

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-2013-22

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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. Can a full time Suffolk County Department ██████████, work part-time on non-county time at a private Counseling company, without creating a conflict of interest under the Suffolk County Ethics Laws?

**SECTIONS OF LAW INTERPRETED**

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

**PROCEDURAL HISTORY**

- 3. This Advisory Opinion was requested 12/16/2013.
- 4. Fact finding was concluded on 2/5/2014 .
- 5. The Board voted on this Advisory Opinion request on 3/12/2014.

**INFORMATION PRESENTED TO THE BOARD**

6. Suffolk County SOP A-15, “Outside Employment of Suffolk County Employees” (SCBE Exhibit # 1).

7. The Requestor is a Suffolk County Department ██████████  
██████████. (Requestor Exhibit #1 ).

- 8. The Requestor’s job duties include:  
“interviewing applicants for financial assistance programs, prepares and computes applicant budget, explains the validation process to the applicant, advises applicant of eligibility determination, advises applicants about their duties to keep the agency informed of changes that may affect eligibility, informs applicants about the range of services in the agency and may refer applicant to social services or

other specialists (housing, employment legal, medical), makes redeterminations of financial eligibility, recommends emergency grants, makes field visits to obtain collateral verification of information to be used in determining eligibility for Public Assistance” (*SCBE Exhibit 2 Civil Service Social Services Examiner I Job Description*).

In addition to the above stated duties, in the event an applicant may have a substance abuse problem, the [REDACTED] titles refer them to the Substance Abuse Assessments and Monitoring (SAAM) Unit for assessment. If the SAAM Unit determines substance abuse treatment is needed, the applicant is then in turn referred by the SAAM Unit to a New York State Office of Alcoholism and Substance Abuse Services OASAS Certificated provider. There are currently 49 such providers in Suffolk County). Suffolk County Department [REDACTED] does not specify a specific program or vendor. (*SCBE Exhibit 3 Civil Service Social Services Website*).

9. The Suffolk County Department [REDACTED] has no authority in OASAS Certificated providers becoming a New York State approved program. (*Requestor’s Exhibits # 2*).

11. The Requestor is seeking to accept part time/ per diem employment as a Credentialed Alcoholic Substance Abuse Counselor (“CASAC”) at an out-patient facility, OASAS Certificated provider (Requestor Exhibit #2).

12. The Requestor’s position as a CASAC would be conducted on non-county time commencing after [REDACTED] Suffolk County work shift 8am - 4pm, Monday through Friday, concluded. (Requestor Exhibit # 2).

13. The anticipated shift would be 6:00pm - 9:00pm and/or weekends. (Requestor Exhibit #2).

14. The Requestor would not be charging any County employment accruals to conduct this outside employment. (Requestor Exhibit #2).

**OPINION AND ANALYSIS**

16. 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 full time [REDACTED] Employee accepting as a part-time position with a private Counseling Center, be a violation of the ethics laws if all outside employment work is conducted outside of County time?

**STANDING**

17. The Board determined that standing exists for this Advisory Opinion request due to the requestor’s position as a public servant employed by the Suffolk County Department [REDACTED] which mandates compliance with the Suffolk County Ethics Laws<sup>1</sup> (*Suffolk County Administrative Code §A30-1, Chapter 77, §77-1*, NYC COIB Advisory Opinion 2009-4).

**PROPOSED FUTURE CONDUCT**

18. The Law States in Pertinent Part<sup>2</sup>:

§ 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.*

19. The Board determined that requestor has not yet accepted the outside part-time employment; the request is regarding proposed future conduct and is within the Board’s jurisdiction.

**POTENTIAL CONFLICTS OF INTEREST**

20. The Law States in pertinent part:

§ 77-3(B). 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;

§ 77-3 (D). PROHIBITED CONDUCT

D. No public servant shall disclose any confidential information concerning the property, affairs or government of the County which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public or use such information to advance any financial or private interest of the public servant or of any person associated with the public servant;

§ 77-3 (H). 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;

**21.** 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.
- (2) Outside employment may not be undertaken on regularly scheduled work time.
- (3) Outside employment may not be undertaken on sick time.

