

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

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In the Matter of the Inquiry of Suffolk County Employee  
[REDACTED]

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STATE OF NEW YORK: COUNTY SUFFOLK  
COUNTY BOARD OF ETHICS  
Advisory Opinion 2021-20  
August 4, 2021

**NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL**  
**ADVISORY OPINION REQUEST**

**Request:** This Suffolk County Employee submits this opinion request to determine if there is a prohibited conflict of interest with a new job position. Land Management Specialist IV and being employed part-time in a familial owned real estate business [REDACTED] which maintains no business dealings with the County of Suffolk (see attached job duties statement: *Land Management Specialist IV*).

**Summary:** Based upon the information presented to the Board, this proposed outside activity ***is not a conflict*** of interest under the Suffolk County Code § 77-3(B) which states, “No 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”. The Board finds that this proposed outside activity is not in conflict with the County Ethics Code as there are no business dealings with the County of Suffolk. In an 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 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 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. Additionally, the Board brings attention to the recusal laws and compliance thereof.

**GOVERNING AUTHORITY**

The Laws of Suffolk County; Suffolk County Administrative Code Article 30, Advisory Opinions; and the Suffolk County Code Chapter 77.

**PROCEDURAL HISTORY**

This request was received 7/15/2021, and the Board voted on this Advisory Opinion within 45 days of the conclusion of fact finding on 8/4/2021 (see: *Attached Request, Standing Vote Letter*)

**INFORMATION PRESENTED TO THE BOARD**

This Suffolk County Employee submits this opinion request to determine if there is a prohibited conflict of interest with a promotional job position. Land Management Specialist IV, and being employed part-time in a familial owned real estate business [REDACTED] which maintains no business dealings with the County of Suffolk.

The Requestor has advised through fact finding that he is employed part-time in a familial owned real estate business, [REDACTED] which maintains no business dealings with the County of Suffolk with no contracts with the County of Suffolk. In furtherance, the requestor advised recusal would be filed in the event of any such

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property.

**OPINION AND ANALYSIS**

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 the potential conflict is prohibited conduct under the County ethics laws?

**STANDING**

The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a public servant employed by the Suffolk County Department of Planning which mandates compliance with the Suffolk County Ethics Laws regulated by the Suffolk County Board of Ethics<sup>1</sup> (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

**PROPOSED FUTURE CONDUCT**

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.*

As applied, the Board determined that the request is regarding proposed ongoing and future conduct and is within the Board's jurisdiction.

**Sections of Law and County Policy Analyzed**

The Laws State in pertinent part:

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

**A.** No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served

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by such public servant.

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

§ 77-3. PROHIBITED CONDUCT.

B. No 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.

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.

The Suffolk County Standard Operating Procedure A-15 paragraph 5, "Policy for Outside Employment for County Employees" states,

(5) Employees represented by collective bargaining units are subject to any and all provisions and restrictions relating to outside employment contained in current collective bargaining agreements. These employees should review their collective bargaining agreements and determine whether they contain outside employment provisions and restrictions. Employees represented by collective bargaining units are also subject to current and future County and departmental procedures and policies which are not inconsistent with the terms of the existing collective bargaining agreements. Employees who are excluded from the collective bargaining units are subject to departmental or County policies and procedures regarding outside employment which are now in effect or which may be promulgated in the future.

All outside employment is also subject to the following provisions:

- (1) Outside employment may not involve or appear to involve a conflict of interest or a potential conflict of interest.
- (2) Outside employment may not be undertaken on regularly scheduled work time.
- (3) Outside employment may not be undertaken on sick time.

The Suffolk County Standard Operating Procedure A-15 paragraph 6, "Conflicts of Interest" states,

(6) "Suffolk County employees are prohibited from engaging in outside employment

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which would conflict, *appear* to conflict or potentially conflict with the proper performance of their official duties. Guidelines for what constitutes a conflict of interest are outlined in the Code of Ethics, Article XXX of the Suffolk County Charter. The Board of Ethics is empowered to render advisory opinions with respect to the Code of Ethics” (emphasis added).

As set forth above, the Board of Ethics, pursuant to Suffolk County Standard Operating Procedure A-15 at paragraph 6, is empowered to render advisory opinions with respect to the Code of Ethics regarding outside employment. It bears important mention that the Board’s statutorily enumerated authority is to render advisory opinions with respect to Chapter 77, Part 1, Article 1 of the Suffolk County Code or other applicable provision of law governing conflicts of interest. *Suffolk Co. Admin. Code A 30-3*. Accordingly, the Board opines no determination or opinion regarding an intra-departmental determination of an appearance of conflict pursuant to the Suffolk County Standard Operating Procedure A-15 on employment.

### CONCLUSION AND DIRECTIVES

The Board finds that based on the information presented, there are no business dealings occurring with the employing entity. Therefore, the requested outside income and promotional employment with the County of Suffolk **is not a conflict** as related to the County Ethics Code.

Additionally, in an abundance of caution, the Board hereby advises the Requestor that as a County Department Head, that the continued existence of the not for profit could create in addition to an appearance of impropriety, an opportunity for conflict to arise. Specifically, the Board advises of potential conflicts regarding the promotional employment position regarding real estate in Suffolk County. Therefore, The Board advises such potential future conduct could rise to impermissible conduct by 1) being in conflict with the proper discharge of official duty under Suffolk County Code § 77-3(B); 2) as to the misuse of official position to impermissibly benefit the not for profit financially under § 77-3(C); and 3) creating a prohibited interest in a firm doing business with the County under sections of the Suffolk County Code § 77-2(A) and § 77-2(B), “Prohibited Interests in Firms Doing Business With the County”<sup>2</sup>.

The Board advises accordingly that this opinion is fact specific and recusals and disclosures will be required to be filed when necessary under Suffolk County Code 77-7 and 77-8<sup>1</sup>.

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<sup>1</sup> § 77-7. RECUSAL AND DISCLOSURE.

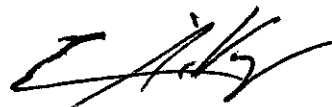
- A. A public servant shall promptly recuse himself or herself from acting on any matter when acting on the matter, or failing to act on the matter, would constitute prohibited conduct under the Code of Ethics or would financially benefit the public servant, a person or firm associated with the public 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:

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Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the Requestor 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  
8/4/2021



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Eric A. Kopp, Chair  
On behalf of Suffolk County Board of Ethics

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

<sup>2</sup> § 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY.

- A. No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.
- B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

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- (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.

§ 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.
- B. For the purposes of this section, "interest" means a direct or indirect pecuniary or material benefit accruing to the public servant as a result of a contract with the County. A public servant shall be deemed to have an interest in the contract of:
  - (1) His or her spouse, except as to his or her spouse's employment agreement with the County;
  - (2) A firm, partnership, or association of which the public servant is a member or employee; and
  - (3) A corporation of which the public servant is an officer, director or employee.

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§ 77-3. PROHIBITED CONDUCT.

- B. No 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.
- 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.