

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 as a
Suffolk County Department Head

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2019-02
April 3, 2019

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

Request: The Department Head of Suffolk County Department of Probation has asked if it is a conflict of the ethics laws for a Suffolk County Probation Officer to work part time as a per diem counselor at St. Charles hospital in Port Jefferson, New York. The County probation officer is a NYS Substance and Alcohol Accredited Counselor and would be performing therapy and intake/discharge for detoxification programs at the hospital in this outside employment.

The Department Head advises that there is a conflict risk of the same population being treated in this outside employment. Currently, the employee is managing high risk offenders in the Town of Brookhaven where the hospital of outside employment is located and previously worked with probationers in the Town of Babylon. The Supervisory Official sets forth there is a high likelihood of conflict and asks if an agreement of patient assignment to exclude County probationers in the outside employment would remove the conflict.

Summary: Based upon the information presented to the Board, this proposed outside employment is 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 employment is in conflict with the proper discharge of official duties and does not find recusals or patient assignments sufficient to remove the conflict.

GOVERNING AUTHORITY

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

PROCEDURAL HISTORY

This Advisory Opinion was requested on 3/14/2019, presented to the Board for a standing vote on 3/20/19, and the Board voted on this Advisory Opinion on 4/3/2019.

INFORMATION PRESENTED TO THE BOARD

The Requestor is the Department Head of the Suffolk County Department of Probation. The Requestor asserts that an employee is seeking approval of an outside job and the Requestor is asking the Board for a County Code conflicts advisory opinion under County SOP A-15.

The employee is a Suffolk County Probation Officer with proposed outside employment as a part time per diem counselor at St. Charles hospital in Port Jefferson, New York performing therapy and intake/discharge for

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detoxification programs. The Department Head advises that the employee is a NYS Substance and Alcohol Accredited Counselor. The Supervisory Official requestor states that there is a risk of conflict as it is likely the same population will be treated in this outside employment. Currently the employee manages high risk offenders in the Town of Brookhaven where the hospital is located and previously worked with probationers in the Town of Babylon.

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 Probation which mandates compliance with the Suffolk County Ethics Laws regulated by the Suffolk County Board of Ethics¹ (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1, see Suffolk County Board of Ethics Advisory Opinion 2013-02, NYC COIB Advisory Opinion 2009-4, see Supreme Court State of New York, County of New York, Article 78 proceeding*).

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.

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Sections of Law and County Policy Analyzed

The Law States in pertinent part:

“§ 77-3(B). 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;

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 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).

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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. 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 makes no determination and gives no opinion regarding an intra-departmental determination of an appearance of conflict pursuant to the Suffolk County Standard Operating Procedure A-15. However, the Board takes heavily into consideration that the department head advises that this proposed outside employment is viewed as a likely conflict and the Board agrees with the department head's assessment.

The compatibility of Probation Officer positions with outside jobs has been addressed by the New York State Attorney General's office as well as by the Suffolk County Board of Ethics. Specifically, it has been opined by the New York State Attorney General that the following positions have been found to be incompatible with a probation officer: police officer, district attorney coroner, and village court clerk (*see New York State Attorney General Informal Opinion 97-14*). Additionally, the Suffolk County Board of Ethics has previously assessed outside employment of Suffolk County probation officers and concluded a conflict of interest exists when the outside employment population is likely to include the same population as County probationers (*See Suffolk County Board of Ethics Advisory Opinion Number 2016-17 concluding outside employment as a court officer is a conflict for a Suffolk County probation officer*).


CONCLUSION AND DIRECTIVES

The Board finds that under the information presented the requested outside employment is not permissible under § 77-3 (B).

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: Great River, New York
4/3/2019


Eric Kopp, Chair

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