

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

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In the Matter of the Inquiry of [REDACTED]

ADVISORY OPINION
No. AO-2013-20

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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. Can a violation of Suffolk County Code § 77-4 (B), “Prohibition of Dual Office-Holding”, be found where an elected official retains an assistant principal position with a local public school district?

APPLICABLE LAWS

2. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions, Suffolk County Code Chapter 77, Section 77-4(B), Education Law, Section 3101 and New York law.

PROCEDURAL HISTORY

- 3. This Advisory Opinion was requested 11/27/2013.
- 4. A standing vote was found on 12/5/2013.
- 5. The Board voted on this Advisory Opinion request on 12/11/2013.

INFORMATION PRESENTED TO THE BOARD

6. The Requestor, a newly elected Suffolk County Legislator, is currently employed as an assistant principal with a local New York public school district. (*Requestor’s Exhibit# 1*). The position with the school district is a full-time, paid position. (Id.).

7. The Requestor is scheduled to be sworn in to [REDACTED] Legislative office at an organizational

meeting on January 2, 2014 at 11:00 a.m. (*Requestor's Exhibits# 2*).

8. Requestor has presented legislative history, specifically, debate of Resolution 1372-2011, the prior version of Section 77-4(B), to support ■■■ claim that the section was not intended to apply to school districts. (*Requestor's Exhibits #3*).

OPINION AND ANALYSIS

9. In considering this inquiry, the Board employed the following three-step analysis to determine whether a violation of Section 77-4(B) would occur:

- 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 the Requestor's retention of ■■■ assistant principal position will violate section 77-4(B) of the Suffolk County Code of Ethics?

STANDING

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

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 Board determined that as the Requestor has not taken ■■■ oath of office, that the request is regarding proposed future conduct and is within the Board's jurisdiction.

POTENTIAL VIOLATION OF SECTION 77-4(B)

13. The Laws state in pertinent part:

I. Suffolk County Code § 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.

14. The Suffolk County Code provides in pertinent part that “[n]o 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.” Suffolk County Code, § 77-4(B).

15. The first issue presented before the Board is whether the Requestor’s paid position of employment with the school board constitutes 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.” Suffolk County Code, § 77-4(B). The Court of Appeals in New York has held that schools boards are subdivisions of the State, specifically, that they are “agents of the state.” City of New York v. State of New York, 86 N.Y.2d 286, 631 N.Y.S.2d 553 (1995). Accordingly, Requestor’s status as an elected official holding a paid position of employment with a board or agency of New York State would be encompassed by Section 77-4(B).

16. The Requestor’s argument that Section 77-4(B) does not apply to any school district position would cause the second sentence of Section 77-4(B) to be superfluous. If the first sentence of Section 77-4(B) did not apply to elected officials who hold positions with school districts, there would be no reason to have included that second sentence of Section 77-4(B) in the statute, *i.e.* that 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.” It bears important mention that courts routinely refuse to interpret a statute in a manner that makes other statutory language without meaning. Rocovich v. Consolidated Edison Co., 577 N.Y.S.2d 219 (1991) (it is “an accepted rule that all parts of a statute are intended to be given effect and that a statutory construction which renders one part meaningless should be avoided”).

17. Requestor argues that during the debate of the bill, Counsel to the Legislature, ██████ stated that the law “does not extend out to [school, fire and library] districts.” (*Requestor’s Exhibits #3*). First, the section of legislative history referred to by Requestor concerned a Resolution Numbered 1372 which became Section A30-8 of the County’s prior Ethics Law. Thus, the debate cited by the Requestor involved debate on the prior Ethics statute and not Section 77-4(B) of the Suffolk County Code. There does not appear to be any published legislative history concerning the specific section implicated in this Opinion request.

18. Additionally, our review of the legislative history of the prior version of the law is that such history is ambiguous. For example, the same resolution cited by Requestor also states that the intent of such law is to restore public confidence by “prohibiting County elected officials from holding paid employment with any other level of government” Such language suggests a broad interpretation of the prohibition against dual office holding and the application of the first sentence of Section 77-4(B) to school districts as agents of the State.

19. Accordingly, the Board finds that the first Section 77-4(B) applies to an elected official who holds paid a position with a school district. Thus, the issue next to be determined is whether the exception provided in the second sentence of Section 77-4(B) applies in this case.

20. The prohibition against dual office holding in the first sentence of Section 77-4(B) does 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.” Thus, the issue is whether the Requestor’s “position” as an assistant principal at a local public school constitutes holding a position as a “teacher.”

21. There is no definition in the Suffolk County Code of Ethics for the word “teacher.” Nor

is there a broadly used definition of such word in other provisions of Suffolk law. The Requestor argues that Section 3101 of the Education law should be applied here. Section 3101 of the Education Law defines the word “teacher” as it applies to salaries of teachers and supervisors, to mean, “all full-time members of the teaching and supervisory staff of each school district of the state, including, if employed in such district, the superintendent of schools, associate or district or other superintendents” N.Y.Educ. Law § 3101. The Requestor argues that such a broad definition of the word “teacher” should be used in this instance as well.

22. However, teachers have very different legal rights and responsibilities than principals and assistant principals. They serve in different tenure areas and they are specifically appointed to an administrative rather than a teaching position. In addition, the duties of an assistant principal vary drastically from that of a classroom teacher. Courts in Suffolk County routinely hold that in ascertaining the legislative purpose or intent of statutory language, courts should construe unambiguous language to give effect to its plain meaning. County of Suffolk v. Givens, 41 Misc.3d 1203 (A) , 2013 WL 5357045 (Sup. Ct., Suff. Co. 2013). Further, it is fundamental that the words used should be given the meaning intended by the lawmakers, and words will not be expanded so as to enlarge their meaning to something which the Legislature could easily have expressed but did not. Board of Ed. V. State Div. of Hum. Rts., 38 A.D.2d 245, 248 (4th Dep’t 1972).

23. In addition, the Third Department has rejected the argument that the Requestor advances here. The Court, in interpreting the Excellence in Teaching apportionment statute, found that the definition of “teacher” in Section 3101 of the Education law was intended only for use in that article and that because the statute at issue in that case did not cross-reference the definition in Section 3101, the court would not apply it. Schneider v. Ambach, 135 A.D.2d 284, 526 N.Y.S.2d 857 (3d Dep’t 1988).

24. Because Section 77-4(B) only exempts an elected official who “holds a position” as a “teacher” in a public school, and because the Requestor is holding a position as an assistant principal and does not perform the functions normally associated with the term “teacher”, the Board finds that the Requestor would be in violation of Section 77-4(B) of the Suffolk County Code of Ethics if [REDACTED] were to

retain ■ position as an assistant principal after accepting an oath of office to serve in the Suffolk County Legislature.

CONCLUSION

25. Absent any showing by the Requestor to the Board of regularly performing direct instructional duties at ■ school district to the students, the Board finds the exemptions for teachers to be inapplicable.

26. The retention of the Assistant Principal position while an Elected Official would be prohibited by Section 77-4(B).

27. Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the Requestor 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.

28. The forgoing is the opinion of the Board.

Dated: Yaphank, New York
12/11/2013

Robin L. Long, Esq. – Chair