

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

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In the Matter of the Inquiry of

██████████ in her capacity as a
Supervisory Official of the
Suffolk County Department of Health Services.

ADVISORY OPINION

No. AO-2016-20

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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. **Issue:** Would a former Suffolk County Department of Economic Development employee be in conflict under Suffolk County Code Chapter 77, Section 77-6 (post-employment restrictions) as a paid consultant performing work of behalf of the County for the Department of Health's ██████████ ██████████ ?

Conclusion: Upon consideration of the facts presented to the Suffolk County Board of Ethics, the Board finds that a consulting agreement between a former Suffolk County Department of Economic Development employee and the Department of Health's is not statutorily prohibited per se assuming adherence of the conflicts of interest directives.

GOVERNING AUTHORITY

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-6(A), 77-6(B), and Section 77-6(I).

PROCEDURAL HISTORY

3. This Advisory Opinion was requested 3/18/2015.
4. Standing was voted and approved on 9/16/2016.

5. Fact finding was concluded on 9/30/2016.
6. The Board voted on this Advisory Opinion request on 10/5/2016.

INFORMATION PRESENTED TO THE BOARD

7. The Requestor, is a Supervisory Official in the Suffolk County Department of Health (*Requestor's Exhibit #A*).

8. The Department of Health has requested an advisory opinion with respect to the Suffolk County post-employment laws asking if a consultancy agreement with a former County Employee of the Department of Economic Development can be issued prior to [REDACTED], the date that the less 2 years post-employment prohibition would apply.

9. The Requestor is seeking to contract with the former County employee to perform work on behalf of the County. The Requestor has represented to the Board that no negotiations on this potential consultancy occurred while the former employee was a County public servant. The Requestor represented to the Board said consulting work will not include any matters previously worked on prior to leaving County Service. (*SCBE Exhibit #1 : Fact Finding Memoranda*).

10. Upon review of the documentary evidence submitted by the Requestor and the information obtained from Board-directed telephone fact-finding inquiries of the Executive Director, the Board determined that an in person appearance of the Requestor before the Board was not required. (See Suffolk County Administrative Code §A30-3(A)).

OPINION AND ANALYSIS

11. 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 post-employment consulting agreement with a Suffolk

County consultant is a violation of the ethics laws.

STANDING

12. The Board determined that standing exists for this Advisory Opinion request due to the requestor's position as a former public servant¹ (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1, NYC COIB Advisory Opinion 2009-4*).

PROPOSED FUTURE CONDUCT

13. 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.

14. The Requestor seeks guidance regarding the subject future conduct. The Board has determined that since the consulting position has not yet commenced, the request is within the Board's jurisdiction.

LAWS ANALYZED

15. The analyzed laws states in pertinent part:

I. Suffolk County Code:

§ 77-6. **POST-EMPLOYMENT RESTRICTIONS**

- 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;

- 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.

16. Because the Requestor is a former County employee and because there is no evidence that the Requestor solicited or negotiated for the consultancy position while personally participating in business dealings on behalf of the County, the Board finds that the proposed consultancy does not violate Section 77-6(A) of the Suffolk County Code.

17. Pursuant to Section 77-6(B), however, any appearance by a former employee of Suffolk County within the prohibited two year time period before the department or agency served by such employee would violate the ethics laws. An “appearance” includes “. . . any communication, for compensation, other than those involving ministerial matters;” Suffolk County Code § 77-1 (*see also id.* 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”). Because the proposed consultancy does not require the former employee to appear before the County Department of Economic Development within the prescribed two year time period, the position is not prohibited by Section 77-6(B). *See also* NYC COIB Advisory Opinion 94-15.

18. In addition, the Board holds that, as the subject matter of the proposed consultancy does not include work of her former County duties, the lifetime ban in Section 77-6(C) prohibiting former employees from receiving compensation for any services in relation to any particular matter in which such person had participated personally and substantially as a public servant is not applicable to the consultancy upon the facts presented to the Board.

19. It bears important mention that The Board holds that under § 77-6(I), a former employee

of any Department in the County is not in violation of this two year ban on post-employment by having business dealings with the County agency they served after the two year time period has expired. As applied to the facts presented to the Suffolk County Board of Ethics, the Board finds that the two year ban on appearing before the County Agency served would expire on [REDACTED]. Additionally, the Board finds that this future conduct would result in the former employee being compensated for work performed *as an agent of the County*, not in the prohibited capacity of “*coming before the County Agency served*” in the roles such as an advocate, liaison, or lobbyist for a client.

20. Finally, the Requestor is cautioned that he cannot disclose or use for private advantage any confidential information gained from County service which is not otherwise available to the public.

21. Accordingly, upon consideration of the facts presented above to the Suffolk County Board of Ethics, the Board finds that a consulting agreement between a former County Comptroller and a vendor of the County is not statutorily prohibited per se assuming the following conflicts of interest directives are followed:

Post-Employment - Conflict of Interest Directives

- A. The Requestor may never engage in any matter that he personally and substantially participated in as a Suffolk County public servant; and
- B. The Requestor may not use confidential information acquired by him in his official capacity as a public servant in any post-employment arrangement.
- C. Under the limitations outlined above, the Requestor is not prohibited from being associated with a firm that has business dealings with Suffolk County government.

CONCLUSION

25. As set forth above, the Board finds that pursuant to Suffolk County Code Section 77-6, the proposed consultancy is not prohibited.

26. 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.

27. The forgoing paragraphs 1-26 constitutes the opinion of the Board.

Dated: Great River, New York
10/5/2016

Linda A. Spahr, Esq.

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.