

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

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In the Matter of the Inquiry of [REDACTED]

ADVISORY OPINION
No. AO-2014-11

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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 the [REDACTED] provide management and coaching services to emergency services companies for Fire Districts in 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 77-5(E).

PROCEDURAL HISTORY

- 3. This Advisory Opinion was requested 8/22/2014.
- 4. The Requestor provided a fact finding response on 9/15/2014.
- 5. Fact finding concluded on 11/7/2014.
- 6. The Board voted on this Advisory Opinion on 11/19/2014.

INFORMATION PRESENTED TO THE BOARD

7. The Requestor is the [REDACTED] employed by Suffolk County in the Department of Fire, Rescue, and Emergency Services.

(Requestor's Exhibit # 1- Civil Service Job Duty Statement).

8. On [REDACTED] the Requestor received approval from his then, and current, Department Head, [REDACTED] for "Dual/Outside Employment" with the Suffolk County Community College and for his Consultant & Project Management Professional Services *(Requestor's Exhibits# 2).*

9. The employer did not elect the pre-formatted options of, "I have disapproved your employment," or, "I will be contacting the Board of Ethics for an advisory opinion. As soon as I receive a response from the Board, I will contact you."

10. The Requestor established that he is also is subject to annual conflicts review in capacity as the volunteer [REDACTED] Fire Department Commissioner. This review is conducted annually as, "All fire district audits must be conducted in accordance with standards applicable to financial audits prescribed in the Government Auditing Standards (GAS) issued by the Comptroller General of the United States" *(NYS Comptroller website at: <http://www.osc.state.ny.us/localgov/firedist/faq.htm#ethics>).* As such, [REDACTED] Fire Department's auditing firm, [REDACTED], is the entity for submitting all compliance measures with this requirement. In an effort to exercise continued conflicts checks, the Requestor requested a conflicts opinion from [REDACTED] with respect to his position as the [REDACTED] Fire Department Commissioner on [REDACTED] and consulting firm *(Requestor's Exhibits #3 and #4).*

11. The Requestor advised the Board through a telephone fact-finding process, that additional due diligence steps were taken on behalf of the County Department to confirm that there is no job duty conflict with the subject outside consulting work. This included the Requestor's acceptance of a verbal non-competition agreement whereas the Requestor would not

engage in advising outside clientele in a manner that could impede the County in securing grant funding from the same sources.

12. The Requestor also advised the Board through a telephone fact-finding process, that there are no current outstanding contracts with the outside employment and all outside matters were placed on an indefinite “hold” to ascertain the Board’s opinion on this outside employment.

OPINION AND ANALYSIS

13. In considering this inquiry, the Board employed the following three-step analysis to determine whether a violation of Section 77-4(B) would occur:

- 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 grant writing is a conflict under the Suffolk County Code of Ethics?

STANDING

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

PROPOSED FUTURE CONDUCT

15. 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.

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

Sections of Law Analyzed

17. 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 (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;

18. 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).

19. 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 that grant writing is not part of the Requestor’s current job duty statement.

20. As applied, the Board finds under § 77-3(B), that the Requestor has properly relied upon a Departmental determination and received timely Departmental approval in

writing that performing such consulting work would not interfere with his County job duties.

21. Additionally, the Board finds that with respect to activity which pre-dates this Advisory Opinion Request, the Requestor took all proper steps and reasonable relied upon the Department Head's determination that this was permissible activity with no per se deviation from the Code of Ethics or the County SOP A-15. Therefore the Board is not converting this Advisory Opinion into a Board self-initiating complaint.

22. However, as to future activity under § 77-3 (D), the Board finds that while assisting in Town management and instruction of Town Fire Departments Grant writing is not confidential information on its face, County employees must not use any information obtained in the course of his official duties inclusive but not limited to County projects, County non-public data, or file names in the course of his outside employment. As such, the Board finds that the Department's requirement of verbal non-competition agreement is sufficient indicia that potential innate conflict does exist on the subject matter of the outside business activity. Therefore, the Board finds future activity by the Respondent in this job title with respect to grant writing for Fire Districts to be an impermissible conflict of interest.

CONCLUSION

23. The Board finds that under the information presented, the requested outside employment is not permissible under § 77-3 (B) and § 77-3 (D).

24. The Board directs that in the event the Requestor's job duty statement is amended to include grant writing of the same subject material as his outside business, that this would also rise to a conflict in official duties and such outside employment would be prohibited.

25. 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.

25. The forgoing is the opinion of the Board.

Dated: Great River, New York
11/19/2014

Robin L. Long, Esq. – Chair