

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

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In the Matter of the Inquiry of



Candidate/Prospective County Elected Official

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COUNTY BOARD OF ETHICS
Advisory Opinion 2021-1
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.

ADVISORY OPINION REQUEST:

Issue 1: The Requestor is a candidate for a seat on the Suffolk County Legislature, and is also an attorney admitted to practice law in the State of New York. In his private law practice, he represents “individuals and companies before the various boards in towns and villages in Suffolk County with respect to land use applications.” He seeks an opinion as to whether the County Ethics Laws would prohibit him from continuing that law practice while a candidate for, or if he were elected to serve, on the Suffolk County Legislature.

SUMMARY:

Issue 1: There is no conflict of interest under the Suffolk County Ethics Laws regarding outside law practice per se for an elected official. Upon review, the board opines that the subject matter of this outside employment does not interfere with the Requestor’s official discharge of duty given that the anticipated law practice be solely conducted on non-County time and require no appearance before any Department or Agency of Suffolk County Government. (*Suffolk County Codes §77-3B, §77-4(B, see Suffolk County Board of Ethics Opinion 2014-14)*).

GOVERNING AUTHORITY/ANALYZED LAWS AND RULES:

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).

PROCEDURAL HISTORY

1. This Advisory Opinion was requested on 2/23/2021;
2. Standing was voted and approved on 3/3/2021;
3. Fact-finding was concluded on 3/19/2021;
4. The Board voted on this Advisory Opinion request on 4/7/2021.

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INFORMATION PRESENTED TO THE BOARD REGARDING ISSUE I:

In a Board directed, Executive Director, fact-finding interview, it was determined that the requestor is a designated candidate for a seat on the Suffolk County Legislature, having filed petitions for the 18th district seat. The requestor presently serves as a Huntington Town Councilman, and has been a licensed attorney since 1993.

He described that in addition to his land use practice; approximately 20% of his law practice involves litigation (State and Federal). He also serves as General Counsel for certain local cemeteries (not-for-profit corporations), and he deals with some code enforcement matters. He indicated that if elected, to the extent his clients became involved in matters before the County, substitutions of counsel would be arranged and he would appropriately recuse himself from any involvement in the matters.

OPINION AND ANALYSIS:

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 appearances are in conflict with the County ethics laws?

STANDING:

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

PROPOSED FUTURE CONDUCT:

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.

The Requestor seeks guidance regarding the subject future conduct. The Board has determined that since the subject election did not yet occurred, the request is within the Board's jurisdiction.

ANALYZED SECTIONS OF LAW:

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The analyzed laws state in pertinent part:

§ 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

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:

A Legislator-elect or Legislator would be precluded from making any appearance before any County agency (See Suffolk County Code, §77-3(H)). As the referenced outside employment does not involve such appearances, it would be permissible activity and not in conflict with County ethics laws. The Board reminds the Requestor that to the extent recusal may be required, in addition to verbal on the records recusals; the Local County Law requires a written recusal be submitted to the Suffolk County Board of Ethics. The Local recusal laws state in pertinent part:

Suffolk County Code Recusal Laws:

§ 77-7. RECUSAL AND DISCLOSURE.

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.

B. Whenever a public servant is required to recuse himself or herself under the Code of Ethics, he or she shall:

- (1) Promptly inform his or her immediate supervisor, if any;
- (2) Promptly file with the Board a signed statement disclosing the nature and extent of the conflict; and
- (3) Immediately refrain from participating further in the particular matter.

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Therefore, the Requestor would not be in violation of the County Ethics Laws by representing “individuals and companies before the various boards in towns and villages in Suffolk County with respect to land use applications.”

CONCLUSION

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.

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.

The forgoing is the opinion of the Board.

Hauppauge, New York
Dated: April 7, 2021

Eric A. Kopp, Chairperson