

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

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In the Matter of the Inquiry of

In Capacity of [REDACTED] as an appointed Member to the
Grabeski Airport Community Advisory Board;

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-21*
August 18, 2021

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:

This Suffolk County Grabeski Airport Community Advisory Board Member submits this opinion request to determine if there is a prohibited conflict of interest with for an appointed Advisory Board member of the Grabeski Airport Community Advisory Board to serve contemporaneously while in active contract negotiations for the lease at Grabeski Airport. ¹ The appointed member is [REDACTED] and is President of [REDACTED] (see attached Suffolk County Resolution 217-2021, reconstituting the Gabreski Airport Community Advisory Board for a New Limited Purpose).

The Board finds through Board directed Executive Director Fact Finding under Suffolk County Administrative Code § A30-3 that the Requestor is the appointed member set forth in paragraph "6", One representative with a background of at least five (5) years in the field of business aviation, to be selected by the County Legislature. As of the day of this draft, the timeframe for final negotiations of the Advisory Board was apprised by law department to be estimated as a couple weeks.

Upon review of the proposed outside activity the Board notes the current negotiations are business dealings with the County of Suffolk and thus would be impermissible to vote on any such matters that involve the company of his ownership. Additionally, in abundance of caution, the Board advises the Requestor that an appearance of impropriety may occur or an opportunity for impermissible conflict. Therefore, the Board advises of potential direct conflicts regarding which would interfere with the Requestor's official discharge of duty under Suffolk County Codes § 77-2(A) and § 77-2(B), § 77-3(B), § 77-3(C), 77-7 and 77-8. The Board additionally advises that any such property subject to County of Suffolk review, or commencing business with the County, would be impermissible under the County Ethics Code. In furtherance, the Board brings attention to the recusal laws, the

¹ § 77-8. DISCLOSURE INVOLVING COUNTY CONTRACTS.

- A. Where a public servant has, or acquires, an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement with the County, the public servant shall disclose the nature and extent of that interest in writing to his or her immediate supervisor and to the Board as soon as he or she has knowledge of the actual or prospective interest.

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status of the lease negotiations, and compliance thereof.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code Section 30, Advisory Opinions; and Chapter 77, Sections 77-3(C), Suffolk County Board of Ethics Rules, and 77-7.

Procedural History: This Advisory Opinion was requested on July 29, 2021 . The Board voted on this Advisory Opinion request on 8/18/2021 determining there is an impermissible conflict to vote on any topic related to the Requestor's company during the lease negotiations.

Opinion: This Suffolk County Grabeski Airport Community Advisory Board Member submits this opinion request to determine if there is a prohibited conflict of interest with for an appointed Advisory Board member of the Grabeski Airport Community Advisory Board to serve contemporaneously while in active contract negotiations for the lease at Grabeski Airport. ² The appointed member is [REDACTED] and is President of [REDACTED] (see attached Suffolk County Resolution 217-2021, Reconstituting the Gabreski Airport Community Advisory Board for a New Limited Purpose).

The Board finds through Board directed Suffolk County Administrative Code § A30-3 that the Requestor is the appointed member set forth in paragraph "6", One representative with a background of at least five (5) years in the field of business aviation, to be selected by the County Legislature.

Upon review of the proposed outside activity the Board notes the current negotiations are business dealings with the County of Suffolk and thus would be impermissible to vote on any such matters that involve the company of his ownership. Additionally, in abundance of caution, the Board advises the Requestor that an appearance of impropriety may occur or an opportunity for impermissible conflict. Therefore, the Board advises of potential direct conflicts regarding which would interfere with the Requestor's official discharge of duty under Suffolk County Codes § 77-2(A) and § 77-2(B), § 77-3(B), § 77-3(C), 77-7 and 77-8. The Board additionally advises that any such property subject to County of Suffolk review, or commencing business with the County, would be impermissible under the County Ethics Code. In furtherance, the Board brings attention to the recusal laws, the status of the lease negotiations, and compliance thereof.

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;

² § 77-8. DISCLOSURE INVOLVING COUNTY CONTRACTS.

- A. Where a public servant has, or acquires, an interest in any actual or proposed contract, purchase agreement, lease agreement or other agreement with the County, the public servant shall disclose the nature and extent of that interest in writing to his or her immediate supervisor and to the Board as soon as he or she has knowledge of the actual or prospective interest.

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- b) Is the requestor seeking advice on proposed future conduct;
c) Whether a conflict of interest automatically exists in procurement due to the status as an advisory board member while in active contract negotiations with the County?

The Board determined that standing is approved for this Advisory Opinion request due to the requestor's position as a public servant employed by the Suffolk County Legislature which mandates compliance with the Suffolk County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*, NYC COIB Advisory Opinion 2009-4). The Board further determined as requestor did not yet attend or vote at the Advisory Board meetings that the request is regarding proposed future conduct and is within the Board's jurisdiction².

As to potential conflicts of interest, the law states in pertinent part at § 77-3(C), Prohibited Conduct, "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 a person associated³ with the public servant. Under § 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 ... financially benefit ... a person or firm associated with the public servant"⁴.

As applied, § 77-3(C), Prohibited Conduct, "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 a person associated⁵ with the public servant. Thus, the Board concludes that the requestor cannot vote on any topic or matter related to his company.

Additionally, under § 77-7(A) and § 77-7(B), finds that recusal is necessary on all official actions relating to the employee's associated person. (*See NYC Conflicts of Interest Board Advisory Opinion No. 90-04, Peterson v. Corbin*, 713 N.Y.S.2d 361 (2nd Dept. 2000).

Conclusion: As set forth above, the Board finds that pursuant to, § 77-3(C), Prohibited Conduct, "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 a person associated⁶ with the public servant. Thus, the Board concludes that the requestor cannot vote on any topic or matter related to his company.

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: Riverhead, New York
August 18, 2021


Eric A. Kopp – Chair
On Behalf of the Suffolk County Board of Ethics

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¹ N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions

² § A30-3 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

³ § 77-1. Definition of 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.

⁴ 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.

⁵ § 77-1. Definition of 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.

⁶ § 77-1. Definition of 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.

* Scrivener's error corrected by Board staff at header pages 1 ,2; on August 18, 2021.