

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-2014-8

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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. Can a County Legislator drive his or her County vehicle on personal use to an adjacent County or State if all expenses (gas, tolls) are paid for by the Legislator?

**SUMMARY**

2. The Board holds that a County Legislator may not drive his or her County vehicle to an adjacent County or State for personal use even if all expenses (gas, tolls) are paid for by the County Legislator. As the Board is permitted to reconsider, revise, or withdraw an advisory opinion at any time upon its own motion, upon submission to the Board of any amendments to the current County procedures, such information shall be represented to the Board.

**GOVERNING AUTHORITY**

3. The Laws of Suffolk County; Suffolk County Administrative Code Article XXX, Advisory Opinions; and Suffolk County Code Chapter 77, Section 77-6(B) and Section 77-6(C).

**PROCEDURAL HISTORY**

- 4. This Advisory Opinion was requested 7/17/14.
- 5. Fact finding was concluded on 7/31/14.

6. The Board voted on this Advisory Opinion on 9/3/14.

### **INFORMATION PRESENTED TO THE BOARD**

7. The Requestor, a County Legislator, requested this Advisory Opinion. (*Requestor's Exhibit #1*).
8. The Requestor is assigned a County vehicle, [REDACTED], in his capacity as an Elected Official of Suffolk County (*Requestor's Exhibit #1*).
9. Suffolk County SOP F-02, F-04 (*Board Exhibit # A & B*).
10. The Requestor position as a County Legislator, requires him to be on call 24 hours a day 7 days a week, and requires him to be in attendance at late night meetings. (*Board Exhibit # C - Exec. Dir. Interview Memorandum*).<sup>1</sup>
11. The Requestor submits mileage monthly to the Clerk of the Legislature (Board Exhibit - #D)

### **OPINION AND ANALYSIS**

12. 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 Suffolk County Legislator can use their assigned County vehicle for personal use in an adjacent County/State if all expenses are paid by the Legislator, without violation of the ethics laws?

### **STANDING**

13. The Board determined that standing exists for this Advisory Opinion request due to the Requestor's position as a public servant (*Suffolk County Administrative Code §A30-1, §A30-3(as amended 6-4-2012 by L.L No. 28-2013, Suffolk County Code Chapter 77, §77-1)*).

## PROPOSED FUTURE CONDUCT

14. The Law States in Pertinent Part<sup>2</sup>:

§ 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.*

15. The Requestor seeks guidance regarding the subject of future conduct. The Board has determined the request is within the Board's jurisdiction.

## POTENTIAL CONFLICTS OF INTEREST

16. The analyzed statutory laws states in pertinent part:

I. Suffolk County Code:

**§ 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.

N. No public servant shall make personal use of County letterhead, personnel, equipment, supplies or resources.

**CHAPTER 255. VEHICLES, COUNTY-OWNED**

Article I. Reporting Policy; Vehicle Standard

**§ 255-1. Legislative intent.**

A. This Legislature hereby finds and determines that numerous County vehicles are assigned to individual County employees on what appears to be an ad hoc basis.

B. Therefore, the purpose of this article is to establish a reporting policy whereby County department heads will be required to justify the assignment of vehicles to the County Legislature and the taxpayers of Suffolk County.

**§ 255-2. Report of vehicle assignments.**

A. The heads of each County department or elected Countywide office shall issue a written report to the County Executive on July 1 and December 31 of each year setting forth the assignment of County-owned or County-leased vehicles within said department to individual employees of that department, together with the justification for said assignment.

B. Such report shall include the number of vehicles assigned; the existence, if any, of carpooling by said department or office; and the rationale behind the assignment of individual vehicles or the creation of a carpool, as the case may be. If a vehicle is assigned to a County employee who is permitted to take that vehicle home on an overnight basis at any time during the year, then said employee shall maintain a log of mileage incurred for the use of such vehicle by said employee which specifies, in detail, on a daily basis, where the individual is traveling; the time the vehicle is in use; the destination as well as the purpose for which the employee is traveling to that particular destination; the mileage incurred after the standard daily work shift assigned to said individual has expired; and the allocation of mileage between that incurred traveling to or from the individual's residence to or from work and that incurred for work-related travel.

(1) The assignment of vehicles to employees whose commuter mileage exceeds business-related mileage is prohibited.

(2) All vehicles that are assigned to individuals with a work station of at least 10 people must be available at the actual permanent work site for other County employees, to be utilized as pool vehicles.

