

LEVENTHAL, MULLANEY & BLINKOFF, LLP
ATTORNEYS AT LAW
15 REMSEN AVENUE
ROSLYN, NEW YORK 11576
TELEPHONE: (516) 484-5440
FACSIMILE: (516) 484-2710

STEVEN G. LEVENTHAL
THOMAS J. MULLANEY
JEFFREY L. BLINKOFF

TO: Hon. Carnell T. Foskey, County Attorney
FROM: Steven G. Leventhal
DATE: January 10, 2017
RE: Advisory Opinion: [REDACTED]

Question Presented

Whether a prohibited conflict of interest would arise if a county employee holding the title of [REDACTED] were, while off duty, to appear in uniform, in an uncompensated, non-speaking role, on a situation comedy filmed for broadcast on network television.

Conclusion

Based on the facts presented, a prohibited conflict of interest would not arise if a county employee holding the title of [REDACTED] were, while off duty, to appear in uniform, in an uncompensated, non-speaking role, on a situation comedy filmed for broadcast on network television.

Governing Authority

Nassau County Charter §2218 (“Code of Ethics), subsection 6, provides that:

No officer or employee of the County shall use the resources of the County in furtherance of his or her business, professional or political interests or activities, or in furtherance of the interests or activities of any outside entity other than pursuant to a County contract with such entity, without the approval of the head of his or her agency and the approval of the Board of Ethics upon a finding by the Board that such activity is in furtherance of the interests of the County.

Discussion

The duties associated with the civil service title of [REDACTED] are performance of inspections and investigations to ensure the enforcement of fire prevention and arson laws, and to determine the cause and origin of fires; promotion of the development and use of effective fire prevention methods, response to hazardous materials incidents, and related duties.

The producers of the television series “Kevin Can Wait” have planned an episode in which a fictitious Nassau County Fire Fighter is interviewed at the scene of a fire concerning his rescue of a cat that jumped from a window to avoid the fire. Neither the fire nor the burning building will be depicted. The scene and interview will take place after the fire has been extinguished.

A county employee holding the civil service title of [REDACTED] has, in the course of his official duties, provided oversight regarding fire safety issues at the scene of filming. The producers have invited him to appear in the program in an uncompensated, non-speaking role. The county employee would appear while off duty. For authenticity, the producers have requested that he appear in uniform.

In a letter submitted in support of this request, the producers stated that:

As you may know, Kevin James, Long Island born and raised, is very supportive of the Nassau County community, specifically the Fire and Police Departments, as well as local businesses. We take this very seriously, and saw this scene as an opportunity to say Thank You to Nassau County.

The [REDACTED] has concluded that the appearance under the facts presented would further the interests of the County by fostering public understanding of the role of the [REDACTED] Office, and has approved the request subject to the further approval of the Board of Ethics.

A three step analysis was used to determine whether a prohibited conflict of interest would arise if a county employee holding the title of [REDACTED] were, while off duty, to appear in uniform, in an uncompensated, non-speaking role, on a situation comedy filmed for broadcast on network television. The following questions were considered: (i) whether the television appearance would violate New York General Municipal Law Article 18 (Conflicts of Interest of Municipal Officers and Employees), (ii) whether the television appearance would violate the Nassau County Code of Ethics, and (iii) whether television appearance would create a prohibited appearance of impropriety under common law principles.

1. N.Y. Gen. Mun. Law Article 18

Article 18 of the New York General Municipal Law the “NYGML”) establishes standards of ethical conduct that are mandatory for officers and employees in every municipality within the

State of New York, other than New York City.¹ NYGML Article 18 does not regulate the outside business, personal or political activities of municipal officers and employees. Accordingly, based on the facts presented, the television appearance would not violate New York General Municipal Law Article 18 (Conflicts of Interest of Municipal Officers and Employees).

2. Nassau County Code of Ethics

The only county resource that would be used in the filming of the television appearance would be the uniform worn by the [REDACTED]. This minimal use of a county resource would be justified by the benefit of public education that is expected to accrue from the television appearance.

Accordingly, based on the facts presented, the television appearance would not violate the Nassau County Code of Ethics.

3. Common Law Principles

Ethics regulations generally are designed to promote high standards of official conduct and to foster public confidence in government.² The restrictions against misuse of county resources help to foster public confidence in government by avoiding situations in which the integrity of an officer or employee may be called into question.

Here, having concluded for the reasons set forth above that the minimal use of a County resource (the wearing of the [REDACTED] uniform) would be justified by the benefit of public education that is expected to accrue from the television appearance, the it is reasonable to conclude that the television appearance under the circumstances presented would not create a prohibited appearance of impropriety under common law principles.

¹ N.Y. Gen. Mun. Law §800(4).

² In some cases, courts have found that government officials have an implied duty to avoid conduct that violates the spirit and intent of ethics regulations, even where no specific statute is violated. *See, Zagoreos v. Conklin*, 109 A.D. 2d 281 (2d Dept., 1985); *Tuxedo Conservation & Taxpayers Assoc. v. Town Bd. of Tuxedo*, 69 A.D. 2d 320 (2d Dept., 1979); *Conrad v. Hinman*, 122 Misc. 2d 531 (Onondaga Co., 1984).