

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

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In the Matter of the Inquiry of



ADVISORY OPINION

No. AO-2013-14

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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. *Advisory Opinion Inquiry:* The following advisory opinion is issued in response to an inquiry from a Suffolk County Legislator as to whether it would be a violation of the Ethics Laws to serve as the Chair of a Board of Directors for a not-for-profit Foundation which will be submitting legislation to the Suffolk County Legislature for donation of real property and where the Elected Official's title may appear on fundraising events. (*Requestor's Exhibit #1*)

2. *Conclusion:* Based on the facts before the Suffolk County Board of Ethics, it is the opinion of the Board that it would be a direct conflict of the Ethics Laws for a County Legislator to serve as the Chair of a Board of Directors for a not-for-profit foundation which will be requesting legislation from Suffolk County for donation of land. The Board also finds that although a person may solicit charitable funds in their personal capacity, it would be a direct conflict of interest for an Elected Official's title to appear in solicitations for fundraising events.

LAWS INTERPRETED

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Chapter 77, §77-3(B).

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 10/21/2013. (*Requestor's Exhibit #1*)
5. Fact finding was commenced on 10/31/2013.
6. The request was deemed administratively inactive on 1/31/2014 as 90 days lapsed without a response to the fact-finding inquiry of 10/31/2013.
7. This request was administratively re-opened on 2/6/14 as a fact finding response was received. (*Requestor's Exhibit #2*)
8. The Board voted on this Advisory Opinion on 2/26/2014.

STANDING

9. 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 Legislature which mandates compliance with the Suffolk County Ethics Laws (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1.*).

INFORMATION PRESENTED TO THE BOARD

10. The Requestor is a Suffolk County Legislator. (*Requestor's Exhibit #2*)

11. The Requestor is the founding organizer of “ [REDACTED] [REDACTED] ” and [REDACTED] name is included on the not-for profit application. (*Requestor’s Exhibit #2*)
12. The foundation’s function is to build a monument commemorating the [REDACTED] [REDACTED] and to maintain the monument post-construction. (*Requestor’s Exhibit #2*)
13. The foundation will be requesting legislation from Suffolk County for donation of land to build the monument. (*Requestor’s Exhibit #2*)
14. The foundation will solicit private funds. (*Requestor’s Exhibit #2*)
15. The Legislator’s Elected title may appear for fundraising events. (*Requestor’s Exhibit #2*)
16. The Requestor has been asked to hold the position of Chair/President of the foundation. (*Requestor’s Exhibit #2*)

INTERPRETED LAW

17. Suffolk County Code, Chapter 77 “Ethics and Accountability” provides, in pertinent part:

§ 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.

OPINION AND CONCLUSION

18. In assessing § 77-3(B) of the prohibited conduct laws, the Board considers (1) the likelihood that decisions made under the relevant circumstances would be unduly influenced by a

secondary interest and (2) the gravity of the harm that could result from such influence. As applied to this request, the Board finds that a current Suffolk County Legislator sitting as Chair of a Board of a not-for-profit foundation who will be drafting a legislative proposal for real property to be donated by Suffolk County to such foundation would create a conflict of interest or at the very least, the appearance of a conflict of interest. The Board also finds that the gravity of harm in the proposed future conduct could be substantial. It could also raise concerns among the public that the foundation receives preferential treatment over other not-for-profit organizations because of the Legislator's relationship with the foundation. Accordingly, the Legislator's proposed service as chair of the foundation could create a conflict of interest with the proper discharge of [REDACTED] official legislative duties.

19. The Board also finds that disclosure and recusal from voting on the legislation to donate real property to the foundation would be insufficient to assure a conflict of interest has been avoided when a sitting Legislator is chairing legislation to secure real property from the county [REDACTED] serves. The appearance that [REDACTED] can influence other policy-makers with whom [REDACTED] works clearly exists if favorable action is taken by the legislature toward the foundation.

20. Moreover, the requestor has supplied facts establishing that the foundation's very mission is to secure a land donation in order to build and maintain a monument. Thus, the existence of a conflict is more than a speculative one. The Board is aware that public servants desire to provide contributions to their communities outside of County employment and such contributions can include membership on the Board of not-for-profit entities. The Board encourages such services so long as there is no conflict or appearance of a conflict between one's official duties and the outside activity. Here, such a conflict is unavoidable.

21. As to the Requestor using [REDACTED] official title on fundraising materials, the Board finds it would pose a direct conflict of with the proper discharge of [REDACTED] official duties. In a similar request made upon the New York State Ethics Commission in Advisory Opinion No. 97-28, the Commission rendered its opinion that,

“a state employee may solicit funds in his personal capacity for a charitable purpose.....he may not use his official title, position or authority in his fundraising efforts or solicit from subordinates in his unit”. *New York State Ethics Commission in Advisory Opinion No. 97-28.*

22. As set forth above, the Board finds that being the Chair/President of the foundation is a conflict of interest as is using [REDACTED] official title for any fundraising.

23. The opinion rendered herein, until and unless amended or revoked, is binding upon the Ethics Board in any subsequent proceeding concerning the person who requested it and who acted in good faith in reliance upon it, unless material facts were omitted or misstated by the person in the request for the opinion or in any related supporting documentation.

24. 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.

25. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
February 26, 2014

Robin L. Long, Esq. - Chair