

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
-----X

REDACTED FOR WEBPUBLISHING
RECONSIDERATION R#2022-1

ADVISORY OPINION
No. AO-2021-17

STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS

**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 opinion asking whether it would be a conflict of interest for a Suffolk County elected official to take campaign contributions from the Suffolk County Police Benevolent Association or its Political Action Committee (hereinafter referred to as "PAC"). Specifically, the request for an advisory opinion states:

Can I, or other elected officials, take money (campaign contributions) from the PBA PAC Given the money is being illegally removed from the PBA corporation and moved over to its PAC, a separate legal entity in clear violation of NYS election law 1416.2. Would this be a prohibited transaction between your political committee that you control and the PBA PAC, when inherent in my duty to ensure that employees do not violate the law. Would it be a conflict of interest to take the money from the PBA PAC under such circumstances and take no action on the illegal activity? The law clearly states that the PBA as a corporation cannot move more than \$5000 of corporate funds into its PAC. It clearly does, see attached.

The gravamen of the inquiry focuses on the allegation that an incorporated PBA or its PAC may not make political contributions in excess of a total of \$5,000. The inquiry states a tautology since it assumes that a violation of Election Law exists.

Analyzed Laws and Rules: New York State Election Law § 14-116; Suffolk County Code of

Ethics § 77-3(B)

Procedural History & Facts: On May 6, 2021, County Legislator, [REDACTED] submitted a formal request to the Board for an advisory opinion asking whether the acceptance of certain campaign contributions by the then County District Attorney from the Suffolk County Police Benevolent Association (PBA) or its political action committee (PAC) violated the Suffolk County Code of Ethics. A standing vote occurred on May 19, 2021 wherein the Board voted it had no standing to issue an advisory opinion. The Board referred the matter to the New York State Attorney General, the Internal Revenue Service, the Suffolk County District Attorney's Office, the New York State Comptroller, and the New York State Department of Taxation and Finance. On or about September 15, 2021, the Requestor spoke at a Board meeting and made a Request for Reconsideration based on additional information. Subsequently, the Board approved the Request for Reconsideration. Thereafter, on October 6, 2021, the Board convened at a regularly scheduled meeting and by majority vote affirmed the request had standing. This determination was premised upon whether a public officer's receipt of donations from the Suffolk County PBA PAC a financial interest in conflict with the proper discharge of is his or her duties.

Following this determination, during the fact-finding stage, Investigator, Edward Yzaguirre spoke with a representative of the Board of Elections and Legislator [REDACTED] Documents requested and submitted by the Suffolk County PBA were reviewed and considered. Additionally, counsel for the Board interviewed David Davis, Esq., counsel for the PBA (hereinafter "Counsel Davis"). Davis explained that the PBA acquired the services of a separate attorney, Vito R. Pitta, Esq (hereinafter "Counsel Pitta"), for election and campaign finance matters. Counsel Pitta was interviewed by Board Counsel on November 29, 2021. Counsel, on behalf of the Board completed fact-finding on December 1, 2021. Following this interview, Board Counsel has undertaken legal study and analysis of this issue in preparation of the Board's issuance of this advisory opinion.

OPINION:

This Board has broad authority under Section A30-3 of the Suffolk County Administrative Code and under Section A30-5(C) to opine on the ethical responsibilities of Suffolk County elected officers. Hence, this Board opines that if an elected official accepts contributions from a police union (PBA) or any political action committee (PAC) that have been made in violation of Election Law § 14-116, a violation of the Suffolk County Code of Ethics would occur. However, before such a determination can be rendered, a definitive ruling of whether such a PBA or PAC contribution from an incorporated union or one of its PACS violates the Election Law is necessary. This falls solely within the province of the New York State Board of Elections and/or a court of law. This Board is not charged with the responsibility of administering or interpreting the New York State Election Law. Such a task lies outside of this Board's jurisdiction. Hence, by this opinion letter this Board does not opine whether the subject campaign contributions are in violation of the Election Law; that determination is left to those public agencies charged with enforcing the provisions of the Election Law.

In significant measure, the following provision of the New York State Election Law pervades the Board's consideration of a response to this request for an advisory opinion.

Section 14-116 of the New York State Election Law states:

1. No corporation, limited liability company, joint-stock association or other corporate entity doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, limited liability company, joint-stock, other association, or other corporate entity organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stock-holder, member, owner, attorney or agent of any corporation, limited liability company, joint-stock association or other corporate entity which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violations, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor.
2. Notwithstanding the provisions of subdivision one of this section, any corporation or an organization financially supported in whole or in part, by such corporation, any limited liability company or other corporate entity may make expenditures, including contributions, not otherwise prohibited by law, for political purposes, in an amount not to exceed five thousand dollars in the aggregate in any calendar year; provided that no public utility shall use revenues received from the rendition of public service within the state for contributions for political purposes unless such cost is charged to the shareholders of such a public service corporation.

N.Y. Elec. Law § 14-116. A violation of this section of the Election Law may result in civil and criminal penalties. N.Y. Elec. Law § 14-126.

