

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-2013-2

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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. Does a contract between the Suffolk County Department ██████████ and a not for profit company hiring a former Department ██████████ Deputy Commissioner less than two years post-employment create a conflict of interest under Chapter 77, §77-6 , post-employment restrictions?

GOVERNING AUTHORITY

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

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 1/30/2013.
4. The 2/13/2013 regularly scheduled Board meeting was cancelled.
5. The Board deliberated on this Advisory Opinion on 2/27/2013
6. Fact finding was concluded on 5/20/2013.
7. The Board voted on this Advisory Opinion request on 5/22/2013.

INFORMATION PRESENTED TO THE BOARD

8. On 11/21/2011 a not for profit company, [REDACTED] (hereinafter “Company X”), submitted a RFQ response to the Suffolk County Department [REDACTED] for a [REDACTED] (*Requestor’s Exhibit#3*).

9. As of 1/29/2013, the Requestor, Suffolk County Department [REDACTED], executed the contract with “Company X” (*Requestor’s Exhibit#3*).

10. “Company X” has selected as a former Suffolk County Department [REDACTED] Deputy Commissioner to be the Director of Operations (*Requestor’s Exhibits# 1*).

11. This former Suffolk County Department [REDACTED] Deputy Commissioner served Suffolk County from [REDACTED] and was not involved with the reviewing and scoring of the RFQ process. (*Requestor’s Exhibits# 3*).

12. This former Suffolk County Department [REDACTED] Deputy Commissioner previously supervised the [REDACTED] which will now oversee the contract between “Company X” and the Suffolk County Department [REDACTED]. (*Requestor’s Exhibits#1*).

13. The Director of Operations job duties include: oversee program start-up/development, implementation, coordination of client services and evaluation of both staff and programs; provides regular supervision to direct service staff, orients new staff to program mission, goals, policies, procedures, coordinates site coverage, ensures that the development and implementation of service plans are consistent with program goals and of maximum benefit to tenants; coordinates social services with building management services, identifies problems related to resources and personnel management; oversees production of internal and external reports, oversees staff compliance with funders guidelines. The Director of Operations will have no role or responsibility in interactions between Suffolk County Department [REDACTED] concerning contracts, per diem rates, or any other policy and/or financial

agreements between “Company X” and the Suffolk County Department [REDACTED]. (*Requestor’s Exhibits# 1*).

OPINION AND ANALYSIS

14. 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 contract between Suffolk County and “Company X” is in violation of the ethics laws if a former Suffolk County employee becomes the Director of Operations of “Company X”.

STANDING

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

PROPOSED FUTURE CONDUCT

16. 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.

17. The Board determined that as the Director of Operations is an on-going position, that the request is regarding proposed future conduct and is within the Board’s jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

18. The Law States in pertinent part:

§ 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(I). POST-EMPLOYMENT RESTRICTIONS

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.

19. The Board, under § 77-6(B) finds that any appearance by the former Suffolk County Department [REDACTED] Deputy Commissioner within the prohibited two year time period before any division of Suffolk County Department [REDACTED], 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*). The Board further finds that as applied to § 77-6(I), a former employee 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 a County agency.

CONCLUSION

20. As there has been no complaint filed against the former employee, the Board’s opinion is herein rendered only as to the requesting Department’s procedures and executed contract. The Board finds that pursuant to § 77-6(I), a contract between Suffolk County and a firm who employs a former public servant is not a violation of the ethics law.

As to the job duties statement set forth above, the Board concludes that as applied to the internal management of “Company X”, the job duties are not subject to the Board’s review. As applied to the requesting County Department, pursuant to § 77-6(B), if the requesting Department permits the former employee to appear in-person, via telephone, or in writing on any matter which is not carried out in a prescribed manner and involves substantial personal discretion within the two-year prohibited time frame, such behavior would be in violation of § 77-6(B), and within the Board’s jurisdiction to process a Complaint. Such activity would include, but is not limited to, interactions between Suffolk County Department [REDACTED] concerning contracts, per diem rates, or any other policy and/or financial agreements between “Company X” and the Department.

21. 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.

22. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
5/22/2013

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.