

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

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In the Matter of the Inquiry of

██████████ on behalf of the
Suffolk County Department ██████████

ADVISORY OPINION
No. AO-2013-16

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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. Would the Suffolk County Department ██████████ be allowing a violation to occur if a former ██████████ employee appeared before a New York State Office ██████████ ██████████, less than two years post-employment, under Suffolk County Code Chapter 77, §77-6, post-employment restrictions?

GOVERNING AUTHORITY

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-6(B), Section 77-6(C), Section 77-6(I).

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 11/12/2013.
4. Fact finding was concluded on 11/22/2013.
5. The Board voted on this Advisory Opinion request on 12/16/2013.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor, the Suffolk County Department ██████████, previously employed two ██████████ until ██████████. (*Requestor's Exhibit#1*). These two employees' primary duties

included representing [REDACTED] in [REDACTED] presided over by [REDACTED] [REDACTED] employed by the New York State Office [REDACTED].

7. These two prior employees have gone into business together as “consultants” to a law firm which represents [REDACTED] applicants and recipients in [REDACTED]. These adjudications are conducted in the building where the former employees maintained their [REDACTED] work location. (*Requestor’s Exhibit#1*).

8. To date, the two former employees have been consultants reviewing the case records. With respect to case number [REDACTED] both were present at the hearing and on cases [REDACTED] and [REDACTED] they were accompanied by counsel from [REDACTED]. (*Requestor’s Exhibit#1*).

OPINION AND ANALYSIS

9. 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, a referral from [REDACTED] naming “Company X” as an approved [REDACTED] provider is in violation of the ethics laws if a former Suffolk County employee of less than 2 years post-employment, is associated with of “Company X”?

STANDING

10. The Board determined that standing exists for this Advisory Opinion request due to the requestor’s position as a public servant, and as a supervisory official who supervised a former public

servant, employed by the Suffolk County Department [REDACTED] which mandates compliance with the Suffolk County Ethics Laws¹ (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*).

PROPOSED FUTURE CONDUCT

11. The Law States in Pertinent Part²:

§ 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.

12. The Board determined that as the subject hearings are of a continuous nature and a function of the regular operations of the Department, that the request is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

13. The Law States in pertinent part:

Suffolk County Code:

§ 77-6(B). POST-EMPLOYMENT RESTRICTIONS

B. No former public servant shall appear, within a *two-year period* after his or her separation from County service, before the County agency served by such public servant. This prohibition shall not apply to a former public servant who appears before a County agency on behalf of another government entity as an elected representative or employee;

§ 77-6 (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;

§ 77-6(I).

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.

14. As to former employee restrictions, the Board, under § 77-6(B) finds that any appearance by any former employee of Suffolk County within the prohibited two year time period before the department or agency they served would be in violation of § 77-6(B). Pursuant to Chapter 77 section 77-1 “Definitions”, the Board defines an "appearance," in turn, defined as "any communication, for compensation, other than those involving ministerial matters " and ministerial matters as, “an administrative act, including the issuance of a license, permit or other permission of the County, which is carried out in a prescribed manner and which does not involve substantial personal discretion” (*see NYC COIB Advisory Opinion 94-15*).

15. The Board further finds that as applied to § 77-6(I), a former employee of any Department in the County is not in violation of the post-employment restrictions by having a position within the two year prohibited time period with a firm which appears before the County agency.

As applied to the facts presented to the Suffolk County Board of Ethics, the Board finds that a State of New York Department [REDACTED] hearing conducted under Section [REDACTED] of the New York State [REDACTED] Law and Part [REDACTED] of [REDACTED] before a New York State [REDACTED], is not an appearance before the Suffolk County Department [REDACTED]. In furtherance, the Board finds that these former employees appeared before the State of New York Department [REDACTED] as

██████████, on behalf of the Suffolk County Department ██████████, not before the Department.

CONCLUSION

16. As set forth above, the Board finds that pursuant to Suffolk County Code § 77-6(B), any appearance other than ministerial by a former employee of the Suffolk County Department ██████████ ██████████ for a two year time period would be in violation of § 77-6(B). The Board finds a former County employee representing or consulting on behalf of an Appellant before the New York State Office ██████████ is an appearance before New York State, not the Suffolk County Department ██████████ (see *Suffolk County Board of Ethics Advisory Opinion 2013-6 holding a New York State District Court's referral designating the former County employee's company as rehabilitation service provider is an appearance before the New York State District Court, not the former employer of the Suffolk County*). The Board finds that the Department of Suffolk County ██████████ is not condoning activity which would be prohibited under the Ethics Laws by having knowledge of former employees appearing before New York State.

17. As it was not inquired as part of this Advisory Opinion request, this opinion does not assess potential conflicts with respect to Suffolk County Code § 77-6(C) which prohibits a former employee from receiving compensation for any services rendered, in relation to any particular matter in which such person had participated personally and substantially as a public servant. This decision is also silent to Suffolk County Code §77-6(E) which prohibits after leaving County service, a former public servant disclosing or using for private advantage any confidential information gained from County service which is not otherwise available to the public.

18. 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.

19. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
12/16/2013

Robin L. Long, Esq. - Chair

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

² N.Y. Gen Mun. Law § 800: Article 18 of the New York General Municipal Law establishes standards of ethical conduct that are mandatory for officers and employees within the State of New York.