(3) Vehicles may be assigned to certain individuals on a specific daily basis when the individual shall engage in after-hours or before-hours activities explicitly related to County work. A daily written explanation card shall then be given to the supervisor as to which car is being given to that individual, the date and time, the specific and particular purpose, and the destination of the employee. The explanation card shall then be countersigned for approval by a supervisor designated by the pertinent department head. These cards shall be maintained in the regular course of business by each pertinent department as part of its ordinary business records.

(4) **The restrictions contained in Subsection B (1), (2) and (3) of this section shall not apply to department heads, elected officials** or anyone specifically exempted by a duly enacted resolution of the County of Suffolk explicitly for after-hour vehicle use in connection with County-related activities (*emphasis added*).....

E. The Clerk of the County Legislature shall issue a written report to the Presiding Officer of the County Legislature on July 1 and December 31 of each year setting forth the assignment of County-owned or County-leased vehicles within said Legislature to individual employees of the Legislature, together with the justification for said assignment. This report shall contain the same information required by Subsection **B** of this section. The Presiding Officer shall forward this written report to the Ways and Means Committee, or to any other successor

committee thereto, of the County Legislature within seven days after receiving such reports from the Clerk of the County Legislature.

17. As to personal use of County vehicles, the Suffolk County SOP F-04 “Operation and Maintenance of Motor Vehicles” states in pertinent part:

“The driver shall:

5. (b)(6) only transport non-County personnel when required in the course of County business”.

### CONCLUSION

18. The Board finds that the Chapter 255 of the Suffolk County Code sets forth specific restrictions as to reporting and assignment of County Vehicles. This Chapter continues and states at paragraph 4 of Chapter 255-2, “(4) **The restrictions contained in Subsection B (1), (2) and (3) of this section shall not apply to** department heads, **elected officials** or anyone specifically exempted by a duly enacted resolution of the County of Suffolk explicitly for after-hour vehicle use in connection with County-related activities.” Accordingly, as Legislators are elected officials of Suffolk County, they may be assigned County vehicles. Such vehicles may be used for commuter mileage which may exceed business-related mileage; however this provision of law does not authorize personal use of the County vehicle. As this provision of law does not establish standards for which the Board could provide an analysis for those persons in the Elected Official category, the Board can only interpret the Statute in the most restrictive manner and opine that only official business purposes of a County issued vehicle is permissible. Any such personal use of a County vehicle by a County Legislator is prohibited “personal use” of County equipment under County Code § 77-3(N).

19. The Board further takes notice that there is not an active County SOP or current employment practice regarding the Fleet Management regulations of County vehicles when assigned to a

County Legislator. The Board further takes notice that Suffolk County Code §77-5 (A) – (G) “Exemptions,” does not have an exemption for personal use of County issued vehicles by County Elected Officials.

**20.** The Board also finds that under § 77-3(B), at no time can the County issued vehicle be used in any impermissible manner, such as any business, or private employment, which is in conflict with the proper discharge of official duties.

**21.** The Board does not render opinions on any law outside of their jurisdiction. Therefore, the Board does not opine on any taxation laws or mileage reimbursement laws.

**22.** The Board does not render opinions with respect to potential motor vehicle liability regarding driving a County issued vehicle. The Board hereby recommends that any person who is issued a County vehicle, contact the County Law Department as to liability coverage, geographic driving limitations, and County interpretation of the SOP F-02, F-04, F-05, and C-07 “insurance claims procedures”.

**23.** As the Board is permitted to reconsider, revise, or withdraw an advisory opinion at any time upon its own motion, upon submission to the Board of any amendments to the current County procedures, such information shall be represented to the Board.

**24.** 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.

25. The forgoing is the opinion of the Board.

Dated: Yaphank, New York

9/3/14

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Robin L. Long – Chair

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<sup>1</sup> In a synonymous request before the New York City Conflicts of Interest Board, the Board found that for Elected Officials whose duties require them to be constantly available to the need of constituents and public emergencies, that they may make any lawful use of their City vehicles, within the five boroughs, without reimbursement to the City, provided that the Elected Official is inside of the vehicle and creating no other conflict of interest while using the vehicle. (*see, NYC COIB Decision 2009-1*). In furtherance, the New York City Conflicts of Interest Board found that for those Elected Officials who were assigned police security detail, that security and safety protocol supersedes the conflicts laws, therefore the assigned City vehicle must be used at all times. (*see, NYC COIB Decision 2009-1*).

<sup>2</sup> N.Y. Gen Mun. Law § 800: Article 18 of the New York General Municipal Law establishes standards of ethical conduct that are mandatory for officers and employees within the State of New York.