

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

-----X
In the Matter of the Inquiry of

ADVISORY OPINION
No. AO-2016-7

██████████

-----X

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. *Advisory Opinion Inquiry:* Do the two Suffolk County public servant positions of an appointed ████████ Department ████████ and Department ████████████████████ create conflict with the proper discharge of official duty if simultaneously served?

SUMMARY

2. *Conclusion:* Based upon the information presented to the Board, these two County public servant positions do not interfere with the proper discharge of official duty.

GOVERNING AUTHORITY

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-2(A), Section 77-2(B), Section 77-4.

PROCEDURAL HISTORY

4. This Advisory Opinion was requested on 2/25/2016.
5. The Board voted on this Advisory Opinion request on 3/16/2016.

INFORMATION PRESENTED TO THE BOARD:

6. The Requestor has been an unpaid volunteer public servant for ██████ years with the Suffolk County ██████████ lecturing in the ██████████ on the subject of ██████████. In ██████████, the requestor was appointed and sworn in by the Suffolk County ██████████ as a ██████████

██████████.¹ This appointed position includes a flat fee stipend for 12 months in the amount of \$██████████. His public servant duties in the capacity of ██████████ include authorization to ██████████ ██████████ or ██████████, liaison with ██████████ communities of Suffolk with the ██████████ Department, and counseling ██████████ department members. The Requestor has been recognized as an extraordinary Suffolk County public servant at the U.S. House of Representatives as reflected in the United States Congressional Record dated ██████████,

“WELCOMING ██████████
 OF NEW YORK
 IN THE HOUSE OF REPRESENTATIVES

██████████

██████████ ██████████ ██████████ ██████████ from ██████████, New York—in my district on Long Island. I am honored to welcome ██████████ to the House as a distinguished representative of Long Island’s ██████████ ██████████ community. I also welcome ██████████ ██████████ ██████████, who are joining us from the gallery. I am especially pleased that ██████████ was able to make the trip during ██████████ ██████████. I have known him for ten years—as a trustee of ██████████ in ██████████, New York and as a leading authority of ██████████ across Long Island. He also serves the ██████████ of Long Island and the Suffolk County ██████████. As the first ██████████ ██████████ of the Suffolk County ██████████, ██████████ has delivered the ██████████ at ██████████. He has also delivered ██████████ of the Suffolk County legislature. I commend him for his service to my district and Long Island, as well as for the ██████████ leadership he provides my constituents. I thank ██████████ and ██████████ for joining us ██████████”

7. The Requestor is also a licensed ██████████. He recently interviewed with the Suffolk County ██████████ and has been offered and accepted a job as a ██████████.

8. The Requestor’s start date with the Suffolk County ██████████ is ██████████. He was informed by the Suffolk County ██████████ that they do not have a departmental prohibition for a ██████████ to also be a Suffolk County ██████████. The Department ██████████ informed the Requestor that multiple positions are subject to the Suffolk County Board of

¹ Presented to the Board were public records inclusive of multiple press articles documenting the Requestor’s public service to the County of Suffolk, ██████████ documenting his public service as a ██████████, as well as the Suffolk County Open Access payment records for his stipend.

Ethics review and advisory opinions can be rendered to prospective public servants under the Suffolk County Code and Suffolk County Standard Operating Procedure A-15 paragraph 6². As such, the Requestor submitted this request to see if stipend public servant work as a [REDACTED] is in conflict with the proper discharge of a Department [REDACTED].

OPINION AND ANALYSIS

9. 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 holding both public servant positions would be in conflict with the County ethics laws?

STANDING

10. The Board determined that standing exists for this Advisory Opinion request due to the Requestor's position as a prospective public servant. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

² 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).

PROPOSED FUTURE CONDUCT

- 11. 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.

- 12. The Requestor seeks guidance regarding the subject future and ongoing conduct. The Board has determined the request is within the Board’s jurisdiction.

ANALYZED SECTIONS OF LAW SECTIONS AND COUNTY PROCEDURE SOP A-15

- 13. The analyzed laws state in pertinent part:

§ 77-1 Definitions

PUBLIC SERVANT All officials, officers and employees of the County, whether paid or unpaid.

§ A30-3. ADVISORY OPINIONS.

E. For the purpose of this section only the term public servant includes a prospective or former public servant and a supervisory official includes a supervisory official who will supervise a *prospective public servant* or a supervisory official who supervised a former public servant.

[Added 6-4-2013 by L.L. No. 28-2013]

BUSINESS DEALINGS WITH THE COUNTY Any transaction with the County involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, or any license, grant or benefit, and any performance with respect to any of the foregoing, but shall not include any transaction involving the public servant's residence or any ministerial matter.

