

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

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In the Matter of the Inquiry of

██████████ in capacity of Supervisory Official
of the Department ██████████

ADVISORY OPINION
No. AO-2016-9

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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

Q: Is it a conflict of interest for a Department ██████████ ██████████ to conduct ██████████ evaluations in his outside business for County employees and submit bills for such services to Suffolk County ██████████ for payment?

CONCLUSION

A: A Suffolk County employee cannot be conducting ██████████ ██████████ evaluations in his outside business for County employees and submit bills for such services to Suffolk County ██████████ for payment under Sections 77-2(B) and 77-3(H) of the Suffolk County Code.

GOVERNING AUTHORITY

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

PROCEDURAL HISTORY

2. This Advisory Opinion was requested on March 23, 2016.
3. Fact finding was concluded on April 18, 2016.
4. The Board voted on this Advisory Opinion request on April 20, 2016.

INFORMATION PRESENTED TO THE BOARD:

5. The Requestor, a Supervisory Official of the County [REDACTED], has requested this advisory opinion to determine if a County [REDACTED] can conduct [REDACTED] evaluations in an outside business for County employees and submit bills for such services to Suffolk County [REDACTED]. (SCBE Exhibit 1).

6. The Requestor asserts that the [REDACTED] employee, a [REDACTED] [REDACTED], did not fully disclose his outside position at home business on the “Dual/Outside Employment Report - (SCBE Exhibit 2).

7. The Requestor asserts that the employee is conducting [REDACTED] [REDACTED] and evaluations in his outside business for County employees, inclusive of a [REDACTED] and is submitting invoices for payment to Suffolk County [REDACTED] (SCBE Exhibit 1).

8. Suffolk County [REDACTED] [REDACTED] and [REDACTED] are paid exclusively from self-insured Suffolk County funds.

9. The Requestor asserts that this ongoing activity became known to the Department [REDACTED] in 2016 upon Department [REDACTED] employee [REDACTED] and recognizing the name of the [REDACTED] [REDACTED] to be employed by the Department [REDACTED].

10. Upon review of the information submitted to the Board, the subject County [REDACTED] employee is conducting [REDACTED] [REDACTED] and submitting invoices for payment for three County employees, employed by three different Departments, namely 1) [REDACTED] 2) [REDACTED] 3) [REDACTED].¹

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 such outside business is in conflict with the County ethics laws?

STANDING

13. The Board determined that standing exists for this Advisory Opinion request due to the

¹ The County [REDACTED] is [REDACTED] of [REDACTED]. The County employees evaluated by [REDACTED] as submitted to the Board are: [REDACTED], [REDACTED], and [REDACTED].

Requestor's position as a supervisory official of a public servant. (*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 ongoing conduct. The Board has determined in prior opinions that future conduct is inclusive of on-going conduct, and supervisory officials have the right to request a determination regarding on-going conduct under SCAC §A30-5(B). As such, the request is within the Board's jurisdiction.

ANALYZED COUNTY PROCEDURE SOP A-15 and SECTIONS OF LAW SECTIONS 77-2(B) and 77-3(H)

- 16.** The analyzed laws state in pertinent part:

§ 77-1 Definitions

"AGENCY SERVED BY A PUBLIC OFFICIAL" A. In the case of a County employee, the agency employing such employee.

"APPEAR" To make any communication, for compensation, other than those involving ministerial matters.

"MINISTERIAL MATTER" 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.

"SUPERVISOR" Any person having the authority to control or direct the work of a public servant.

§ 77-2. Prohibited Interests In Firms Doing Business With The County

B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

§ 77-3 Prohibited Conduct

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.

COUNTY PROCEDURE SOP A-15

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.* (italics added).

(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).

OPINION AND ANALYSIS

16. The Suffolk County Code provides at § 77-2 that, “No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.” As applied, a Department ██████████ cannot own a ██████████ which is engaging in the business dealings with the County. The act of evaluating County employees ██████████ and submitting bills for payment to Suffolk County ██████████ is a business dealing with the County. As such, this activity by a County employee is a prohibited activity under the County Code.

17. Additionally, § 77-3(H) prohibits such outside employment, “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”. In the issue presented here, the County agency is ██████████. The Board’s conflict of interest analysis for a County Employee is with respect to the entire County due to the prohibition in § 77-2.² Accordingly, the on-going actions of submitting payment claims to Suffolk County ██████████, is a prohibited appearance on behalf of private interests in matters involving the County.³ Therefore, a Department ██████████ employee is prohibited conduct under the Suffolk County Code from such a prohibited interests in a firm doing business with the County (See *COIB v. E. Dockery*, COIB Case No. 2010-880 (2012)).⁴

² “§ 77-2. Prohibited Interests In Firms Doing Business With The County

B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

³ The New York City Conflict of Interest Board has fined public servants who worked part-time for a firm that was engaged in business dealings with their City agency. See *Ludewig*, COIB Case No. 97-247 (Dec. 1998) (firefighter who had worked part-time as a salesman for a vendor that the firefighter knew was engaged in business dealings with the Fire Department, and who continued to work for the vendor after the Fire Department denied his request for permission to work for the vendor, fined \$7,500); *Cioffi*, COIB Case No. 97-247 (May 1998) (firefighter who was aware that his part-time employer engaged in business dealings with the Fire Department fined \$100, an amount that took into consideration the firefighter's resignation from the part-time position, his financial difficulties, and the negligible amount of income he received from the part-time job).

⁴ Holding a Clerical Associate in violation for owning a group day care center that received money from ACS and that she submitted documentation to ACS in order to receive those monies. The Board found she violated provisions of the City's

18. As set forth above in paragraph 15, 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 indicia that the Requestor is deferring this decision to a Board Opinion by seeking Board advice prior to the department assessing the appearance of potential conflict.

19. It also bears important mention that public servants are prohibited from disclosing or using confidential information concerning the property, affairs or government of the County which is obtained as a result of the public servant's official duties and not otherwise available to the public § 77-3(D).

CONCLUSION AND DIRECTIVES

20. Accordingly, the Board finds that pursuant to Suffolk County Code, the requested on-going conduct, as described herein, is not permissible under Sections 77-2(B) and 77-3(H).

21. The Board recommends that the Department direct ██████████ terminate business dealings with the County.

22. 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.

23. The forgoing is the opinion of the Board.

Dated: Great River, New York
April 20, 2016

Linda A. Spahr, Esq. - Chair

conflicts of interest law that (1) prohibit a City employee from disclosing or using confidential information obtained as a result of his or her official duties to advance any direct or indirect financial or other private interest of the City employee; (2) prohibit a City employee from having an interest in a firm that the employee knows, or should know, is engaged in business dealings with any City agency; and (3) prohibit a City employee from "appearing" before any City agency on behalf of a private interest. "Appearing" under the City's conflicts of interest law includes making telephone calls, sending e-mails, and attending meetings, all for compensation. *COIB v. E. Dockery*, COIB Case No. 2010-880 (2012).