

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-2016-16



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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. *Advisory Opinion Inquiry:* Does the outside independent contractor position with a grass root advocacy corporation for state pharmaceutical laws interfere with the proper discharge of official County duty?

SUMMARY

2. *Conclusion:* Based upon the information presented to the Board, the outside independent contractor position would not interfere with the proper discharge of official duty.

GOVERNING AUTHORITY

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-2(A), Section 77-2(B), Section 77-4.

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 7/11/2016.
5. Fact finding was concluded on 9/2/2016.
6. The Board voted on this Advisory Opinion request on 9/7/2016.

INFORMATION PRESENTED TO THE BOARD:

7. The requestor is [REDACTED] Aide for a County Legislator.

8. The Requestor is seeking to be a part-time independent contractor to the company [REDACTED] assigned to [REDACTED]. As per the corporations website, [REDACTED] is, “a firm founded to help our clients win their business-to-business, legislative (federal, state, local), regulatory, crisis management and reputation goals with new third party advocates.” (See SCBE Exhibit “1”).

9. As per [REDACTED]’s website the company , “is a fully integrated pharmaceutical facility that houses management, administration and support, commercial operations, manufacturing, and product development. It includes a state-of-the-art manufacturing suite, next-generation product development laboratories, a fully equipped education and training conference center, and administrative offices. [REDACTED] is a research-driven biopharmaceutical company devoted to commercialization of innovative products in the fields of infertility and reproductive health, gastroenterology, gynecology, orthopaedics and urology.” (See SCBE Exhibit “2”).

10. The Requestor’s supervisor, a County Legislator, has approved the outside position contingent on County SOP compliance and conflicts. (See Requestor’s exhibit “B”).

11. The Requestor set forth in a fact finding telephone conference with the Executive Director of the Suffolk County Board of Ethics that the outside income would be on grass roots initiatives regarding subject matters of State health care laws. The Requestor represents that these laws would not be presented in any capacity to the County Government. The Requestor represents that all outside work would be performed on non-County time and his County title would not be used in any capacity. The Requestor represents that [REDACTED] is not in contract with the County. The Board directed a fact finding to determine if [REDACTED] has any business dealings with the Suffolk

County Department of Health. This fact finding resulted in the Department of Health advising there are no business dealings with [REDACTED].

OPINION AND ANALYSIS

12. 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 holding both public servant positions would be in conflict with the County ethics laws?

STANDING

13. The Board determined that standing exists for this Advisory Opinion request due to the Requestor’s position as a current County employee. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

14. 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.

15. The Requestor seeks guidance regarding the subject future conduct. The Board has determined the request is within the Board’s jurisdiction.

ANALYZED SECTIONS OF LAW SECTIONS AND COUNTY PROCEDURE SOP A-15

16. The analyzed laws state in pertinent part:

§ 77-1 Definitions

PUBLIC SERVANT All officials, officers and employees of the County, whether paid or unpaid.

§ A30-3. ADVISORY OPINIONS.

E. For the purpose of this section only the term public servant includes a prospective or former public servant and a supervisory official includes a supervisory official who will supervise a *prospective public servant* or a supervisory official who supervised a former public servant.

[Added 6-4-2013 by L.L. No. 28-2013]

COUNTY PROCEDURE SOP A-15

The Suffolk County Standard Operating Procedure A-15 paragraph 5, “Policy for Outside Employment for County Employees” states in relevant part:

(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.* (italics added).

(2) Outside employment may not be undertaken on regularly scheduled work time.

(3) Outside employment may not be undertaken on sick time.

(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).

OPINION AND ANALYSIS

17. As to SOPA-15 subsection 1, the Requestor set forth that his outside income would not occur on his County employment time. This time regulation and the subject matter of the outside employment being State laws, renders the Board's opinion that the two positions do not "*involve or appear to involve a conflict of interest or a potential conflict of interest*" as is prohibited by SOPA-15.

CONCLUSION AND DIRECTIVES

18. Accordingly, assuming compliance with the SOPA-15 regulations on outside employments, the Board finds maintaining both public servant positions permissible under the County Code of Ethics.

19. The Requestor will continue to be subject to the other provisions of the County Ethics Code, particularly that the Requestor may only engage in his outside employment at times when he is not required to perform services for the County; he may not use County resources in connection with his non-County activities; he may not disclose or use for private advantage any confidential information concerning the County; and he may not appear before the County Legislature in any capacity in the outside Employment. (See, e.g., *Suffolk County Code*, §§ 77-3(B), (C), (D), (N)).

20. 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.

21. The forgoing is the opinion of the Board.

Dated: Great River, New York
9/21/ 2016

Linda A. Spahr - Chair