

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

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In the Matter of the Inquiry of

██████████ in capacity of  
Deputy Commissioner of the Board of Elections

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STATE OF NEW YORK: COUNTY SUFFOLK  
COUNTY BOARD OF ETHICS  
Advisory Opinion 2017-14  
January 3, 2018

**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 Suffolk County Board of Elections Deputy Commissioner. He has inquired if a paid consulting position with a political campaign while being a Deputy Commissioner of the Suffolk County Board of Elections, would create an impermissible conflict under the Suffolk County ethics laws. The Board has concluded under 77-3(B) that it is an impermissible conflict with his proper discharge of job duties for a Deputy Commissioner of the Board of Elections, whose job responsibilities include petition challenges at the Board of Elections<sup>1</sup>, to be a paid consultant on any political campaign.<sup>2</sup>

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<sup>1</sup> Executive Director Fact Finding interview with County Board of Election Commissioners and Requestor

<sup>2</sup>Suffolk County Administrative Code § 7-3. Validation of petition; public notice.

[Derived from Charter Sec. 707; amended 5-1-1990 by L.L. No. 33-1990; 8-24-1999 by L.L. No. 37-1999  
In determining the number of signatures, the Board shall presume valid a signature if it appears valid on its face. If the Board determines that there are a sufficient number of signatures, the petition shall presumptively be valid. The Board of Elections shall immediately advise the Clerk of the Legislature in writing of this presumptive validity. No later than one business day after receiving this determination, the Clerk of the Legislature shall initiate the process to cause to be published at least once a public notice in each of the towns of the County, within general-circulation publications designated by the County Legislature, provided that such publications are distributed at least weekly within each town. The public notice shall contain the following information: title, text and summary of the measure. A statement of written objections to the petition may be filed by any registered voter in the office of the Clerk of the Legislature within 30 days of initial publication. Such objections shall be made in conformity with New York Election Law § 6-154. Once the time for filing objections has expired, the Clerk of the Legislature shall immediately forward all objections to the Board of Elections, which shall finally determine whether or not there are a sufficient number of signatures. The Board shall make such determination within 10 business days of receipt of said objections and inform the Clerk of the Legislature of the result. The Clerk of the Legislature shall notify the sponsor, the Presiding Officer, the County

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As to the County’s employment policy for all employees regarding an “appearance of conflict”, Suffolk County SOP A-15(5)(1) states, “outside employment may not involve *or appear to involve a conflict of interest or a potential conflict of interest*”. The Board continues to defer assessment of “appearances of conflict” with the proper discharge of official duties under County Code 77-3(B), to County Department Heads.

**Analyzed Laws and Rules:** The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions, Chapter 77-3 (B), and the Suffolk County Board of Ethics Rules.

**Procedural History:** This Advisory Opinion Standing vote occurred on 12/6/2017 and the Board has determined on 1/3/2017 that the requested future conduct is an impermissible conflict of interest.

**Opinion:** The Requestor is a Deputy Suffolk County Board of Elections Commissioner. He has inquired with the Board if paid consulting on political campaigns is an impermissible conflict under the Suffolk County conflicts laws.

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 a conflict of interest exist requiring declination of the position.

The Board determined that County employees have standing for this Advisory Opinion, deeming the Requestor a “public servant” and binding the Requestor to the Suffolk County Ethics Laws (*People of the State of New York v. Adolphus Ebuzome* 435 N.Y.S.2d 243, NYC COIB Advisory Opinion 2009-4).

As to potential conflicts of interest, the laws state in pertinent part at § 77-3 Prohibited Conduct, Sections 77-3(B)

“(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”;

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 as required to determine if there was a conflict.

The Board has concluded that the proposed activity under the facts presented, is impermissible conduct under 77-3(B). The Board has further concluded that “appearance of conflicts” is deferred to the Department Head.<sup>3</sup>

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Executive and the County Attorney of the *final determination of the Board of Elections*. If the petition is deemed sufficient, the measure shall be put on the ballot at the next general election as provided in § **C7-3D** of the Suffolk County Charter.

<sup>3</sup> It is noteworthy that this requestor is a licensed attorney and also subject to County Code 77-3(I) which imposed the following limitation, “No public servant shall appear as attorney or counsel against

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**Conclusion:** As set forth above, the Board finds the proposed future conduct is an impermissible conflict of interest for a Deputy County Board of Election Commissioner to have outside income as a paid consultant on political campaigns.

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.

Dated: Great River, New York  
1/3/2018

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Eric A. Kopp - Chair

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the interests of the County in any litigation in which the County is a party, or in any action or proceeding in which the County, or any public servant of the County, acting in the course of official duties, is a complainant, provided that this subsection shall not apply to an elected official representing himself or herself, or to a public servant employed by an elected official who appears as attorney or counsel for that elected official, in any litigation, action or proceeding in which the elected official has standing and authority to participate by virtue of his or her capacity as an elected official. This subsection shall not apply to an elected official who represents himself or herself in an election law matter or to a public servant who represents a defendant in a criminal proceeding. For a public servant who is not a County employee, this prohibition shall apply only to the agency served by the public servant”;