

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

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In the Matter of the Inquiry of
[REDACTED] in Capacity of a
Former County of Suffolk Public Servant

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-3
April 7, 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: The Requestor, a former County of Suffolk Department of Public Works employee has submitted an advisory opinion request to the Suffolk County Board of Ethics as part of a prospective post-employment income conflicts check with regard to his employment with a company in contract with the County. The County contract is for servicing the Bergen Point Wastewater Treatment Plant where the Requestor performed work during his former employment with the County of Suffolk. The Requestor has also asked whether a waiver would be available in the event the Board determines that there is a conflict of interest. In furtherance of the requested opinion / waiver he asserts that he was not involved in the review or award of the contract to his present employer.

Upon full Board review, the Board hereby issues this advisory opinion setting forth that pursuant to Suffolk County Code 77-6 (C), the stated prospective post-employment income does create an impermissible conflict, as the work at the Bergen Point Wastewater Treatment Plant constitutes a “particular matter” on which Requestor participated personally and substantially as a public servant. Further, there is no applicable waiver provision in the County of Suffolk Code of Ethics. Accordingly, the Board concludes that as the stated prospective post-employment activity at the Bergen Point Wastewater Treatment Plant involves a “particular matter” in which the Requestor participated personally and substantially as a as a public servant, it would create an impermissible conflict under the Code.

The prohibition limiting this post-employment activity is limited, however, to the matter in which he participated personally and substantially as a public servant, in this instance, the work at the Bergen point Wastewater Treatment Plant. The limits imposed by Suffolk County Code 77-6(I) do not preclude the Requestor’s employment by the employer generally.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77 Sections 77-6(C), and 77-6(I).

Procedural History: This request was received on 3/5/21, standing vote occurred on 3/17/2021 and the Board vote occurred within the 45 days of conclusion on fact finding under the Suffolk County Code on 4/6/2021. The Board determined by majority vote that there is an impermissible conflict of interest under the facts presented on prospective future activity.

Opinion: The Requestor, a former County Department of Public Works employee has submitted a post-

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employment advisory opinion request to the Suffolk County Board of Ethics for a conflicts check and potential waiver. This former employee retired on 2/21/2020 from his position at the County with the job title of “Director of Operations and Maintenance (Sewer District)” (*See Civil Service Spec7652*). The post-employment income conflicts check relates to prospective post-employment work, as an employee with a company CDM Smith Engineers (“CDM”). CDM has a contract with the County to provide construction management services at the Bergen Point Wastewater Treatment Plant. The Requestor’s job duties with CDM could include serving as a construction inspector and developing input into operations and maintenance manuals and on-site training at that site. During his employment with the County, the Requestor’s job duties included assignment to the Bergen Point Wastewater Treatment Plant. The Requestor has advised he was not involved in any County RFP Committees for CDM.

This requesting former employee retired from the County of Suffolk on 2/21/2020 and has been subsequently employed by CDM on non-Bergen Point projects. The prospective post-employment work in question is specifically related to the Bergen Point Wastewater Treatment Plant.

The Suffolk County Board of Ethics has reviewed the relevant provisions of the County Code inclusive of Section 77-6(C), and 77-6(I). These state in pertinent part:

- C. No person who has served as a public servant shall appear before the County, or receive compensation for any services rendered, in relation to any particular matter in which such person had participated personally and substantially as a public servant, provided that, such prohibition shall not apply to a former public servant serving as a consultant to the County, where such former public servant contracts to provide such consultant services directly with the County.
- I. Nothing contained in this section shall prohibit a former public servant from being associated with or having a position in a firm which appears before a County agency or from acting in a ministerial matter regarding business dealings with the County.

As applied to this request, the Requestor has advised that his former job duties included,

“An employee in this class supervises the operation and maintenance of wastewater treatment plants, pumping stations and collection systems and insures that all aspects of operations meet regulatory agency requirements. This position differs from that of a Wastewater Plant Operations Supervisor in the number of plants supervised and by virtue of its expanded scope and level of responsibility. Supervision is exercised over all operations and maintenance personnel directly or through subordinate supervisory personnel. The work is performed under the general supervision of a higher-level engineer and is reviewed through conferences, consultations and the submission of required reports. Does related work as required.

- Directs and supervises the operations and maintenance of a number of wastewater treatment plants, pumping stations and collection systems;
- Plans, organizes and implements a preventative maintenance program for wastewater treatment plants, related facilities and collection systems;
- Makes field inspections of wastewater treatment plants and related facilities to evaluate

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performance and worker productivity;
Assures that all operations meet Federal, State and local regulations for wastewater treatment and pumping facilities;
Develops plans for modifications and additions to wastewater treatment plants and pumping stations to correct overloading conditions, improve efficiency and facilitate operations;
Prepares specifications for capital equipment purchases;
Oversees the preparation of a variety of reports relating to the operation and maintenance of wastewater treatment plants and related facilities.” (See *Civil Service Spec 7652*).

The description of Bergen Point as described online and by the Requestor is set forth below:

“Bergen Point Waste Water Treatment Plant, which processes the effluent from the district prior to release to the ocean outfall. The Bergen Point Wastewater Treatment Plant provides primary and secondary treatment for the removal of biological oxygen demand (BOD) and suspended solids in the wastewater flow.

Installation of a new UV disinfection system to neutralize microorganisms in the effluent, providing improved worker safety and resulting in cleaner discharge into the Great South Bay.

GD expansion of the plant to provide additional treatment capacity. Due to the necessity of providing additional treatment capacity at the Bergen Point WWTP to accommodate areas that are adjacent to and outside the district boundaries, a 10-million-gallon-per-day expansion has been planned.

Upgrade of the influent grit handling facility to improve operation and maintenance costs.

Replacement of the final effluent pumps and the addition of a new pump to provided redundant capacity. The final effluent pump station at the Bergen Point Wastewater Treatment Facility conveys treated effluent through a 6½ mile outfall to the Atlantic Ocean. The final effluent pump station facility went into operation over 30 years ago and it is essential that the redundancy and service life of the facility is extended”.

As applied to 77-6 (C), the Board concludes that Requestor’s service performed at Bergen Point employed while employed by the County *do* constitute a “particular matter” under the Code and that he *did* participate in this particular matter personally and substantially as a public servant. Therefore, the Board concludes that the proposed work is not *de minimis* or ministerial and, therefore, constitutes an impermissible post-employment conflict.

The Board concludes, however, that this opinion regarding a post-employment prohibition pursuant to 77-6(C) *is limited to only the matters* in which he personally and substantially participated in as a County employee which, in this case is the identified work at the Bergen Point facility.

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Finally, the Board hereby sets forth that there is no applicable waiver provision on the County of Suffolk Code of Ethics and, therefore, the Board cannot grant the requested waiver.

CONCLUSION

The Board concludes 1) Pursuant to 77-6 (C), the stated prospective outside income does create an impermissible conflict, as it constitutes a “matter” in which the Requestor participated personally and substantially as a public servant and 2) Pursuant to 77-6 (I), the Board concludes that the above post-employment prohibition in 77-6(C) *is limited to only the matter* in which he participated as a County employee, Bergen Point.

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 advisory opinion approved by majority of the Members of the Suffolk County Board of Ethics.

Hauppauge, New York
Dated April 7, 2021

Eric A. Kopp. - Chairperson