

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 Department of
Social Services Commissioner [REDACTED]

ADVISORY OPINION
No. AO-2021-6

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Advisory Opinion 2021-6
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: The Requestor is the Suffolk County Commissioner of the Department of Social Services. This Supervisory Official is requesting this advisory opinion as to whether it is a conflict of interest for the significant other of the Chief Deputy Commissioner, of the Department of Social Services, to donate professional services to the Department. With specificity, this proposed donation of photography and videography services, to the Department of Social Services, is for the purpose of participating in the May 20, 2021 New York State Office of Children and Family Services virtual adoption to create the adoption profile of a, “16 year old youth in care and custody of Commissioner of the Department of Social Services” (*Requestor’s Exhibit “A”*). As set forth by the Requestor, the photographer, “volunteer(s) to take the photo and video free of charge” and “the materials will not be used for any other purpose”.

SUMMARY: Upon review of this request, including fact-finding determining that the photographer is not a vendor or former employee of the County of Suffolk, the Suffolk County Board of Ethics concludes that it is not a conflict of interest for the Suffolk County Department of Social Services to accept the donation of photography services of [REDACTED]. The purpose of this donation is for the Department’s submission to the State of New York of an adoption profile of a, “16 year old youth in care and custody of Commissioner of the Department of Social Services” (*Requestor’s Exhibit “A”*).

Additionally, it is of importance to note, that the Suffolk County Board of Ethics previously concluded in Advisory Opinion 2019-19, that, “*the Suffolk County Code of Ethics gifting provisions are only as to direct gifts to individuals, not County departments receiving gifts and donations*”¹.

¹ (*See, Suffolk County Board of Ethics Advisory Opinion 2019-19, concluding 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 of Ethics recommended that the Suffolk County 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*).

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GOVERNING AUTHORITY/ANALYZED RULES AND LAW: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Suffolk County Board of Ethics Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-3(B) and Section 77-3(C).

STANDING VOTE 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.²

PROCEDURAL HISTORY This Advisory Opinion was requested on 3/31/2021. Standing vote was voted and approved on 4/7/2021 by the full Board of Directors. The Board deliberated on this request on 4/7/2021, voted and approved the request as a “non-conflict” pending final identity/vendor conflict check of the photographer donating services “free of charge”. The additional Board directed fact finding and conflict review was concluded by the Executive Director and Board Investigator.

FACTS AND OPINION The Requestor is the Suffolk County Commissioner of the Department of Social Services. This Supervisory Official is requesting this advisory opinion as to whether it is a conflict of interest for the significant other of the Chief Deputy Commissioner, of the Department of Social Services to, “volunteer(s) to take the photo and video free of charge” and “the materials will not be used for any other purpose”. This donated photography and videography services, to the Department of Social Services, is for the purpose of participating in the May 20, 2021 New York State Office of Children and Family Services virtual adoption to create the adoption profile of a, “16 year old youth in care and custody of Commissioner of the Department of Social Services” (*Suffolk County Codes §77-3B , Requestor’s Exhibit “A”*).

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.

First, as applied and 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. Second, the Board further determined that as this donation of photography services to the Department did not yet occur, this is qualifying proposed future conduct.³ And finally, upon review

²§ 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*).

³ § A30-3. ADVISORY OPINIONS

B. Advisory opinions shall be issued only with respect to *proposed future conduct* or action by a public servant.” (*Excerpt with emphasis added*).

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of the public information and facts submitted to the Board⁴, the Board of Ethics concludes that the donation of Photography/Video services to the Department for purpose of participating in the New York State Office of Children and Family Services virtual adoption is not a prohibited conflict of interest.

ANALYZED SECTIONS OF LAW 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.
- 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.

⁴ The Suffolk County Board of Ethics directed fact-finding by the Executive Director and Board Investigator fact-finding interviews determined the following. The name of the volunteer photographer [REDACTED] with photography business website located at [REDACTED]. Through fact-finding, the Board of Ethics was apprised by the photographer, and County contract review, that there are no prior or existing business dealings between the County of Suffolk and the photographer, there are no vendor contracts or services agreements with the County of Suffolk, and the photographer is not a current or former employee of the County of Suffolk. Additionally, public record review by the Board's investigator reflects prior volunteer efforts of the photographer regarding gift cards being donated to the Department⁴.

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As applied to the prohibited conduct laws, of §77-3, the Chief Deputy Commissioner, would be precluded from using her official position or office, or take or fail to take any action, that would personally financially benefit her significant other, or engage in any transaction which is in conflict with the proper discharge of duties. The Board opines that this volunteer, non-County vendor, donation of photography services, is not a financial benefit to Chief Deputy Commissioner's significant other, therefore not a conflict of interest nor interfere with proper discharge of official duties.

Additionally upon conclusion of Board directed fact-finding by the Executive Director and Board Investigator⁵, including public record review, fact finding responses of the Requestor, photographer's name, corporate website, appraisal that the Deputy Commissioner's significant other, a professional photographer is not a vendor to the County nor a current or former employee. Therefore, as previously opined in *Suffolk County Board of Ethics Advisory Opinion 2019-19*, County Departments are not prohibited from receiving donations under the Suffolk County Ethics Laws. As such, the Suffolk County Board of Ethics concludes in this Advisory Opinion Request, that there is not a prohibition for the donation of services to the Department of Suffolk County Social Services for this New York State Office of Children and Family Services virtual adoption event.

CONCLUSION

Due to the foregoing, the full Suffolk County Board of Ethics deliberations concluded that the Requestor's proposed future conduct as described herein as the donation of photography services by the Chief Deputy Commissioner's significant other, for purpose of creating the Department's adoption profile for one youth participating in the May 20, 2021 New York State Office of Children and Family Services virtual adoption, will not violate the Suffolk 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
On Behalf of the Suffolk County Board of Ethics

⁵ The name of the volunteer photographer [REDACTED] with photography business website located at [REDACTED]. There are no prior or existing business dealings with the County of Suffolk and the photographer, there are no vendor contracts or services agreements with the County of Suffolk, and the photographer is not a current or former employee of the County of Suffolk