a requester shall have **fifteen (15) business days** from the time an 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. Unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Applications requesting modification, clarification, or withdrawal must be made in accordance with Board rules. Nothing shall prohibit the Board, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.