

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 2021-25

██████████ in capacity as a public servant
in the title of Deputy Commissioner of Parks

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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.

Summary: The Requestor is a current Suffolk County Deputy Commissioner of ██████████. The Requestor has asked whether it would violate the Code of Ethics to become the Chairman of the Huntington Democratic Committee, which is a defined Town political party officer included in the Suffolk County Code of Ethics¹. As set forth pursuant to Suffolk County Code, 77-4 (A), “No political party officer shall be eligible to serve as an elected official, *department commissioner*, assistant district attorney or member of any board, commission, authority, or public benefit corporation whose members are appointed by the County Executive or County Legislature (*emphasis added*). As the Requestor is a Deputy Commissioner, and not a department commissioner, the Suffolk County Board of Ethics concludes that there is no per se prohibition in the Requestor becoming the Chairman of the Huntington Democratic Committee and this is not prohibited under the County Code of Ethics. In furtherance, the Suffolk County Board of Ethics advises that this opinion is issued as to the current facts set forth. In the event of a change in facts resulting in the Requestor’s current title of Deputy Commissioner of ██████████ changing to Acting Commissioner or Commissioner, this position would be prohibited under Suffolk County Code, 77-4 (A).

Additionally, through fact finding, the Requestor apprised the Suffolk County Board of Ethics, in accordance with Departmental policies, no political activity would occur within a County venue, and that he is not a vendor to the County, and further has represented that County vehicles would not be used for political activities. (*see precedent case Suffolk County Board of Ethics, Advisory Opinion 2018-19*).

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code 30, Advisory Opinions, and Suffolk County Board of Ethics Advisory Opinions.

Procedural History: This Advisory Opinion was received on November 23, 2021, presented and voted on for Standing on December 1, 2021 and voted on within 45 days of conclusion of fact finding on December 15, 2021. On December 15, 2021, the Suffolk County Board of Ethics has determined that the requested future conduct is permissible under the County Code of Ethics.

¹ Suffolk County Code Definitions 77-1, **POLITICAL PARTY OFFICER**, A chairperson of any County political party committee elected pursuant to § 2-112 of New York Election Law or the chairperson of any duly constituted Town political party committee.

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Opinion: The Requestor is a current Suffolk County employee holding the title of Deputy Commissioner of the Parks Department. The Requestor has asked whether it would violate the Code of Ethics become a member of a Town Political Party.

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 an impermissible conflict of interest exists.

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). 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.

Analyzed Provisions of County Code 77 as to Political Activity:

§ 77-4. PROHIBITION ON DUAL OFFICE-HOLDING; OTHER PROVISIONS RELATING TO POLITICAL PARTY OFFICIALS.

A. No political party officer shall be eligible to serve as an elected official, *department commissioner*, assistant district attorney or member of any board, commission, authority, or public benefit corporation whose members are appointed by the County Executive or County Legislature (*emphasis added*).

C. A political party officer may represent private interests before a County agency but he or she shall first disclose to the Board the nature and scope of the services to be provided.

D. No political party officer or firm in which he or she holds an ownership interest shall have business dealings with the County, except that a political party officer or his or her firm may receive a contract from the County as a result of a competitive bidding process conducted in accordance with Article 5-A of the New York General Municipal Law.

“§ 77-3. PROHIBITED CONDUCT.

K. No public servant shall compel, induce or request any person to make a monetary or in-kind contribution to any candidate for elected office, committee or political party under threat of prejudice to, or promise of, advantage in rank, compensation or other job-related status.”

As applied to Suffolk County Code, 77-4 (A), “No political party officer shall be eligible to serve as an elected

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official, *department commissioner*, assistant district attorney or member of any board, commission, authority, or public benefit corporation whose members are appointed by the County Executive or County Legislature (*emphasis added*). As the Requestor is a Deputy Commissioner, and not a department commissioner as precluded under the local law, the Suffolk County Board of Ethics concludes that there is no per se prohibition in the Requestor becoming the Chairman of the Huntington Democratic Committee and this is not prohibited under the County Code of Ethics. Additionally, as applied to Suffolk County Code 77-4 (C) and (D), based upon the facts provided through the fact-finding process, there is no current disclosure required under 77-4(C) and no “ownership or business dealings” under 77-4(D).

Additionally, as to potential conflicts of interest, the Suffolk County Board of Ethics has opined on county employee/Town political Party activity in Advisory Opinion 2016-14 and in Advisory Opinion 2018-19. Specifically, the Board previously analyzed the above Section 77-3(K) of the County Code and opined in Advisory Opinion 2019-19,

“When assessing potential conflicts including section 77-3(K) regarding outside political activity, the Board considers if a public servant intends to, or has, extended a threat or promise with respect to a candidate, committee, or political party. Here, the Board finds that no information has been presented to conclude any threat or promise would be created by such activity by the Requestor. Additionally, based upon the facts presented including the Requestor’s representation that no political activity would occur within a County venue or vendor that he has County job duty dealings with, the Board finds that the proposed future conduct is not prohibited.

In furtherance, as applied to the Suffolk County Ethics code, as opined is Advisory Opinion 2019-19, it is widely accepted that Public Officials can be involved in political campaigns even when no conflicts exists. Such limitations were opined by the New York State Ethics Commission in Advisory Opinion No. 98-12 stating, “pursuant to the authority vested in it by Executive Law §94(15), the Commission renders its opinion that the State employee may work on political campaigns, but activities are subject to certain restrictions arising from his obligation to avoid a conflict of interest or the appearance of a conflict in violation of Public Officers Law §74. The Commission further held that, “no State resources of any type may be used in furtherance of these (political) activities, including, but not limited to, telephones, office supplies, postage, photocopying machines, computers and support staff. Nor may campaign activities be conducted from a State office or during State business hours unless leave is taken. Finally, no State employee may solicit from subordinates, as this practice is strictly forbidden by Civil Service Law §107 (See also Election Law §17-158)”.

CONCLUSION

As set forth above, as the Requestor is a Suffolk County Deputy Commissioner, a position which is permissible to be held contemporaneously with a Political Party Office under the Suffolk County Code section 77-4(A), the Board finds the proposed future conduct is permissible¹ under the County Ethics Code. . The Board further advises, in the event of a change in facts resulting in the Requestor’s current title of Deputy Commissioner of [REDACTED] changing to Acting Commissioner or Commissioner, this position would be prohibited under Suffolk County Code, 77-4 (A).

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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.

Voted and Issued: Riverhead, New York
December 15, 2021



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