

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS-----X
In the Matter of the Inquiry of [REDACTED]**PLAIN LANGUAGE
CLARIFICATION****ADVISORY OPINION**
No. AO-2014-12-----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. Summary: A County part-time environmental engineer can perform outside employment work for a private firm on consulting projects as long as he does not work on County projects or appear before any department or agency of Suffolk County.

APPLICABLE LAWS

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

PROCEDURAL HISTORY

- 3.** This Advisory Opinion was requested 9/24/2014.
- 4.** Fact finding concluded on 11/1/2014.
- 5.** The Board voted on this Advisory Opinion on 11/19/2014.
- 6.** The Requestor submitted a reconsideration request on 11/25/14.
- 7.** The Board approved a plain-language clarification by vote on 12/3/2014.
- 8.** The plain-language clarification was approved on 12/17/2014.

INFORMATION PRESENTED TO THE BOARD

9. The Requestor is part-time County Employee in the Suffolk County Department of Public Works Department in the job title “ [REDACTED]”, at an hourly rate not to exceed \$30,000 per year. He does not receive County benefits other than his County Employee Retirement System benefits from his former County job. (*Requestor’s Exhibit # 1*). His current job duties include correcting DEC violations for the County with respect to County waste water treatment plants.

10. The Requestor is a licensed environmental engineer who was offered a consulting position with an outside engineering firm. He has no interest or investment with the potential outside employer.

11. The potential outside employer is [REDACTED]. The offered consulting position would require the Requestor to design private sector waste water treatment plants.

12. The Requestor has certified to the Board that he will not work on any Suffolk project in his outside employment, attend or appear before, Suffolk County Government for such projects. As an environmental engineer, the requestor is not permitted by law to certifying engineering project plans. The future employer asserted to the Board, “We have many projects with private clients which do not involve the SCDPW in any way and do not go before SCDPW for review or approval. I can confirm to you that it would be ONLY those types of projects that [REDACTED] would participate in while in our employ.” (*see Requestor’s Reconsideration Request*”).

13. On [REDACTED], the Requestor’s Supervisor informed him via email that the Law Department advised him to go through Board process and request an Opinion from the Board.

14. County Comptroller records reflect that [REDACTED] had a contract

in place with the County as of [REDACTED]. (*SCBE Exhibit #1*).

15. The Requestor did not submit any information regarding any procurement between the County and [REDACTED].

16. As the documentary evidence submitted by the Requestor and the Board directed telephone fact-finding inquiries of the Executive Director satisfied the Board's factual inquiries, the Board did not elect their statutory right of an in person appearance of the Requestor under Suffolk County Administrative Code A30-3(A).

OPINION AND ANALYSIS

17. In considering this inquiry, the Board employed the following three-step analysis to determine whether a violation of Section 77-3 would occur in accepting this outside employment:

- 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 Requestor's outside consulting business in designing waste water plants a conflict under the Suffolk County Code of Ethics?

STANDING

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

PROPOSED FUTURE CONDUCT

19. 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.

20. The Board determined that the request is regarding proposed future conduct and is within the Board's jurisdiction.

Sections of Law and County Policy Analyzed

21. 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 (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. For a public servant who is not a County employee, this prohibition shall apply only to the agency served by the public servant.

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).

22. 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. However, the Board notes there is indicia that the Requestor’s supervisor deferred this decision to a Board Opinion by directing him to seek Board advice prior to assessing the appearance of potential conflict.

23. As applied, the Board finds that under § 77-3 (H) no public servant shall, for compensation, represent private interests before *any* County agency. Such appearance would not be permitted under § 77-3 (B), as it would interfere with proper discharge of his official County duties.

24. As such, the Board directs that the Requestor, a current County employee, may not appear¹ in person, on the phone, or by way of a document submission at any County Department or Agency, while working at his outside employment. The Board further directs that the all employee lifetime ban of working on a particular matter which the employee participated personally and substantially as a County employee applies to the Requestor § 77-6 (C). Additionally the Board direct that no confidential County information pursuant to 77-3(D), be disclosed by the Requestor in any capacity.²

CONCLUSION

25. The Board finds that under the information presented, and in following the above directives, the requested outside employment is permissible under § 77-3 (B) and § 77-3 (H).

26. Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the Requestor 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.

27. The forgoing is the opinion of the Board.

Dated: Great River, New York
12/17/2014

Linda A. Spahr, Esq. – Vice Chairperson

¹ 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*).

² § 77-3. PROHIBITED CONDUCT.

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;