

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion No. 2022-9
July 20, 2022

SUFFOLK COUNTY

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Advisory Opinion No. 2022-9

Subject Matter: Post-Employment

Relevant Laws: Laws of Suffolk County, Chapter 77, Article I, § 77-6

Summary: Proposed post-employment work on behalf of a County vendor would be prohibited by the post-employment restrictions of the Code of Ethics where such work included appearing before a public servant's former department within two years of leaving County service and such work included working on a matter in which the public servant was both personally and substantially involved while in County service.

The Suffolk County Board of Ethics (the "Board") has received a request, dated June 30, 2022, from [REDACTED], a [REDACTED] with the Suffolk County Police Department (the "SCPD"). [REDACTED] seeks an opinion from the Board regarding the proposed post-employment activities of [REDACTED] and [REDACTED], two SCPD programmers whom he supervises at the SCPD. As their supervisor, pursuant to Section A30-3 A of the Suffolk County Code, [REDACTED] has standing to make this request.

In his request, [REDACTED] asks whether it would be in conflict with the post-employment provisions of Chapter 77 of the Suffolk County Code (the "Code of Ethics") for [REDACTED] and [REDACTED] to perform work on the SCPD's [REDACTED] program for [REDACTED], hereinafter, the "Vendor") after they retire from Suffolk County ("County") service. To the extent that such post-employment activity is prohibited by the Code of Ethics, [REDACTED] advises that [REDACTED] and [REDACTED] would like to receive permission or a "waiver" to engage in this activity.

At its July 6, 2022 meeting, the Board determined that, based on the facts presented, [REDACTED] [REDACTED]s and [REDACTED]s proposed post-employment activities on behalf of the Vendor **would be prohibited by the Code of Ethics**. There is no applicable waiver provision in the Code

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion No. 2022-9
July 20, 2022

of Ethics that would allow the Board to grant permission for such activities.

Background

██████████ advises that the SCPD currently contracts with the Vendor to support ██████████ a software program that serves as a ██████████ system for the SCPD. ██████████ further advises that ██████████ is integral to the SCPD and is used in the SCPD arrest systems, overdose database, and homicide, domestic violence, and community relations systems, to name but a few of the critical systems it serves. ██████████ indicates that both ██████████ and ██████████ are employed by the County as a ██████████ and ██████████, respectively, and that their current duties involve providing internal technical support for the SCPD's ██████████ system.

According to ██████████, the SCPD is currently transitioning away from ██████████, but it will take several years to move all of the legacy data to a new system. In the interim, ██████████ informs the Board that the Vendor has the exclusive rights to a critical part of the operation of the ██████████ software and is a "sole source" of support for the software. ██████████ further advises that a large number of both SCPD and Vendor programmers are retiring, including ██████████ and ██████████. As a result, ██████████ indicates that the continuing support of the ██████████ system is at risk. In order to address this critical support concern, ██████████ has advised that the Vendor would like to hire ██████████ and ██████████ to work on its behalf to support the ██████████ system for the SCPD, as well as to support the ██████████ program for other agencies.

Relevant Law

The "Post-Employment" provisions of the Suffolk County Code of Ethics provide, in relevant part, that

[n]o 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. § 77-6 A.

[n]o 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 any government entity, including the County of Suffolk, as an elected representative, employee or consultant, provided that, in the case of a former public servant serving as a consultant, such former public servant contracts to provide such consultant services directly with the County. § 77-6 B, emphasis added. "Appear" is defined as any communication, for compensation, other than those involving ministerial matters. § 77-1.

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion No. 2022-9
July 20, 2022

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[n]o person who has served as a public servant shall appear before the County, or receive compensation for any services rendered, in relation to any particular matter in which such person had participated personally and substantially as a public servant, provided that such prohibition shall not apply to a former public servant serving as a consultant to the County, where such former public servant contracts to provide such consultant services directly with the County. § 77-6 C, emphasis added.

* * *

[n]othing 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.
§ 77-6 I.

Discussion and Determination

Preliminarily, the Board notes that the Code of Ethics does not preclude the [REDACTED]'s or [REDACTED]'s general employment by the Vendor. Rather it is the proposed activities involved in such employment that conflict with the post-employment prohibitions. More specifically, inasmuch as [REDACTED]'s and [REDACTED]'s post-employment work for the Vendor would require them to communicate (e.g., phone calls, meetings, etc.) with the SCPD, the proposed work **would violate** the Code of Ethics prohibition on “appearing” before their former County agency within two years of leaving service. See § 77-6 B. In addition, even if this proposed work did not involve any communication with the SCPD, the proposed work **would violate** the “particular matter” ban of Section 77-6, inasmuch as both [REDACTED] and [REDACTED] participated in the [REDACTED] Program personally and substantially while employed by the SCPD. See e.g., Board Advisory Opinion No. 2021-3 (finding a public servant’s proposed post-employment work with a company in contract with the County would create an impermissible conflict where the work involved servicing the Bergen Point Wastewater Treatment Plant, since, among other things, the public servant would be performing the same work, on the same matters and at the same location as he had during his former employment with the County).

The Board notes that, upon the facts presented, the exception to the Code of Ethics post-employment “appearance” and “particular matter” prohibitions does not apply since both [REDACTED] and [REDACTED] advise that they intend to work on behalf of the Vendor, as opposed to contracting directly with the County as consultants themselves. See e.g., Board Advisory Opinion No. 2019-3 (finding that proposed post-employment work of retired Assistant County Attorney would not be in conflict with post-employment laws where such works falls into post-employment exemptions, namely, where retired Assistant County Attorney contracts directly with the County

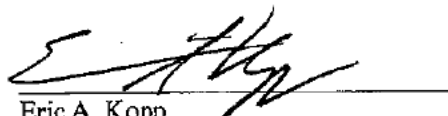
STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion No. 2022-9
July 20, 2022

to work on two matters that he was previously assigned while serving as an Assistant County Attorney).

The Board therefore determines that, pursuant to Section 77-6 of the Code of Ethics, the proposed post-employment activities of [REDACTED] and [REDACTED] on behalf of the Vendor on the SCPD's [REDACTED] system would be prohibited by the post-employment provisions of the Code of Ethics. The Board further notes that the Code of Ethics contains no waiver provisions and therefore there is no mechanism for the Board to "permit" conduct that would otherwise be prohibited by the Code. See Board Advisory Opinion No. 2019-3.

The forgoing is the opinion of the Board.*

Dated: Riverhead, New York
July 20, 2022


Eric A. Kopp
Chair, Suffolk County Board of Ethics

*Pursuant to Suffolk County Board of Ethics Resolution 004/2013, a requestor shall have **fifteen (15) business days** from the time an 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. Unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Applications requesting modification, clarification, or withdrawal must be made in accordance with Board rules. Nothing shall prohibit the Board, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time. This advisory opinion may not be relied upon if material facts were omitted or misstated in the request for an opinion.