There exists no definitive determination by the New York State Board of Elections that campaign contributions from an incorporated union from dues, through a political action committee, or from union “non-dues” revenue, exceeding \$5,000 in a calendar year violates or does not violate N.Y. Elec. Law § 14-116.¹ In New York State Board of Elections Opinion #9,

¹ PBA election law counsel stated in his interview with SCBE Counsel that there is no definitive New York State Board of Elections ruling regarding such campaign contributions made from a union or PAC may exceed the \$5,000 statutory cap. He indicated his belief that such contributions exceeding \$5,000 are permissible based upon existing “practice”. This may be grounded in the argument that the \$5,000 limit is only applicable if the sole purpose of the

1979, the Board of Elections addressed the issue of when a public employee union constitutes a political committee so as to be subjected to the financial reporting requirements of the Election law. Based upon the 1975 opinions number #10 and #13, if the public employee union either solicits or expends money on behalf of a candidate or party it would be deemed to be a political committee which is subject to the reporting requirements of Article 14 of the Education law. Further if a union is incorporated as a corporation or joint stock association doing business in New York State then it would be subject to the \$5000 expenditure limit set forth in section 14-116 of the Election Law. However, it is our understanding that the Board of Elections enforces that rule only when the sole purpose of the corporation is for political fundraising activities. Of course, the Suffolk County PBA is involved a full panoply of activities in addition to fundraising including the representation of police officers in collective negotiations, grievance administration, public relations and administration of police officer employment benefits. (It is unknown whether PBA PACs are similarly engaged in non-political activities.)

This Board is not charged with the responsibility of administering or interpreting the New York State Election Law, nor is this Board aware of a definitive determination by the Board of Elections, or a court of law, that elected officials' acceptance of such contributions violates Election Law § 14-116.

However, the Board has jurisdiction to render an advisory opinion regarding the County Code of Ethics based upon "...such facts as are presented in the request." (County Administrative Code §A30-3(A)). Suffolk County Code §77-3(B) states: *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.* For violation of § 77-3(B) to exist, the financial interest must conflict with the "... proper discharge of... official duties." Accepting monies that are paid in violation of the Election Law falls within the ambit of the improper discharge of the officer's duties which of course includes obedience to the law.

Hence, if it were determined by a public agency charged with enforcement of the Election laws of the State of New York, or a court of law, that campaign contributions from a police union or its political action committee exceeding \$5,000 to elected officials in violation of the Election Law § 14-116, then the same will be violative of the Suffolk County Code of Ethics.

Appearance of Impropriety

Suffolk County Code §77-3(B) states: *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.*

If a public servant acting as a prosecuting attorney receives campaign contributions from a police union or one of its political action committees the receipt of a 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.

This Board takes notice that prominent among the elected officials of Suffolk County is the

organization is political fundraising and contributions.

District Attorney. This elected official is the chief law enforcement arm of the County.²

This Board has independent authority to advise regarding public officials' compliance with the Suffolk County Code of Ethics. We take this opportunity to opine, regardless of the issue of compliance with Election Law § 14-116, that acceptance of campaign contribution(s) from any law enforcement union or organization of related PAC or "Super PAC", controlled or managed by Suffolk County law enforcement public servants, made to a District Attorney creates a non-waivable and impermissible appearance of impropriety under the County Code of Ethics due to the unique role of the District Attorney. The District Attorney on a daily basis provides police officers and their superiors with legal advice regarding criminal matters, arrests, search warrants, confessions and all other legal matters arising in the exercise of the police enforcement function. Also, the District Attorney is responsible for holding law enforcement officers accountable for acts of misconduct. This role imposes a responsibility on prosecutors not only to ensure the fairness of the process by which a criminal conviction is attained, but also to avoid a public perception that criminal proceedings are unfair or that law enforcement authorities are not influenced by political contributions.

The Suffolk County District Attorney, an elected official, is charged with review, investigation and/or prosecution of alleged police officer misconduct. It is well established in case law that an appearance of impropriety can "discourage public confidence in our government and the system of law to which it is dedicated." People v. Adams, 20 N.Y.3d 608, 612 (2013). Accordingly, it is the opinion of the Board that political contributions from a PBA, its PACS or other law enforcement unions or their PACS appearance is completely averse to the County Code of Ethics. A prosecuting attorney accepting campaign contributions from a law enforcement union, or its political action committee, is inherently problematic when the prosecuting attorney is charged with holding law enforcement officer members of a police union accountable for misconduct. Likewise, the daily advice of a District Attorney and his office shared with the Suffolk County Police Department and its police and superior officers must be dispassionate avoiding any appearance of partisanship arising from campaign support in the form of financial contribution. Because the Suffolk County Code of Ethics is designed to foster public trust in government, the appearance of impropriety in organizational interaction and oversight of police conduct leads this Board to determine that receipt of campaign contributions from an organization representing police or law enforcement agencies, from any related PACS, or from any similar organization such as a "Super PAC" is violative of the Code.

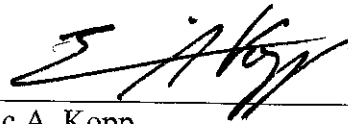
This Board acknowledges that the application of the rule regarding appearance of impropriety from the receipt of campaign contributions could be argued to apply to any elected official or county public servant who contributes to any Suffolk elected official, not just the District Attorney. After all, the District Attorney is responsible for the criminal law oversight of all Suffolk elected official misconduct. However, 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.

² At the outset, it should be noted that the following comments are not intended to suggest any impropriety or the appearance thereof on the part of the new District Attorney of Suffolk County, recently elected this past November.

Certainly, the rule is applicable to receipt of campaign contributions by all other elected officials of the County from third parties. However, such application will require a particularized factual case by case analysis of whether a campaign contribution in that setting will give rise to an appearance of impropriety. However, as noted above, the special relationship between police and the District Attorney requires scrupulous avoidance of the appearance of significant impropriety for a District Attorney to accept campaign contributions from a law enforcement officer union or PAC.

The foregoing is the opinion of the Board.

Dated: February 16, 2022,
Hauppauge, New York



Eric A. Kopp
Chairperson, Suffolk County Board of Ethics
On behalf of
The Suffolk County Board of Ethics