

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

-----X  
In the Matter of the Inquiry of

  
on behalf of Suffolk County Department of Health

**ADVISORY OPINION**

No. AO-2014-6

-----X

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. Would a contract between the Suffolk County Department of Health and a former Suffolk County Department of Health Employee for per diem services more than two years post-employment be a violation of the Suffolk County post employment laws?

**SUMMARY**

2. The Board holds that under § 77-6(I), a former employee of any Department in the County is not in violation of this two year ban on post-employment by having business dealings with the County agency they served after the two year time period has expired. The Board holds that under the lifetime ban of 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.

**GOVERNING AUTHORITY**

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

**PROCEDURAL HISTORY**

4. This Advisory Opinion was requested 6/25/2014.
5. Standing vote occurred on 6/30/2014.
6. The Board voted on this Advisory Opinion request on 7/8/2014.

**INFORMATION PRESENTED TO THE BOARD**

7. The Requestor, a supervisory official of a former public servant, requested this Advisory Opinion. (*Requestor's Exhibit#1*).
8. Former Suffolk County Social Worker [REDACTED] was the subject of a lay off with her last day of employment with the County on [REDACTED] (*Requestor's Exhibits #1*).
9. Post employment, this former employee submitted a response to a County RFP for services that are distinct and separate from any matter that she worked on as an employee (*Respondent's Exhibit #2*).
10. The Requesting Department anticipates a contract date for such services to be awarded and commence after [REDACTED].

**OPINION AND ANALYSIS**

11. 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 Suffolk County Department can enter into a service contract with a former County employee, more than 2 years post-employment,

without violation of the ethics laws?

## STANDING

12. The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a supervisor of a former public servant<sup>1</sup> (*Suffolk County Administrative Code §A30-1, §A30-3(as amended 6-4-2012 by L.L No. 28-2013, Suffolk County Code Chapter 77, §77-1).*)

## PROPOSED FUTURE CONDUCT

13. 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.*

14. The Requestor seeks guidance regarding the subject of future conduct. The Board has determined that since the subject contract has not yet been effectuated, the request is within the Board's jurisdiction.

## POTENTIAL CONFLICTS OF INTEREST

15. The analyzed laws states in pertinent part:

I. Suffolk County Code:

§ 77-6. **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;

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

\*\*\*

16. 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 they 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 ministerial matters;” 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. The Board holds that under § 77-6(I), a former employee of any Department in the County is not in violation of this two year ban on post-employment by having business dealings with the County agency they served after the two year time period has expired. As applied to the facts presented to the Suffolk County Board of Ethics, the Board finds that the two year ban on appearing before the County Agency served would expire on [REDACTED]. Additionally, the Board finds that this future conduct would result in the former employee being compensated for work performed as an agent of the County, not in the prohibited capacity of “coming before the County Agency served” in the roles such as an advocate, liaison, or lobbyist for a client.

18. The Board holds that under the lifetime ban of 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. As applied, the proposed future conduct would not violate this provision as the former employee would be, “working in a new program providing treatment to our young people experiencing their first psychotic episode” (Requestor’s Exhibit “1”).

19. This Advisory Opinion does not address the content, scope, or process of the requesting Department’s vendor selection process.

**CONCLUSION**

**20.** The Board finds that the former employee's two year post-employment ban under § 77-6(B) as to appearing before the County Agency served expires on [REDACTED].

**21.** The Board finds that the proposed future conduct does not violate the lifetime ban under §77-6(C) as no work product is being performed on identical matter.

**22.** The Board directs under §77-6(C) that the requesting Department cannot compensate this or any former County employee for any services rendered, in relation to any particular matter in which such person had participated personally and substantially as a public servant. As such, a former employee cannot receive compensation in a subsequent role as a vendor for any such specified matter.

**23.** 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.

**24.** The forgoing is the opinion of the Board.

Dated: Yaphank, New York  
7/8/14

---

Robin L. Long – Chair

---

<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.

Dated: Yaphank, New York  
7/23/14

---

Robin L. Long<sup>3</sup> – Chair

---

<sup>3</sup> Re: Procedural History: Resigned due to document preparation error