

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 ██████████
██████████

ADVISORY OPINION
No. AO-2013-6

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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 referral between the New York State District Court and a former County employee's Company, less than two years post-employment, create a conflict of interest, for the former employee's County Department, 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 3/11/2013.
4. Fact finding was concluded on 4/23/2013.
5. The Board voted on this Advisory Opinion request on 5/8/2013.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor, the Suffolk County [REDACTED], currently receives rehabilitation program referrals for [REDACTED] from the New York State District Court. (*Requestor's Exhibits#1, 2, 3*).

7. The subject referrals are signed by the [REDACTED] and the referring Assistant District Attorney and court ordered by the New York State District Court. (*Requestor's Exhibits#1, 2, 5*).

8. A member of [REDACTED] hereinafter "Company X" is a former Suffolk County Employee from [REDACTED] (holding the titles [REDACTED], [REDACTED], and [REDACTED]) and has been out of Suffolk County employ for less than two years. The Requestor does not know how many people work for "Company X". (*Requestor's Exhibits#2*).

9. Post-employment, the former employee requested that [REDACTED] Department employees send referrals to "Company X". The [REDACTED] advised the Suffolk County [REDACTED] that the former employee could not accept referrals from the Suffolk County [REDACTED]. (*Requestor's Exhibits#3*).

10. The Suffolk County [REDACTED] does not make referrals to "Company X". (*Requestor's Exhibits#1,2,3,5*).

11. The Suffolk County [REDACTED] receives the subject referrals from the District Court which names "Company X" as the treatment provider. (*Requestor's Exhibits#1,2,3,5*).

12. The Suffolk County [REDACTED] makes recommendations to the District Court as to treatment that should be received by a [REDACTED] but does not specify a specific program or vendor. (*Requestor's Exhibits# 2,4*).

13. The Suffolk County [REDACTED] does not pay for treatment rendered by "Company X". (*Requestor's Exhibits# 2*).

14. The Suffolk County Department [REDACTED] has no authority in "Company X" being a

court approved program. (*Requestor's Exhibits#2*).

OPINION AND ANALYSIS

15. 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 District Court naming “Company X” as an approved rehabilitation 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

16. 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 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

17. 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.

18. The Board determined that as the subject referrals are of a continuous nature being referred by the New York State District Court to the Suffolk County Department [REDACTED] that the request is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

19. 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.

20. The Board finds that they have no jurisdiction over the New York State District Court. The Board further finds that District Court ordered referrals designating a former County employee's company as a [REDACTED] rehabilitation provider is not under the Suffolk County Board of Ethics' jurisdiction.

21. As to former employee restrictions, the Board, under § 77-6(B) finds that any appearance by any former employee of the 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).

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

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

23. The Board finds that the 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 Suffolk County Department [REDACTED].

24. The Board finds that no referral has been made by the Suffolk County Department [REDACTED] [REDACTED] to "Company X".

25. The Board further finds that the New York State District Court's Order is not in the Suffolk County Board of Ethics jurisdiction therefore it cannot be subject to the Suffolk County Ethics Codes.

26. The Board has no authority to self-initiate a complaint against a *former* public servant under A30-5(C), Complaint's and Referrals, which states, "The Board, on its own motion, may review a past or ongoing action of a *public servant*, in the same manner as a complaint received by the Board under subsection A of this section". Therefore, absent a written complaint being filed alleging post-employment restrictions have been violated, the Board cannot assess the former employee's action solely under an Advisory Opinion request.

27. 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.

28. 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.