

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

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In the Matter of the Inquiry of [REDACTED]
in capacity as a Supervisory Official in the
Suffolk County Police Department
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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2019-19
November 6, 2019

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: The Requestor is a current Supervisory Official in the Suffolk County Police Department. This official is requesting an opinion as to whether County police vehicles can place corporate donation sponsorship information on refurbished former military vehicles honoring fallen members of service. Currently, dedication language on County police vehicles lists the fallen service member's name and not a sponsoring donation entity.

Upon review of this request, the Board concludes that the Suffolk County Code of Ethics gifting provisions are only as to direct gifts to individuals, not County departments receiving gifts and donations. Accordingly, the Board recommends that the Police Department review this opinion concluding that the County gifting laws apply only to individuals and request an opinion as well from the County Law Department regarding gifting and sponsorship protocols for County Departments.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, SCBE Advisory Opinions; Chapter 77, and other applicable provision of law governing conflicts of interest.

Procedural History: The standing vote on this request occurred on 10/16/2019. The Board voted on this opinion on 11/6/2019.

Opinion: The Requestor is a current Supervisory Official in the Suffolk County Police Department. [REDACTED] is requesting an opinion as to whether County police vehicles can place an entity's name as a donation sponsor on refurbished former military vehicles honoring fallen members of service. Currently, dedication language on police vehicles lists the names of the fallen service members and not a sponsoring donation entity.

In considering this opinion request, the Board determined that standing exists for this Advisory Opinion request under Suffolk County Administrative Code Section A30-3 due to the requestor's position as a current County Supervisory Official. Additionally, the Board reviewed the County Ethics Laws, materials submitted by the Requestor including Departmental Commissioner Orders, County SOP's, and other applicable provisions of law governing conflicts of interest as permitted under the Suffolk County Administrative Code A30-3¹.

As to the information submitted by the Requestor, the Board's factual inquiries were satisfied and the Board did not elect their statutory right for an in person appearance by the Requestor under Suffolk County Administrative Code A30-3(A).

¹ § A30-3. ADVISORY OPINIONS

"A. The Board will render advisory opinions with respect to all matters covered by Chapter 77, Part 1, Article I, of the Suffolk County Code or any other applicable provision of law governing conflicts of interest, on the request of a public servant or a supervisory official of a public servant" (Excerpt with emphasis added).

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Upon review of the inquiry and County Ethics laws, the Board concludes that while there are no County ethics laws that address gifting or sponsorship donations to County Departments², the Board does have authority to review other relevant areas of law as related to inquiries under Suffolk County Administrative Code A30-3. Accordingly, the Board advises the Requestor as to the following for guidance and review.

Regarding the potential for appearance of impropriety, and Article VIII § 1 of the New York Constitution, the Board advises that there are strong public policy and initiatives prohibiting the use of public property as a forum for private business advertisement³. Therefore, sponsorship and advertising must be addressed here as to potential conflicts of interest and gifting.

In the *New York State Ethics Commission Advisory Opinion No. 95-38*, requested by the Department's Acting General Counsel, the requestor advised the Commission that it periodically receives offers of donations of equipment or money for a variety of agency purposes whose owners and individual members may engage in activities which are licensed and regulated by the Department. This Opinion concluded in pertinent part:

² § 77-3. PROHIBITED CONDUCT (PARAGRAPHS C,E,F,& G)

- 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.
- E. No public servant shall solicit or accept any gift having a value of \$75 or more from any person or firm which such public servant knows is or intends to become engaged in business dealings with the County.
- F. No public servant shall receive compensation for performing any official duty except from the County or accept or receive any gift or gratuity from any person or entity whose interests will be affected by the public servant's official action or whose interests have been affected by the public servant's official action.
- G. No public servant shall solicit, accept or receive any gift or gratuity from a lobbyist.

§ 77-7. RECUSAL AND DISCLOSURE (PARAGRAPH A)

- 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.