FIRM A sole proprietorship, joint venture, partnership, corporation or any other form of business enterprise.

§ 77-2. PROHIBITED INTERESTS IN FIRMS DOING BUSINESS WITH THE COUNTY

A. No public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.

B. No County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County.

C. An individual who, prior to becoming a public servant, has an ownership interest which would be prohibited under this section, shall either:

- (1) Divest of the ownership interest; or
- (2) Terminate the business dealing with the County; or
- (3) Disclose to the Board such ownership interest and comply with its order.

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

A. No political party officer shall be eligible to serve as an elected official, department commissioner, assistant district attorney or member of any board, commission, authority, or public benefit corporation whose members are appointed by the County Executive or County Legislature.

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.

C. A political party officer may represent private interests before a County agency but he or she shall first disclose to the Board the nature and scope of the services to be provided.

D. No political party officer or firm in which he or she holds an ownership interest shall have business dealings with the County, except that a political party officer or his or her firm may receive a contract from the County as a result of a competitive bidding process conducted in accordance with Article 5-A of the New York General Municipal Law.

COUNTY PROCEDURE SOP A-15

The Suffolk County Standard Operating Procedure A-15 paragraph 5, “Policy for Outside Employment for County Employees” states in relevant part:

(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.

(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).

OPINION AND ANALYSIS

14. The Suffolk County Ethics law provides that, “no County employee shall have an ownership interest in a firm which such employee knows is engaged in business dealings with the County” and “no public servant shall have an ownership interest in a firm which such public servant knows is engaged in business dealings with the department or agency served by such public servant.” *Suffolk County Code, § 77-2(A) and (B).* The Suffolk County Administrative Code defines the word

“firm” broadly to include a sole proprietorship, joint venture, partnership, corporation, or “any other form of business enterprise.” In the issue presented here, the Suffolk County [REDACTED] appointed the Requestor as a [REDACTED] and he was sworn in by the Suffolk County [REDACTED]. The Board finds that being paid as a public servant does not constitute engaging in business dealings with the County. Therefore, such conduct does not constitute a violation of the Suffolk County Code as both positions are public servant positions with the County.

15. The Suffolk County Ethics law sets for prohibition on specific dual office holding at § 77-4, “Prohibition on dual office-holding”. This law is applicable to elected officials and political party officers. As the Requestor is not an elected official or a political party officer, it is not applicable.

16. As to SOPA-15 subsection 1, the Requestor set forth that his service as [REDACTED] would not occur on his Department [REDACTED] time. As such, the Board does not find that the two positions “involve or appear to involve a conflict of interest or a potential conflict of interest” as is prohibited by SOPA-15. In addition, it bears important mention that public servants employed by the Federal Government and New York State are permitted in certain circumstances to receive compensation for two appointments from their government employer.³

³ See New York State Office of the State Comptroller Division of State Government Accountability “Managing Dual Employment Report Dated 12/2013” at pages 2-3, “Working Two Government Jobs As noted above, most State workers do not take on a second State job. Earnings by workers with two State jobs exceed \$500 million annually, however. Dual employment is most prevalent at the senior colleges of the City University of New York (CUNY), the Department of Corrections and Community Supervision (DOCCS), the Office of Mental Health (OMH), the State University of New York (SUNY) and the Unified Court System Office of Court Administration (UCS). State employees also appear in the New York City municipal payroll. The most common secondary positions are as adjuncts, correction officers, election monitors, poll workers, and school hourly staff. Regulating Dual Employment State and City laws and regulations governing dual employment help to ensure the integrity of public service, and to reduce conflicts of interest, risks to public health and safety, and the abuse and waste of public resources. Generally, these laws and regulations require the employee to disclose and seek management approval to work in a second government job. Certain State employees designated as “policymakers” by their agencies must also seek permission from the Joint Commission on Public Ethics (JCOPE) before taking a second job either in or outside of State service. The Office of the State Comptroller (OSC) requires the annual submission of a supervisor-approved “Dual Employment/Extra Service Form” in order to issue a second paycheck. The form describes the work performed in the second job, optionally reports the hours

CONCLUSION

17. Accordingly, assuming compliance with the SOPA-15 regulations on outside employments, the Board finds maintaining both public servant positions permissible under the County Code of Ethics.

18. 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.

19. The forgoing is the opinion of the Board.

Dated: Great River, New York
March 16, 2016

Linda A. Spahr - Chair

scheduled, and includes the employee's and supervisor's attestation that the secondary employment poses no conflict of interest."