

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

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In the Matter of the Inquiry of
[REDACTED], County Legislator

ADVISORY OPINION
No. AO-2022-6

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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.

INQUIRY

County Legislator, [REDACTED], submitted this request for an advisory opinion asking whether it would be a violation of the Suffolk County Code of Ethics for a candidate for County Executive to receive campaign contributions from the Suffolk County Police Benevolent Association (“PBA”) or its Political Action Committee (“PAC”). Specifically, the request states:

If a candidate for County Executive were to receive campaign contributions from the Suffolk County Police Benevolent Association and/or their Political Action Committee or Super Political Action Committee would that violate the Suffolk County Code of Ethics, since, they would be responsible for negotiating the terms of the county’s contracts with the Association as well as entering into various stipulations of agreement and memorandums [sic] of understanding relating to compensation and terms of employment (including those involving Association leadership receiving perks above and beyond those of all other officers)? Furthermore, would it constitute a violation of the Ethics Code for the candidate, since in his/her capacity as County Executive, they would be responsible for the hiring and oversight of the Police Commissioner who in turn oversees and may assign union leadership as well as rank and file members and is responsible for enforcing the Department’s Rules and Procedures?

The gravamen of the inquiry focuses on the County Executive’s relationship with the Suffolk County Police and the Suffolk County PBA.

Analyzed laws and rules: The requestor does not point to specific Suffolk County Code of Ethics provisions to guide our analysis. The Board has opted to analyze the requestor’s inquiry alongside Suffolk County Code of Ethics § 77-3(B).

Procedural history and facts: The Board received the request for an Advisory Opinion on April 26, 2022. During the fact-finding stage, the requestor met with counsel for the Board to submit evidence supporting the request. Counsel, on behalf of the Board, completed fact-finding on July 25, 2022. The Board acted upon the opinion at its regularly scheduled meeting on September 7,

2022.

OPINION

Sections A30-3 and A30-5(C) of the Suffolk County Administrative Code authorize this Board to opine on the ethical responsibilities of Suffolk County elected officers. Hence, this Board opines that a candidate for County Executive receiving campaign contributions from the Suffolk County PBA and/or its PAC does not violate the Suffolk County Code of Ethics even considering the role the County Executive occupies in labor negotiations with the PBA.

Earlier this year, this Board issued Advisory Opinion AO-2021-17. In this opinion, the Board opined whether a conflict of interest exists when a Suffolk County elected official receives campaign contributions in excess of \$5,000 from the Suffolk County PBA PAC, specifically as it relates to the appearance of impropriety for a District Attorney to receive said contributions. Without weighing in on election law analysis beyond its jurisdiction, the Board determined that “[i]f a public servant acting as a prosecuting attorney receives campaign contributions from a police union or one of its [PACs] the receipt of such a contribution is improper because **a significant non-waivable appearance of impropriety arises due to the unique nature of the relationship between a prosecuting attorney and the police department.**”¹

In AO-2021-17, the Board acknowledged that “the application of the rule regarding appearance of impropriety from the receipt of campaign contributions could be argued to apply to any elected official or county public servant who contributes to any Suffolk elected official, not just the District Attorney.”² However, as the Board consistently reiterated throughout AO-2021-17, “the application of this important rubric to candidates for the office of District Attorney, or an incumbent District Attorney, is made because of the obvious intensity of the relationship between law enforcement officers and the District attorney, the overlapping work each does with the other, and the District Attorney’s oversight of police misconduct.”³ The unique relationship between the District Attorney and law enforcement “requires scrupulous avoidance of the appearance of significant impropriety[.]”⁴ This Board is thus tasked with undertaking a particularized factual case by case analysis whenever a campaign contribution is made in a setting which could give rise to an appearance of impropriety, as it stressed in AO-2021-17.

