

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-2013-21

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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. Can a full time Suffolk County Department ██████████ ██████████, on non-county time as an independent contractor providing trainings to pre-K and elementary program teachers a conflict of interest under the Suffolk County Ethics Laws? What are the post-employment restrictions for a full time Suffolk County Department ██████████ ██████████?

SECTIONS OF LAW INTERPRETED

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

PROCEDURAL HISTORY

- 3. This Advisory Opinion was requested 12/9/2013.
- 4. Fact finding was concluded on 2/1/2014.
- 5. The Board voted on this Advisory Opinion request on 3/12/2014.

INFORMATION PRESENTED TO THE BOARD

- 6. Suffolk County SOP A-15, “Outside Employment of Suffolk County Employees” (SCBE Exhibit # 1).
- 7. The Requestor is a Suffolk County Department ██████████ ██████████. (Requestor Exhibit #1).

8. The Requestor's job duties include:

“TYPICAL WORK ACTIVITIES

Assists in ensuring that all laws and regulations pertaining to the provision of services to disabled children are complied with;

Interacts with program and service providers, parents, State Education Dept. and State Health Dept. personnel, special education chairpersons (CPSE) and school district personnel;

Selects and supervises consultants to review CPSE evaluation materials and attend CPSE meetings as municipality voting member;

Assists in the development of policy and procedures for bureau programs;

Assists in the development of training materials and the training of staff and service providers”. (*SCBE Exhibit 2- Civil Service Assistant Coordinator of Special Education Job Description*).

9. The Requestor's self-employment would be conducted on non-county time commencing after [REDACTED] Suffolk County work shift concluded. (Requestor Exhibit #2).

10. The Requestor mailed fliers to prospective clients' which advertises [REDACTED] County title (Requestor Exhibit #3).

11. The Requestor was issued an outside employment denial by [REDACTED] department (Requestor Exhibit # 4).

12. The Requestor ceased all such outreach since being issued this denial (Requestor Exhibit # 1).

13. The Requestor states that [REDACTED] wants to commence such self-employment, post-employment with Suffolk County (Requestor Exhibit # 1).

OPINION AND ANALYSIS

14. 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 full time Department [REDACTED] employee engaging in self-employment be a violation of the ethics laws”?

STANDING

15. 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

16. 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.

17. The Board determined that requestor has not yet commenced the outside employment, the request is regarding proposed future conduct and is within the Board’s jurisdiction.

POTENTIAL CONFLICTS OF INTEREST

18. The Law States in pertinent part:

§ 77-3(B). 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;

§ 77-3(C)

C. No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.

§ 77-3 (D).

D. No public servant shall disclose any confidential information concerning the property, affairs or government of the County which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public or use such information to advance any financial or private interest of the public servant or of any person associated with the public servant;

§ 77-3 (H).

H. No public servant shall, for compensation, represent private interests before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County;

19. The Suffolk County Standard Operating Procedure A-15 paragraph 5, “Policy for Outside Employment for County Employees” states,

(5) Employees represented by collective bargaining units are subject to any and all provisions and restrictions relating to outside employment contained in current collective bargaining agreements. These employees should review their collective bargaining agreements and determine whether they contain outside employment provisions and restrictions. Employees represented by collective bargaining units are also subject to current and future County and

departmental procedures and policies which are not inconsistent with the terms of the existing collective bargaining agreements. Employees who are excluded from the collective bargaining units are subject to departmental or County policies and procedures regarding outside employment which are now in effect or which may be promulgated in the future.

All outside employment is also subject to the following provisions:

- (1) Outside employment may not involve or appear to involve a conflict of interest or a potential conflict of interest.
- (2) Outside employment may not be undertaken on regularly scheduled work time.
- (3) Outside employment may not be undertaken on sick time.

The Suffolk County Standard Operating Procedure A-15 paragraph 6, “Conflicts of Interest” states,

(6) “Suffolk County employees are prohibited from engaging in outside employment which would conflict, *appear* to conflict or potentially conflict with the proper performance of their official duties. Guidelines for what constitutes a conflict of interest are outlined in the Code of Ethics, Article XXX of the Suffolk County Charter. The Board of Ethics is empowered to render advisory opinions with respect to the Code of Ethics” (italics added).

20. As set forth above, the Board of Ethics, pursuant to Suffolk County Standard Operating Procedure A-15, is empowered to render advisory opinions with respect to the Code of Ethics. It bears important mention that the Board’s statutorily enumerated authority is to render advisory opinions with respect to Chapter 77, Part 1, Article 1 of the Suffolk County Code or other applicable provision of law governing conflicts of interest. *Suffolk Co. Admin. Code A 30-3*. Accordingly, the Board makes no determination and gives no opinion regarding an intra-departmental determination of an appearance of conflict pursuant to the Suffolk County Standard Operating Procedure A-15.

21. The Board finds that as one of the enumerated job duties requires the Requestor to, ‘Interact with program and service providers, parents, State Education Dept. and State Health Dept. personnel, special education chairpersons (CPSE) and school district personnel’, that there is a potential conflict under § 77-3(B), as to the conflict with the proper discharge of his or her official duties exists

as it is the same population of persons (head start, pre-K, and elementary program teachers) from which ■ private self-employment would be financially benefitting.

22. To that end, under § 77-3(C), “No public servant shall use his or her official position or office, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself”. As such, the flier sent soliciting private business while being employed by Suffolk County, does present a conflict by use his or her official position in an advertising manner.

23. As to post-employment, the law is clearly delineated. Upon the end of employment with Suffolk County, the Requestor must abide by the following restrictions:

POST-EMPLOYMENT RESTRICTIONS

- § 77-6. A. 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.
- E. No public servant shall, after leaving County service, disclose or use for private advantage any confidential information gained from County service which is not otherwise available to the public; however, this shall not prohibit any former public servant from disclosing any information concerning conduct which the public servant knows or reasonably believes to involve waste, inefficiency, corruption, criminal conduct or conflict of interest.
- 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.

CONCLUSION

24. As set forth above, the Board further finds that engaging in the advertised activity inclusive of using [redacted] County title would create a conflict of interest under § 77-3(B).

25. The Board finds that sending such solicitations of interest while employed by Suffolk County, is a conflict of interest under § 77-3(B).

26. The prior solicitations, which resulted in a departmental conflicts denial, cannot recommence while employed by the County.

27. The Board finds that as the Requestor ceased all advertisement using [redacted] official position upon notice of [redacted] department, the Board is not commencing a self-initiating complaint.

28. The Board finds post-employment, that the Requestor is not barred from soliciting and engaging in self-employment in accordance with the restrictions set forth above.

29. The Board directs the Requestor is not relieved of departmental or union directives by way of this Advisory Opinion.

30. The Advisory Opinion herein is only binding on the Board as to the facts presented to the Board for analysis. 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.

31. 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.

32. The forgoing is the opinion of the Board.

Dated: Yaphank, New York

3/12/2014

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.