22. 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).

23. As set forth above, 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.

24. The Board considers various factors when assessing a potential conflict of interest. Of specific consideration, the Board evaluates pre-established mitigating factors that are outside the Requestor’s control and authority. As applied, OASAS provider companies obtain their Certificated provider status through the New York State Office of Alcoholism and Substance Abuse Services (OASAS) through established criteria of New York State. This certification is a New York State Certification of which the Requestor has no authority or control. As such, an outside licensing authority, such as New York State, is a significant pre-established mitigating factor that provides a barrier for a potential County conflict of interest.

Additionally, although the Board is empowered to render advisory opinions with respect to the Code of Ethics, it would be remiss to ignore specific limitations set forth in the Suffolk County Standard Operating Procedure A-15(5). As set forth above in Standard Operating Procedure A-15(5), and applied, the Board assesses a Requestor’s specific anticipated work shift in such future outside employment to determine if (1) outside employment is anticipated to be undertaken on regularly scheduled work time and (2) if outside employment is anticipated to be taken on sick time. Here, the Requestor is looking to work part-time on non-County time. As such, the Board finds that the anticipated work shift does not present a conflict with the official discharge of Counties duties.<sup>3</sup>

25. Notably, this part-time outside employment conflict of interest assessment is distinguishable from the recent Suffolk County Board of Ethics Opinion No. AO-2013-3. In Suffolk County Board of Ethics Opinion No. AO-2013-3, the Board held that under § 77-2(B) a County employee is precluded from having an ownership interest in a firm that is engaged in business dealings with the County. Here, as a future part-time employee, the Requestor has represented [REDACTED] status will be a part-time employee, not a County employee seeking an ownership interest in a firm that is engaged in business dealings with the County. Therefore, there is no conflict of an ownership interest in a firm that is engaged in business dealings with the County.

### CONCLUSION AND DIRECTIVES

26. The Board finds, based upon the information presented by the requestor, that under § 77-3(B), working as a CASAC Counselor (after Suffolk County work hours and on a part-time basis) by a New York State Credentialed Provider does not present a conflict with the proper discharge of [REDACTED] official duties as set forth in the Civil Service [REDACTED] “Typical Work Activities”.

27. The Board directs the Requestor that under § 77-3 (D) he is prohibited from disclosing any confidential information concerning the property, affairs or government of the County which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public or use such information to advance any financial or private interest of the public servant or of any person associated with the public servant.

28. The Board further directs the Requestor that under § 77-3 (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. Therefore, the Requestor cannot represent the private interests of [REDACTED] outside employer, before any County agency or appear directly or indirectly on behalf of private interests in matters involving the County.

29. The Board further directs the Requestor is not relieved of departmental or union directives by way of this Advisory Opinion.

30. The Advisory Opinion herein is only binding on the Board as to the facts presented to the Board for analysis. 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.

31. 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.

**32.** The forgoing is the opinion of the Board.

Dated: Yaphank, New York

3/12/2014

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Robin L. Long, Esq. - Chair

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<sup>1</sup> N.Y. Gen Mun. Law § 810 (6). Additional definitions; Suffolk County §77-1 definitions

<sup>2</sup> 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.

<sup>3</sup> In an analogous request before the New York City Conflicts of Interest Board, the Board rendered an opinion to the Department of Mental Health, Mental Retardation and Alcoholism Services (the "Department") as to whether it presented a conflict of interest for Department employees to work part-time performing certain types of clinical evaluations for the Family Court. In finding that no conflict of interest existed, the Board assessed factors including 1) that one's ability to improperly use one's position for financial gain is sharply reduced when established criteria for appointment exist and 2) the requirement that Department employees must perform outside work only at times when they are not required to perform their official duties for the City; may not use any City supplies, equipment or personnel in performing this outside work; and may not disclose or use for private advantage any confidential information concerning the City. (*NYC COIB Advisory Opinion 95-19*). Additionally, in *NYC COIB Advisory Opinion 95-19*, the Requestor was looking to work part-time on non-County time.