Suffolk County Code § 77-3(B) reads “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.” Lacking specific guidance from the requestor, the Board proceeds by assuming that if the County Executive accepted the campaign contributions, the requestor would allege a violation of the Suffolk County Code of Ethics follows because of the appearance of impropriety. The appearance of impropriety can “discourage public confidence in our government and the system of law to which it is dedicated.”⁵

In support of his request for an advisory opinion, the requestor submitted an article (with no named author) entitled “Exposed: Liberal Democrat Steve Bellone’s Secret Left Wing Agenda,” a

¹ Advisory Opinion No. AO-2021-17, page 4 (emphasis added).

² *Id.* at 5.

³ *Ibid.*

⁴ *Ibid.* at 6.

⁵ *People v. Adams*, 20 N.Y.3d 608, 612 (2013).

signature page for a 2012 Memorandum of Agreement between Suffolk County and the Suffolk County PBA (signed by the Chief Deputy County Attorney as Acting Director of Labor Relations), and two pages of policies presumably governing Suffolk County Police. Interestingly, none of these materials even identify whether Bellone has received campaign contributions from the Suffolk County PBA. In a subsequent email to the Board's counsel, the requestor provided case law regarding solicitations by police officers and police integrity. A review of this case law does not provide precedent that informs the Board in issuing this Advisory Opinion.

Even if the requestor had supplied evidence detailing campaign contributions from the Suffolk County PBA to the County Executive, this Board would be hard pressed to make a finding of impropriety similarly to the District Attorney in AO-2021-17. For one, many of the concerns to which the requestor points fall squarely within the jurisdiction of the County Executive. Suffolk County Code § C3-2 has established that the County Executive "shall be the chief executive officer of the County government and its administrative head." A provision in section C3-3(H) gives the county executive the "authority, justification and control over the rules for the administration of the Suffolk County Salary Plan and labor contracts as may be, from time to time, promulgated by action of the County Legislature of County Executive." Importantly, unlike the District Attorney and law enforcement relationship, the collective bargaining relationship between the County Executive and law enforcement contains layers of check and balances. Under Section 204-a of the Taylor Law of the State of New York, any collective bargaining agreement must be negotiated by the government's chief executive officer. If a collective bargaining agreement requires the appropriation of monies to fund a settlement it must be approved by the appropriate legislative body.⁶ In the matter at hand the Suffolk County Legislature is required to approve monetary expenditures to fund collectively bargained settlements. Section 201(12) of the Taylor Law clearly sets forth that any agreement requires approval by the legislative body of the County, the Suffolk County Legislature. Further, should no settlement be reached the Taylor Law requires an impartial arbitrator to render a binding decision.⁷

A prosecuting attorney accepting campaign contributions from a law enforcement union or its political action committee is inherently problematic because the prosecuting attorney must hold law enforcement officer members of a police union accountable for misconduct through the prosecution of acts of criminal misconduct by a police officer. Additionally, a district attorney works closely with police on a daily basis and can presumably directly raise concerns regarding a police officer's performance with Suffolk County police administration.

Such is not the case in the relationship between the County Executive and the police and its union. Discipline and discharge of police officers proceeds in accord with the labor contract between the County and the PBA. Charges are heard either by a disciplinary trial or at the election of the police officer before an impartial labor arbitrator.⁸ The decision of the impartial arbitrator is final and binding.⁹ The County Executive plays no role in such processes.

For the above reasons, political contributions by a police union or union political action committee to a county executive, or for that matter to any member of the Suffolk County Legislature does not

⁶ N.Y. CIV. SERV. LAW § 204-a(1).

⁷ See N.Y. CIV. SERV. LAW § 209.

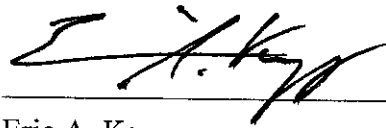
⁸ N.Y. CIV. SERV. LAW §§ 209(4), 205.3.

⁹ N.Y. CIV. SERV. LAW § 209(4)(c)(vi).

contravene the Suffolk County Code of Ethics, absent direct proof of an improper quid pro quo interest compensated in an improper transaction between the public officer, the police union, or PAC with the public officer.

The foregoing is in the opinion of the Board.

Dated: September 7, 2022
Riverhead, New York



Eric A. Kopp

Chairperson, Suffolk County Board of Ethics

On behalf of

The Suffolk County Board of Ethics