

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

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In the Matter of the Inquiry of

ADVISORY OPINION

No. AO-2021-7

Supervisory Official Request of
Deputy Suffolk County Police Commissioner [REDACTED]

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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. *Advisory Opinion Inquiry:* Do the two public servant positions of a full-time Deputy Chief, Internal Affairs Bureau, and proposed part-time Town Harbormaster of the Town of Smithtown create a conflict with the proper discharge of official duty if simultaneously served?

SUMMARY

2. *Conclusion:* The Board determined that as the full-time Suffolk County Police Department Deputy Chief of Internal Affairs is a County-wide position with police jurisdiction inclusive of the Town of Smithtown waterways, that pursuant to Suffolk County Code 77-3(B), the proposed outside income of Town Harbormaster is a conflict and does interfere with the proper discharge of official duty with the full time Suffolk County Police Department Deputy Chief of Internal Affairs Bureau.

GOVERNING AUTHORITY

3. The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-2(A), Section 77-3(B).

PROCEDURAL HISTORY

- 4. This Advisory Opinion was requested on 4/1/2021, standing vote occurred on 4/7/2021.
- 5. The Board voted on this Advisory Opinion request on 4/21/2021.

FACTS AND DOCUMENTS REVIEWED BY THE BOARD

6. The requestor is a Supervisory Official of the County in the title, Deputy Suffolk County Police Commissioner. The Requestor submits this opinion request asking if the two public servant positions of a full-time Deputy Chief, Internal Affairs Bureau, and part-time Town Harbormaster in the Town of Smithtown, creates a conflict with the proper discharge of official duty if simultaneously served. The Board reviewed the full advisory opinion file during deliberations including the Requestor's advisory opinion requests.

OPINION AND ANALYSIS

7. 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 holding both public servant positions would be in conflict with the County ethics laws?

STANDING

8. As applied to the above, the Board determined that standing exists for this Advisory Opinion request due to the Requestor’s position as a prospective public servant, the request is as to future conduct. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

PROPOSED FUTURE CONDUCT

9. 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.

10. The Requestor seeks guidance regarding the subject future and ongoing conduct. The Board has determined the request is within the Board’s jurisdiction.

ANALYZED SECTIONS OF LAW SECTIONS AND COUNTY PROCEDURE SOP A-15

11. The analyzed laws state in pertinent part:

§ 77-1 Definitions

PUBLIC SERVANT All officials, officers and employees of the County, whether paid or unpaid.

§ A30-3. ADVISORY OPINIONS.

E. For the purpose of this section only the term public servant includes a prospective or former public servant and a supervisory official includes a supervisory official who will supervise a *prospective public servant* or a supervisory

official who supervised a former public servant.
[Added 6-4-2013 by L.L. No. 28-2013]

§ 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.

COUNTY PROCEDURE SOP A-15

The Suffolk County Standard Operating Procedure A-15 paragraph 5, “Policy for Outside Employment for County Employees” states in relevant part:

(5) Employees represented by collective bargaining units are subject to any and all provisions and restrictions relating to outside employment contained in current collective bargaining agreements. These employees should review their collective bargaining agreements and determine whether they contain outside employment provisions and restrictions. Employees represented by collective bargaining units are also subject to current and future County and departmental procedures and policies which are not inconsistent with the terms of the existing collective bargaining agreements. Employees who are excluded from the collective bargaining units are subject to departmental or County policies and procedures regarding outside employment which are now in effect or which may be promulgated in the future.

All outside employment is also subject to the following provisions:

(1) *Outside employment may not involve or appear to involve a conflict of interest or a potential conflict of interest.* (italics added).

(2) Outside employment may not be undertaken on regularly scheduled work time.

(3) Outside employment may not be undertaken on sick time.

(6) “Suffolk County employees are prohibited from engaging in outside employment which *would conflict, appear to conflict or potentially conflict with the proper performance of their official duties.* Guidelines for what constitutes a conflict of interest are outlined in the Code of Ethics, Article XXX of the Suffolk County Charter. *The Board of Ethics is empowered to render advisory opinions with respect to the Code of Ethics*” (italics added).

OPINION AND ANALYSIS

12. Upon review, the Board notes that the Supervisory Official is requesting review as to the full time Deputy Chief of Internal Affairs Bureau which is a County-wide position with police jurisdiction inclusive of the Town of Smithtown waterways. As such, the Board finds that as there is police jurisdiction on the waterways, that there is a conflict with his official duties under Suffolk County Code 77-3 (B). Additionally, the Board notes that the two positions do “*involve or appear to involve a conflict of interest or a potential conflict of interest*” as is prohibited by County SOP A-15.

In addition, as previously opined by the Suffolk County Board of Ethics, it bears important mention that the Board's prior opinion on this topic, Advisory Opinion, 2016-13, is distinguishable as the requesting employee was employed by the Department of Public Works, a non-law enforcement entity without police jurisdiction. Additionally, the Board opined that public servants are not precluded per se to be employed by more than one public employer as discussed in Suffolk County Board of Ethics Advisory Opinion, 2016-13 as Federal and New York State government employees are permitted in certain circumstances to receive compensation for two appointments from their government employer.¹

CONCLUSION

13. Accordingly, the Board finds maintaining both public servant positions not permissible under the Suffolk County Code of Ethics.

14. 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.

15. The forgoing is the opinion of the Board.

Dated: Hauppauge, New York
April 21, 2021




Eric A. Kopp, Chair
On Behalf of Suffolk County Board of Ethics

¹ See New York State Office of the State Comptroller Division of State Government Accountability "Managing Dual Employment Report Dated 12/2013" at pages 2-3, "Working Two Government Jobs As noted above, most State workers do not take on a second State job. Earnings by workers with two State jobs exceed \$500 million annually, however. Dual employment is most prevalent at the senior colleges of the City University of New York (CUNY), the Department of Corrections and Community Supervision (DOCCS), the Office of Mental Health (OMH), the State University of New York (SUNY) and the Unified Court System Office of Court Administration (UCS). State employees also appear in the New York City municipal payroll. The most common secondary positions are as adjuncts, correction officers, election monitors, poll workers, and school hourly staff. Regulating Dual Employment State and City laws and regulations governing dual employment help to ensure the integrity of public service, and to reduce conflicts of interest, risks to public health and safety, and the abuse and waste of public resources. Generally, these laws and regulations require the employee to disclose and seek management approval to work in a second government job. Certain State employees designated as "policymakers" by their agencies must also seek permission from the Joint Commission on Public Ethics (JCOPE) before taking a second job either in or outside of State service. The Office of the State Comptroller (OSC) requires the annual submission of a supervisor-approved "Dual Employment/Extra Service Form" in order to issue a second paycheck. The form describes the work performed in the second job, optionally reports the hours scheduled, and includes the employee's and supervisor's attestation that the secondary employment poses no conflict of interest."