³ See, *The Constitution of the State of New York, ARTICLE VIII, Section 1 "Local Finances"* stating at pertinent part: No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association; nor shall any county, city, town, village or school district give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking, except that two or more such units may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately (emphasis added).

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“Decisions as to the propriety of a donation must be made by the Commissioner on a case-by-case basis, considering its source, timing and amount. While donors may freely advertise donations to DEC, use of logos or other identifiable markings on the donated equipment, while not prohibited, should be discreet. For example, potential donations include snowmobiles, boats, and smaller types of equipment. These offers are often intended to meet the needs of Environmental Conservation Officers (“ECOs”), who are responsible for enforcing a wide range of provisions of the Environmental Conservation Law (“ECL”). Each ECO has the status of “police officer,”⁽¹⁾ thus charging him or her with responsibilities similar to those of others in law enforcement” (see *New York State Ethics Commission Advisory Opinion 95-38*).

Additionally, public property and advertising was addressed in the *New York State Office of the Attorney General Opinion No. 92-56* concluding, “A local government is unauthorized to permit the use of its property for private advertising”. In furtherance, this public policy was addressed in *NYS Comptroller in Opinion 92-31* concluding:

“We have also expressed the opinion, however, that, except in connection with a proprietary activity or pursuant to express statutory authority, it is not a proper municipal purpose to raise revenues by selling advertising space on municipal property (1982 Opns St Comp No. 82-133, p 167; cf. 1980 Opns St Comp No. 80-671, unreported; General Municipal Law, §77-d). Thus, it is our opinion that a municipality may not sell advertising space in an informational newsletter to be distributed to its residents (1979 Opns St Comp No. 79-475, unreported; see also 1992 Atty Gen Formal Opn No. 92-F5; 1992 Atty Gen Inf. Opn No. 92-56; 1955 Atty Gen 181; cf. Opn No. 80-671, *supra*; 1977 Atty Gen 42).”

As applied to this opinion request before the Suffolk County Board of Ethics, these are analogous as both the Public Officers Law (§73 , § 74) and the Suffolk County Code of Ethics, are specifically applicable to gifts made to individual public servants and are not enforceable with respect to gift and donations to agencies. As such, the Suffolk County Board of Ethics recommends that the Police Department Supervisory Official request a legal opinion as well from the County Law Department relevant to the provisions of the County Administrative Code relating to Departmental gifting, sponsorship, and County vehicles (inclusive of § A3-10).⁴

CONCLUSION

Due to the foregoing, the full Board’s deliberations concluded that the Requestor’s proposed conduct regarding the printing of sponsorship and donation entity names on police vehicles does not fall into an enumerated section of gifting within the current County Code.

⁴Suffolk County Administrative Code, § A3-10 **Acceptance of gifts and insurance proceeds.** [Derived from Res. No. 271-1978] **A.** An unconditional gift or bequest received from any source may be accepted and appropriated by order of the County Executive, after a statement of the amount and source of said gift and of the proposed appropriation has been duly filed with the Clerk of the County Legislature. **B.** Any conditional gift or bequest from any source, not exceeding \$5,000, may be accepted and appropriated by order of the County Executive, after a statement of the amount, source, terms and conditions of such gift or bequest and of the proposed appropriation has been duly filed with the Clerk of the County Legislature.

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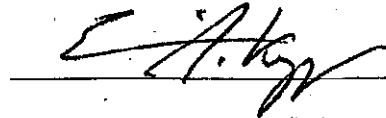
Accordingly, the Suffolk County Board of Ethics recommends that the Police Department Supervisory Official request a legal opinion from the County Law Department as to the relevant sections of the Suffolk County Administrative Code related to gifting, sponsorship, and refurbished military vehicles.

The forgoing is the opinion of the Board.

Dated: Great River, New York

11/6/2019

Vote (5-0-0)



Eric A. Kopp - Chair