

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

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In the Matter of the Inquiry of

██████████

**ADVISORY OPINION**  
No. AO-2015-10

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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. **Question:** Upon leaving County employment, can a former ██████████ of Social Services have employment with a non-profit agency that houses the homeless on behalf of Suffolk County?

**Answer:** A former County employee can be associated with, or have a position in a firm, which appears before the County but cannot appear, within a two-year period after separation from County service, before the County agency served by such public servant and can never appear before the County or accept compensation in connection with any matter he or she was involved with substantially as a County employee. Moreover, prior to retirement or separation from the County, a County employee cannot solicit, negotiate for, or accept employment with any private sector firm which is involved in business dealings with the County while such public servant is directly concerned with or personally participating in those business dealings on behalf of the County.

**GOVERNING AUTHORITY**

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

### PROCEDURAL HISTORY

3. This Advisory Opinion was requested 6/30/2015.
4. Standing was voted and approved on 7/1/2015.
5. Fact finding was concluded on 9/10/2015.
6. The Board voted on this Advisory Opinion request on 10/7/15.

### INFORMATION PRESENTED TO THE BOARD

7. The Requestor is a current [REDACTED] of Social Services.
8. To date, the Requestor has not retired or accepted a post-employment position.
9. The Requestor asserts that his post-employment is anticipated to have minimal or no communications with Suffolk County Government.

### 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 a current [REDACTED] of Social Services can have post-employment with a non-profit agency that houses the homeless on behalf of Suffolk County?

### STANDING

11. The Board determined that standing exists for this Advisory Opinion request due to the Requestor's position as a County employee<sup>1</sup> (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code 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 Requestor seeks guidance regarding the subject future conduct. The Board has determined that since retirement has not yet occurred, the request is within the Board's jurisdiction.

**ANALYZED LAWS****14.** § 77-6. POST-EMPLOYMENT RESTRICTIONS.

C. No public servant shall solicit, negotiate for, or accept employment with any firm which is involved in business dealings with the County while such public servant is directly concerned with or personally participating in those business dealings on behalf of the County. This prohibition shall not apply to positions in the federal, state or any local government.

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.

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.

\* \* \*

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 holds under § 77-6(A) that a public servant shall not solicit, negotiate for, or accept employment with any firm which is involved in business dealings with the County while such public servant is directly concerned with or personally participating in those business dealings on behalf

of the County. Accordingly, prior to retirement, the Requestor cannot solicit, negotiate for, or accept employment with any private sector firm which is involved in business dealings with the County while the Requestor is directly concerned with or personally participating in those business dealings on behalf of the County.

**16.** In addition, the Board holds under § 77-6(B) that any appearance by any former employee of Suffolk County within the prohibited two year time period before the department or agency he or she served would violate § 77-6(B). Pursuant to Chapter 77 section 77-1 “Definitions,” the statute defines an appearance as “. . . any communication, for compensation, other than those involving a ministerial matter;” ministerial matters is defined 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*).

**17.** Moreover, the Board holds under § 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.

**18.** However, the Board holds 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 or individually appearing before a different department or agency than the department or agency that the former employee served.

**19.** As applied to the facts presented to the Suffolk County Board of Ethics, the Board finds that the Requestor, when retired, can be associated with, or have a position in a firm which appears before the County but cannot appear, within a two-year period after separation from County service, before the County agency served by such public servant (the Department of Social Services). Additionally, the Requestor can never appear before the County (at any Department or Agency) or accept compensation in connection with any particular matter he was involved with substantially as a County

employee. Because the Requestor, as [REDACTED] of Social Services, is at times involved in certain vendor selection processes for non-profit agencies that contract with the County, the Requestor is cautioned that he may never appear before the County or accept compensation in connection with any contract he was involved with substantially as a County Employee. (See §77-1 (“Particular Matter” includes any case proceeding, application, request for a ruling or benefit, determination, contract ... which involves a specific party or parties.)

## CONCLUSION

**20.** As set forth above, the Board finds that pursuant to Suffolk County Codes § 77-6(A), (B), (C), and (I), that the Requestor can accept post-employment with a non-profit agency that houses the homeless on behalf of Suffolk County as long as he does not appear before the Department of Social Services for two years, never appears before the County on a matter he worked on substantially as a public servant, and does not solicit such post-employment prior to retirement while directly concerned with or personally participating in those business dealings with the future employer on behalf of the County.

**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  
10/7/15

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Linda A. Spahr, 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.