

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

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In the Matter of the Inquiry of
Supervisory Official Legislator [REDACTED] on
a prospective new employee

ADVISORY OPINION
No. AO-2021-2

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-2
April 7, 2021

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.

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ADVISORY OPINION REQUEST

Issue 1: This future Supervisory Official advisory opinion request asks the Board if hiring a new legislative aide would be impermissible under the County Ethics laws as the prospective employee is currently an attorney independent contractor holding the title “Special Prosecutor” in the County Law Department assigned “Raise the Age” cases.

In considering this inquiry, the Board employed the following 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 appearances are in conflict with the County ethics laws?

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-2
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SUMMARY

Issue 1: There is no conflict of interest under the Suffolk County Ethics Laws regarding the employment of a part-time legislative aide currently holding a per diem 1099 third party service provider position in County Law Department under the title, Special Prosecutor. The subject matter of this outside employment does not interfere with the Requestor's official discharge of duty. (*Suffolk County Codes §77-3B, §77-4(B)*).

GOVERNING AUTHORITY

1. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-3(B), (H), Section 77-6(C), Section 77-6(I); New York State Criminal Procedure Law §722.

PROCEDURAL HISTORY

2. This Advisory Opinion was requested on 3/3/2021
3. Standing was voted and approved on 3/17/2021
4. Fact finding was concluded on 3/19/2021
5. The Board voted on this Advisory Opinion request on 4/7/2021

INFORMATION PRESENTED TO THE BOARD REGARDING ISSUE I:

The Suffolk County Board of Ethics directed Executive Director fact-finding interviews determined the following. The Requestor is a Suffolk County Legislator inquiring about future employment of a part-time legislative aide (with job duties to include research, resolution drafting, no criminal law, family law, nor court related legislation).

The prospective employee, [REDACTED] is an attorney, with the third party service provider title in the Suffolk County Law Department, Special Prosecutor. Special Prosecutor [REDACTED] is assigned "Raise the Age" juvenile cases. The Special Prosecutor position is per-diem (\$150 per day/ \$300 per-day in a pre-petition remand), compensated as a 1099 third party service provider, on weekends or holidays, with under 10 cases assigned last year.

Special Prosecutor [REDACTED] cases are assigned under the supervision of Law Department Attorney [REDACTED] and Bureau Chief [REDACTED]. Mr. [REDACTED] and Mr. [REDACTED] advised that there is no conflict of interest from the Department's review. In the event of legislation creating a juvenile detention center or other Special Prosecutor subject matters, case assignments would be re-directed by law department to another Special Prosecutor.

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-2
April 7, 2021

Additionally, the Board notes of importance, there is no County involvement in establishing or maintaining these courts. The youth court was established as part of the New York State “Raise the Age” initiative, established by the chief administrator of the courts, as directed by New York Criminal Procedure Law §722. As advised by Law Department, the Special Prosecutor position was created to address the Court’s docket if a juvenile requires to be housed in a special facility as there are no Judges staffed on weekends and nights.

STANDING

6. The Board determined that standing exists for this Advisory Opinion request due to the Requestor’s position as a Supervisor of a prospective public servant¹ (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1.*).

ANALYZED SECTIONS OF LAW

7. The Analyzed Laws 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.

§ 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.
- 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.

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

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-2
April 7, 2021

- 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.

OPINION AND ANALYSIS

8. The Requestor is a current Suffolk County Legislator. This future Supervisory Official advisory opinion request asks the Board if hiring a new part-time legislative aide would be impermissible under the County Ethics laws as the prospective employee is currently an attorney independent contractor holding the title “Special Prosecutor” in the County Law Department assigned “Raise the Age” cases.

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 an impermissible conflict of interest exists.

As applied, the Board determined that The Requestor maintains standing for this Advisory Opinion, deeming the Requestor a prospective future Supervisory Official and “public servant” pursuant to the Suffolk County advisory opinion laws. Additionally, the Board finds under § 77-2(D)(3), that the Requestor, who is a public servant, did comply with the directives set forth in this subsection by asking the Board in a timely manner, prior to employing the part-time Legislative Aide, as required to determine if there was a conflict. Finally, based upon the above facts, including the Youth Court being a function of the State, and the Legislative Aide Duties precluding matters of Juvenile Justice, the Board opines that there is no prohibition under Suffolk County Code 77-3 in the employment of an part-time legislative aide who is a third party service provider 1099 Special Prosecutor.

CONCLUSION

9. Accordingly, the Board finds that pursuant to Suffolk County Code, the requested future conduct, as described herein, will not violate the County Code of Ethics.

10. 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.

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-2
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11. The forgoing is the opinion of the Board.

Hauppauge, New York
Dated: April 7, 2021

Eric A. Kopp, Chairperson

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