

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-2016-6

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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 on-going outside employment by a Department ██████████ employee with a contract provider for the Department ██████████ services prohibited under the Suffolk County Code?

**CONCLUSION**

A: It is prohibited. A Suffolk County Department ██████████ employee cannot be employed contemporaneously by a contract provider for the Department ██████████ under Sections 77-3(C) 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, 77-3(C) and 77-3(H).

**PROCEDURAL HISTORY**

- 2. This Advisory Opinion was requested on February 5, 2016.
- 3. Fact finding was concluded on February 17, 2016.
- 4. The Board voted on this Advisory Opinion request on February 17, 2016.

**INFORMATION PRESENTED TO THE BOARD:**

- 5. The Requestor, ██████████ ██████████, has requested clarification as to whether a Department ██████████ (hereinafter, “██████”) employee is in conflict with the County ethics laws by maintaining on-going employment with a current vendor of ██████.
- 6. The Requestor asserts that the ██████ employee did not seek permission or prior approval of this outside position.

7. The Requestor asserts that the employee was hired by [REDACTED] on [REDACTED] (SCBE Exhibit I).

8. The Requestor asserts that the employee was hired by the vendor and performed work for claimed compensation starting [REDACTED] (SCBE Exhibit I).

9. The Requestor asserts that the County contract does not set forth that the vendor is prohibited from employing Suffolk County employees.

10. The Requestor asserts that this outside employment became known to the Department upon processing the vendor’s contractually required Personnel Change Form, and the employee’s payment claim, submitted by the vendor for the work performed at the outside employment. (Requestor’s - “Exhibit I”). As set forth in the request,

“The Suffolk County Department [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] contracts with [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [REDACTED] Administration must review and authorize every personnel change from contract providers. Without our authorization, they cannot make the change or receive reimbursement from the county. This language is included in their contract. Pursuant to the contract, [REDACTED] is requesting [REDACTED] to give authorization to employ and pay worker [REDACTED] effective [REDACTED]. [REDACTED] also is employed by [REDACTED] as a [REDACTED] in the [REDACTED] [REDACTED]. [REDACTED].”

Although the [REDACTED] [REDACTED] [REDACTED] is under contract with [REDACTED] [REDACTED], the [REDACTED] served by [REDACTED] are referred by the Department [REDACTED]. Staff of [REDACTED] [REDACTED] participates in [REDACTED] [REDACTED] [REDACTED] meetings to discuss/vote [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] notes are taken under consideration when developing justification/support for a particular position with regard to [REDACTED] [REDACTED]. In addition, when [REDACTED] complete their involvement with [REDACTED], typically within 30 to 45 days, they are referred to one of two [REDACTED] [REDACTED] including the [REDACTED] [REDACTED] [REDACTED] in [REDACTED] bureau ([REDACTED]). [REDACTED], though, does not have involvement with these [REDACTED] in discharge of her official duties.” (Requestor’s - “Exhibit I”).

### 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 such outside employment status by a [REDACTED] employee would be in conflict with the County ethics laws?

### STANDING

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

13. 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.*

14. The Requestor seeks guidance regarding the subject future conduct. The Board has determined in prior opinions that future conduct is inclusive of on-going conduct, and the request is within the Board's jurisdiction.

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

15. 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.

§ 77-3 Prohibited Conduct

C. No public servant shall use his or her 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 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.

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).

**16.** The Suffolk County Ethics law provides that, “[n]o public servant shall use his or her 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 personal financial benefit to himself or herself or a person or firm associated with the public servant.” As applied, the employee’s action of securing outside employment with a vendor who serves the County is clearly a use of his or her official position, title, and job duties to benefit her financially. *Suffolk County Code, § 77-3(C)*. This behavior of self-promoting within the County is specifically prohibited under § 77-3, and is further amplified in post-employment restrictions which prohibit public servants from negotiating job employment with vendors and places a 2-year limitation on appearances before their own agency.<sup>1</sup>

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§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.
- 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.

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 [REDACTED]. As the County Code defines the agency served by a County employee as the *agency* employing such employee, the department or sub-department that an employee is assigned to execute their job duties, is irrelevant. The Board’s agency to vendor and employee to vendor conflict of interest analysis is with respect to the agency as an entire entity.<sup>2</sup> Accordingly, the on-going actions of [REDACTED] securing outside work, for a vendor who is submitting payment claims her services under County contract, is a prohibited appearance on behalf of private interests in matters involving the County.<sup>3</sup> Therefore, a Department [REDACTED] employee being employed by a vendor for with the very agency served by such employee would be prohibited conduct under the Suffolk County Code (See *COIB v. E. Dockery*, COIB Case No. 2010-880 (2012)).<sup>4</sup>

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

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<sup>2</sup> “**AGENCY SERVED BY A PUBLIC OFFICIAL**”

A. In the case of a County employee, the agency employing such employee.

<sup>3</sup> 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).

<sup>4</sup> 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 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).

by seeking Board advice prior to department assessing the appearance of potential conflict.

**19.** As applied, the Board finds that absent statutory exceptions, under § 77-3 (H) no public servant shall, for compensation, represent private interests before any County agency. Such appearance would not be permitted under § 77-3 (B), as it would interfere with proper discharge of his official County duties. In the request before the Board, the Board finds the departmental supervisor's statement credible that the employee is appearing before Suffolk County by working for a vendor. As such, there is a patent prohibited behavior occurring.

**20.** 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

**21.** 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(C) and 77-3(H).

**22.** The Department Head must provide to vendor [REDACTED] a copy of the Suffolk County Ethics Laws pursuant to SOP A-06 paragraph 6(b)(3).

**23.** 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.

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

Dated: Great River, New York  
February 17, 2016

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Linda A. Spahr, Esq. - Chair