

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

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In the Matter of the Inquiry of

██████████ in capacity of Supervisory Official
of the Department of Social Services

ADVISORY OPINION
No. AO-2014-16

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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

Is a Department of Social Services employee permitted to become a vendor for shelter services for a social services Temporary Assistance client and receive Housing Allowance money from the County?

SUMMARY

A Suffolk County Department of Social Services employee becoming a vendor for shelter services and receiving as rent Temporary Assistance monies offered by the Department for whom that employee works would not be permissible under Sections 77-2(A) and 77-3(B) of the Suffolk County Code.

GOVERNING AUTHORITY

1. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-2(A), Section 77-3(B), (C), and (D).

PROCEDURAL HISTORY

2. This Advisory Opinion was requested on December 10, 2014.
3. Standing was voted and approved on December 17, 2014.
4. Fact finding was concluded on February 20, 2015.
5. The Board voted on this Advisory Opinion request on February 25, 2015.

INFORMATION PRESENTED TO THE BOARD:

6. The Requestor, [REDACTED] for the County of Suffolk, has requested clarification as to whether a Department of Social Services (hereinafter, “DSS”) employee may become a vendor for shelter services for individuals receiving Temporary Assistance from the County.

7. The Requestor asserts that the Department of Social Services has a long-standing policy that DSS employees may not serve as a landlord or vendor for Public Assistance housing. This policy was developed to comply with an earlier version of the County’s Code of Ethics, specifically, Section 3001, Conflict of Interest, (“No officer or employee of the County of Suffolk, whether paid or unpaid, shall: (4) Invest or hold any investment directly or indirectly, in any financial, business, commercial or other private transaction, which creates a conflict with his official duties”). The Requestor advised the Board that the DSS policy is intended to comply with the updated Suffolk County Code as well, specifically Chapter 77, Part I, Article I, Section 77-2(A) of the Suffolk County Code which states that:

“No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.”

The Requestor also advised that the policy is intended to ensure compliance with Chapter 77, Part I, Article I, Section 77-3(B) of the Suffolk County Code which provides that:

“No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.”

OPINION AND ANALYSIS

8. 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 such vendor status by a DSS employee would be in conflict with the County ethics laws?

STANDING

9. The Board determined that standing exists for this Advisory Opinion request due to the Requestor's position as a supervisory official of a public servant. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

10. The Law States in Pertinent Part:

§ 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.

11. The Requestor seeks guidance regarding the subject future conduct. The Board has determined that since the action is proposed for the future, the request is within the Board's jurisdiction.

ANALYZED SECTIONS OF LAW

12. The analyzed laws state in pertinent part:

§ 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY

A. No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.

§ 77-3. PROHIBITED CONDUCT

B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.

OPINION AND ANALYSIS

13. The Suffolk County Ethics law provides that, “[n]o public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.” *Suffolk County Code*, § 77-2(A). The Administrative Code defines the word “firm” broadly to include a sole proprietorship, joint venture, partnership, corporation, or “any other form of business enterprise.” *Id.* at § 77-1.

14. In the proposal suggested herein -- a County social services department employee becoming a vendor of housing for recipients of public assistance – the DSS employee would obtain an ownership interest in a sole proprietorship doing business with the department served by such employee, even if the vendor has not registered as a sole proprietor because the statute broadly includes “any form of business enterprise.” *Id.* at § 77-1.

15. Therefore, a Department of Social Services employee doing business as a vendor for housing with the very department served by such employee would constitute a violation of Section 77-2(A) of the Suffolk County Code.

16. In addition, the County Ethics law provides that, “[n]o public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.” *Suffolk County Code*, § 77-3(B).

17. A Department of Social Services employee doing business as a vendor for housing with the very department served by such employee would create the appearance of a conflict of interest which contravenes the spirit of the County ethics law. Thus, even if the employee’s responsibilities do not include Temporary Assistance eligibility determinations or case management for Temporary Assistance applicants, and even if case access is restricted, the employee’s status as a vendor for services offered by the very Department for which the employee works would be inappropriate.

18. It also bears important mention that public servants are prohibited from using their positions to obtain a financial benefit, *Suffolk County Code § 77-3(C)*, and are prohibited from disclosing or using confidential information concerning the property, affairs or government of the County which is obtained as a result of the public servant's official duties and not otherwise available to the public. *Id. at § 77-3(D)*.

19. In this case, the Department of Social Services has adopted a policy that holds that employees working in its Department shall not become vendors for services offered by that Department. Specifically, the policy states that,

“[A] Department of Social Services employee shall not rent housing quarters to Public Assistance recipients. This would be a violation of the Code of Ethics. You may also not be a vendor connected with Public Assistance Housing”

Suffolk County Department of Social Services Employee Manual, at p. 11.

Although the aforementioned policy cites to a section of an earlier version of the County's Code of Ethics, specifically, Section 3001, Conflict of Interest, the language of the current code is nearly identical. *Compare* Section 77-3(B) (“No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties”) *with* Section 3001, Conflict of Interest (“No officer or employee of the County of Suffolk, whether paid or unpaid, shall: (4) Invest or hold any investment directly or indirectly, in any financial, business, commercial or other private transaction, which creates a conflict with his official duties”). The Department of Social Services did not rescind or amend its policy regarding compliance with the Code of Ethics after the Suffolk County Code was updated.

The Board supports the Department of Social Services policy that employees working in its Department shall not become vendors for services offered by that Department and this decision is in accord with such policy. Such a result will avoid any appearance that the County employee at issue is

using his or her official position with the Department of Social Services for personal gain and will ensure the integrity of the Department decision-making.

CONCLUSION

20. Accordingly, the Board finds that pursuant to Suffolk County Code, the requested future conduct, as described herein, is not permissible under Sections 77-2(A) and 77-3(B).

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: Great River, New York
2/25/2015

Robin L. Long - Chairperson