

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

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In the Matter of the Inquiry of

██████████

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ADVISORY OPINION
No. AO-2012-2

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. Is it a conflict of interest for a member of the Suffolk County ██████████, to be employed as the Executive Director for a not-for-profit corporation receiving grant funding from Suffolk County?

GOVERNING AUTHORITY

2. The Laws of Suffolk County, Suffolk County Administrative Code XXX, Advisory Opinions, and Chapter 77, Sections 77-2(A)(B)(C)(D)(E), 77-3(B)(C)(H)(L), and 77-8.

PROCEDURAL HISTORY

- 3. This Advisory Opinion was requested 6/22/2012.
- 4. Fact finding was concluded on 3/6/2013.
- 5. The Board deliberated on this Advisory Opinion on 3/11/2013 and 3/27/2013.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor is a member of the Suffolk County ██████████ since ██████████
(Requestor's Exhibits# 1 and #2).

7. The Requestor was the Chair of the Board of Directors for a not-for-profit corporation (hereinafter "Corporation X") and became the Executive Director of Corporation X (a paid employee position) as of ██████████ (Suffolk County Board of Ethics Exhibit #6).

8. Corporation X's initial Department of State filing date was [REDACTED] (*Suffolk County Board of Ethics Exhibit #2*).

9. The Requestor states that Corporation X does not engage in activity that requires the review the Suffolk County [REDACTED]. (*Requestor's Exhibits# 1 and #2*).

10. Corporation X submitted a grant submission to the Suffolk County Division of [REDACTED] under [REDACTED]. (*Requestor's Exhibits# 1*).

11. The [REDACTED] Committee ([REDACTED]) approves all funding through the [REDACTED] [REDACTED] (*Suffolk County Board of Ethics Exhibit #3, Suffolk County Board of Ethics Exhibit #9*).

12. The [REDACTED] Committee consists of [REDACTED] Committee members (*Suffolk County Board of Ethics Exhibit #9*).

13. The Requestor is not a [REDACTED] Committee member. (*Suffolk County Board of Ethics Exhibit #9*).

14. The [REDACTED] Committee voted on calls for submissions on the [REDACTED] Grant. (*Suffolk County Board of Ethics Exhibit #9*).

15. Nine grants were awarded through the [REDACTED] Committee (*Suffolk County Board of Ethics Exhibit #7*).

16. On February 5, 2013 four of the nine grants inclusive of Corporation X's grant, were adopted by the Suffolk County Legislature and approved on February 14, 2013. Introductory Resolution Number [REDACTED] speaks to Corporation X's grant¹ (*Suffolk County Board of Ethics Exhibit #4*).

OPINION AND ANALYSIS

17. 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 grant funding of the not-for-profit is a conflict of interest for the Suffolk County [REDACTED] member;

STANDING

18. The Department of [REDACTED] powers, duties, and membership are governed by the Suffolk County Charter and the Suffolk County Administrative Code Article [REDACTED] through [REDACTED] (*Suffolk County Board of Ethics Exhibit #5*).

19. The Suffolk County Charter states in pertinent part:

§ C [REDACTED]. Powers and duties.

Except as otherwise provided in the Charter or by local law, the Department of [REDACTED] shall have the following powers, duties and responsibilities:

- A. To concern itself with any and all matters pertaining to the [REDACTED] of the County, [REDACTED] and an innovative Suffolk.

§ C [REDACTED]. Membership of [REDACTED]

- A. The [REDACTED]

§ C [REDACTED]. Appointment of members of [REDACTED]

The members of the [REDACTED] shall be appointed by the County [REDACTED] with the approval of the County Legislature.

20. The Board determined that as [REDACTED] members are appointed by the County [REDACTED], standing exists for this Advisory Opinion due to the Requestor's position as a member of the Suffolk County [REDACTED], 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).

PROPOSED FUTURE CONDUCT

21. 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.

22. The Board determined that as the grant funding had not occurred at the time of the Advisory Opinion request, that request is within the Board's jurisdiction as proposed future conduct.

