

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-2013-4

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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 future contract between a Suffolk County Department and a private company whose Member is a former County employee of less than two years post-employment, create a conflict of interest, individually for the former employee, and for the private company, 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), Section 77-6(I).

**PROCEDURAL HISTORY**

3. This Advisory Opinion was requested 2/11/2013.
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 4/1/2013.
7. The Board voted on this Advisory Opinion request on 4/24/2013.

### INFORMATION PRESENTED TO THE BOARD

8. The Requestor, the Suffolk County Department [REDACTED], is evaluating a contract submitted to a County RFP with a private company [REDACTED] [REDACTED] (hereinafter “Company X”) (*Requestor’s Exhibits# 2*).
9. A Member of “Company X” is a former Suffolk County Employee [REDACTED] and has been out of Suffolk County employ for less than two years. (*Requestor’s Exhibits# 2*).

### OPINION AND ANALYSIS

10. 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; contract between Suffolk County and “Company X” is in violation of the ethics laws if a former Suffolk County employee is a Member of “Company X”.

### STANDING

11. 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] [REDACTED] which mandates compliance with the Suffolk County Ethics Laws<sup>1</sup> (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*).

## PROPOSED FUTURE CONDUCT

### 12. The Law States in Pertinent Part<sup>2</sup>:

#### § 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.*

13. The Board determined that as the contract had not been entered into at the time of the Advisory Opinion request, that the request is regarding proposed future conduct and is within the Board's jurisdiction.

## POTENTIAL CONFLICTS OF INTEREST

### 14. 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.

15. The Board, under § 77-6(B) finds that any appearance by the former employee of the Suffolk County [REDACTED] within the prohibited two year time period before any division of the Suffolk County [REDACTED] inclusive of the 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), the 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

16. As set forth above, the Board finds that pursuant to § 77-6(B), that an appearance, other than ministerial by the former employee of the Suffolk County [REDACTED] for a two year time period before any division of the Suffolk County [REDACTED] inclusive of the Suffolk County Department [REDACTED], would be in violation of § 77-6(B).

17. Additionally, the Board finds under § 77-6(I), there is no violation of the post-employment restrictions by the former employee having a position within the two year prohibited time period with a firm which appears before a County agency. The Board further finds that the entire firm does not have to be excluded from appearing before the County due to the former employee’s recent Suffolk County employment.

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  
4/24/2013

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Robin L. Long, Esq. - Chair

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

<sup>2</sup> 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.