

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

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In the Matter of the Advisory Opinion Inquiry of

Suffolk County Legislator [REDACTED]
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COUNTY BOARD OF ETHICS
Advisory Opinion 2021-15

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.

Summary: A Suffolk County Elected Officials requests this advisory opinion request to determine if consulting for a registered Lobbyist, during and post-employment, creates a conflict under the Suffolk County Code of Ethics.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, § 77-4.

Procedural History: This request was received on 04/30/2021, standing vote occurred on 05/05/2021 and fact-finding concluded on 06/11/2021. The Board vote occurred within the 45 days under Suffolk County Code occurring on 06/16/2021. The Board reviewed the full advisory opinion file, inclusive of the Requestor's fact-finding documents from the lobbying firm, and determined by majority vote that the proposed future must comply with the recusal laws during the remainder of the Requestors term and the Post-Employment Laws of the Suffolk County Code of Ethics.

Opinion: Suffolk County Elected Official requests this advisory opinion request to determine if consulting for a registered Lobbyist, during and post-employment, creates a conflict under the Suffolk County Code of Ethics.

Suffolk County Board of Ethics fact finding determined that 1) the County Elected Official currently holds the elected official title of "Suffolk County Legislator, 2) the proposed outside income did not yet commence 3) the proposed future conduct includes consulting with a Lobbyist that is registered with County of Suffolk 4) the terms of the outside consultant contract require compliance with the County Ethics Laws and preclude consulting on County of Suffolk projects. Further, fact finding included a review of a list of existing projects of the Consulting firm and any existing geographic limiters.

Fact finding concludes that the geographic region for consulting would exclude the County of Suffolk. In response to a Board directed fact finding inquiry, the Requestor has advised this proposed outside income would be obtained from registered Lobbyist Firm, [REDACTED]. Further fact-finding shows that the Requestor was connected to [REDACTED] by a former legislator and a decision was made for the Requestor to work with [REDACTED]. He will not be an employee of [REDACTED], but rather will serve in the capacity of a consultant. Requestor has created an S Corporation that will be compensated for the work Requestor performs. If the Requestor performs no work, he will not be paid. He is not currently engaged with

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any clients.

In his role with [REDACTED] Requestor will help procure government grants, establish relationships, assist with business planning and procurement.

Sections of Law:

§ 77-3. 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.

C. No public servant shall use his or her official position or official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.

§ 77-4. PROHIBITION ON DUAL OFFICE-HOLDING; OTHER PROVISIONS RELATING TO POLITICAL PARTY OFFICIALS.

B. No elected official shall hold another paid position of employment with the County or a paid position of employment with any department, office, commission, board or agency of the United States of America, New York State, any town or village government, or public benefit corporation created under the provisions of New York State law. This provision shall not apply to an elected official who also holds a position as a teacher in a public school district or a professor at a public university or college.

§ 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

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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.

C. No 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.

§ 77-7. RECUSAL AND DISCLOSURE.

A. A public servant shall promptly recuse himself or herself from acting on any matter when acting on the matter, or failing to act on the matter, would constitute prohibited conduct under the Code of Ethics or would financially benefit the public servant, a person or firm associated with the public servant, a customer or client or any person from whom the public servant has received a gift, or any goods or services for less than market value in the preceding 12 months.

B. Whenever a public servant is required to recuse himself or herself under the Code of Ethics, he or she shall:

- (1) Promptly inform his or her immediate supervisor, if any;
- (2) Promptly file with the Board a signed statement disclosing the nature and extent of the conflict; and
- (3) Immediately refrain from participating further in the particular matter.

ANALYSIS

The Requestor is an elected Suffolk County Legislator. Pursuant to 77-4(B), an elected official may not hold “a paid position of employment with the County or with any department, office, commission, board or agency of the United States of America, New York State, any town or village government, or public benefit corporation created under the provisions of New York State law.” As the proposed employment is with a private entity, it is not prohibited by 77-4(B).

Section 77-3(B) prohibits a public servant, such as the Requestor, from engaging in any business, transaction or private employment, or having any financial or private interest which is in conflict with the proper discharge of his duties. If the Requestor is employed by the Lobbyist, he will, at minimum, be required to recuse himself on any matters which the Lobbyist brings to Suffolk County. Further, if the extent and number of recusals reaches

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the point where the Requestor cannot effectively perform his duties as a Legislator, then the outside employment would become prohibited. As the outside income could have the effect of being in conflict with the proper discharge of his duties, Requestor is cautioned that such outside income could become prohibited.

Section 77-3(C) prohibits a public servant from using his official position in a manner which he has reason to know may result in a personal financial benefit to himself. The Requestor received an offer of outside income through a contact who previously sat on the County Legislature. It is not apparent that [REDACTED] was seeking out individuals to work on their behalf. Therefore, it can be concluded that Requestor is receiving this outside income by virtue of the fact that he is a County Legislator. Accordingly, he is utilizing his official position in a manner to result in personal financial benefit to himself. Therefore, the outside income is prohibited.

Post-employment, Requestor is prohibited from soliciting, negotiating for or accepting 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. In this instant matter, [REDACTED] is not currently involved in business dealings with the County and not engaged in any business dealings with which Requestor is directly concerned or personally participating.

Accordingly, after completing his term on the legislature, Requestor is not prohibited from engaging with [REDACTED]. He must, however, refrain from appearing before the County legislature for at least two years and he may not receive compensation for any services rendered, in relation to any particular matter in which he had participated personally and substantially as a public servant

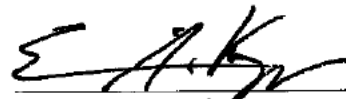
CONCLUSION

As applied to the above, this public official requestor had proposed outside income that is prohibited under §77-3.

Further, the requested future conduct for employment subsequent to Requestor's serving as a public servant is not in conflict with the Suffolk County Code of Ethics and, thus, is permitted.

The forgoing is the opinion of the Board.

Dated: Hauppauge, New York
June 16, 2021



Eric A. Kopp, Chair
On Behalf of Suffolk County Board of Ethics