CONFLICT OF INTEREST

23. The Law States 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 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.*

C. *An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited under this section, shall either:*

- (1) Divest of the ownership interest; or*
- (2) Terminate the business dealing with the County; or*

(3) *Disclose to the Board such ownership interest and comply with its order.*

D. *A public servant who has an ownership interest and did not know of a business dealing which would cause the interest to be prohibited, but has subsequently gained knowledge of such business dealing; or a public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be prohibited; or a public servant, who, by operation of law, obtains an ownership interest which would be prohibited shall disclose to the Board such ownership interest. Further, the public servant will, within 15 days of knowing of the business dealing, either:*

(1) *Divest of the ownership interest; or*

(2) *Terminate the business dealing with the County; or*

(3) *Ask the Board to determine whether such ownership interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties.*

E. *When an individual discloses an ownership interest to the Board pursuant to Subsection C of this section, or a public servant requests that the Board make a determination regarding an ownership interest pursuant to Subsection D, the Board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the Board shall take into account the nature of the public servant's duties, the manner in which the interest may be affected by any action of the County, the appearance of conflict and such other factors as the Board deems appropriate. If the Board determines a conflict exists, the Board's order shall require divestiture or such other action as it deems appropriate which may mitigate such conflict.*

§ 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.*

H. *No public servant shall, for compensation, represent private interests before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County. For a public servant who is not a County employee, this prohibition shall apply only to the agency served by the public servant.*

L. *No public servant shall attempt to influence the course of any proposed legislation in the County Legislature that will affect an interest of the public servant or the interest of a person or firm associated with the public servant without publicly disclosing to the Legislature the nature and extent of the private interest.*

24. The Law States in pertinent part:

§ 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.*

CONCLUSION

25. The Board concludes that no conflict of interest exist in Corporation X receiving the grant funding under § 77-2(A)(B) (C)(D)or (E). The Board finds under § 77-2(A) that the Requestor does not have an interest in a firm which engages in business dealings with the department or agency served by the public servant ([REDACTED]). The Board finds under § 77-2(B), that the Requestor is not a

County employee therefore, this section of law is not applicable. The Board finds under § 77-2(C), that prior to becoming a public servant, there was no ownership interest in a firm that does business with the County therefore, this section of law is not applicable. 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 with the potential grant funding. The Board finds under § 77-2(E), that although there is no conflict with the public servant being a Member of the [REDACTED] and the Executive Director of a not for profit receiving County grant funding, that due to an ongoing appearance of a conflict, that the Requestor, under §77-7, must recuse [REDACTED] on matters before the Suffolk County [REDACTED] that are based out of current or prospective activities under the approved [REDACTED] Grant, and with respect to any matters under the Suffolk County Administrative Code Article [REDACTED] through [REDACTED] regarding the activities of the [REDACTED] Grant and as applied to Company X.

The Board concludes that no conflict of interest exists as to Corporation X receiving the grant funding under § 77-3(B)(C)(H) or (L). As the approval of the [REDACTED] grant was voted on by the [REDACTED] Committee and subsequently passed through the Suffolk County Legislature, and did not come under review of the Suffolk County [REDACTED], the Board concludes that under § 77-3(B), the Requestor's position as the Executive Director of Corporation X does not conflict with the proper discharge of her duties with the Suffolk County [REDACTED].

In furtherance, the Board concludes under § 77-3(C) that as the Suffolk County [REDACTED] did not vote on the [REDACTED] grant awards, that the Requestor did not use [REDACTED] 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 or a person or firm associated with the public servant.

Additionally, the Board concludes under § 77-3(H) that as the Requestor is not a County employee and that the Suffolk County [REDACTED] did not vote on the [REDACTED] grant awards, that

the Requestor did not for compensation represent private interests before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County. The Board finds that under § 77-3(L) no conflict of interest exists as the Requestor did not personally present or speak before the Legislature with respect to the grant funding.

Also, the Board further concludes that the Requestor is a public servant with an interest required to be disclosed under § 77-8(A) and (B)(3). The Board determines that Requestor’s letter is a timely disclosure. As set forth above under §77-3, the Board determines that this disclosed interest is not a conflict.

In addition to the above findings and conclusions, the Board hereby apprises the Requestor of an ongoing duty under §77-7 to recuse [REDACTED] on any matters before the Suffolk County [REDACTED] [REDACTED] that are based out of current or prospective activities funded by the approved [REDACTED] Grant and with respect to the Suffolk County Administrative Code Article [REDACTED] through [REDACTED].

The foregoing constitutes the opinion of the Board.

Yaphank, New York
Dated: 04/10/2013

Robin L. Long, Esq. - Chair

¹Introductory Resolution Number [REDACTED] (Corporation X), Introductory Resolution Number [REDACTED], Introductory Resolution Number [REDACTED], Introductory Resolution Number [REDACTED], Introductory Resolution Number [REDACTED] was laid on the table 2/5/2013. Introductory Resolution Number [REDACTED] was laid on the table 3/5/2013. The remaining three awarded grants have not been laid on the table.