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COUNTY OF SUFFOLK


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MEMORANDUM

TO: Honorable Jon Cooper
County Legislator, 18th District

FROM: George Nolan
Counsel to the Legislature 

DATE: June 30, 2010

RE: Financial Disclosure

Issue

You have asked me to determine whether the Suffolk County Ethics Commission has the legal authority to accept from County officers and employees a financial disclosure statement that differs in form and substance from the financial disclosure statement set forth in Chapter 61 of the Suffolk County Code.

Background

It has been reported in the media that the Ethics Commission has in recent years allowed two county officials, including the County Executive, to file with the Commission a State financial disclosure form in lieu of the County's financial disclosure statement. The State form requires the disclosure of less information than the County's statement.

Discussion

Suffolk County's Financial Disclosure Law, codified in Chapter 61 of the Suffolk County Code, is applicable to "county officers and employees", which includes all elected county officials and departments heads, members of certain boards and agencies and other officers and employees who hold policymaking positions or negotiate contracts, licenses, et al. County officers and employees are required to file annually a financial disclosure statement. Section 61-9 of the Code states that the disclosure statement set forth therein shall be the "approved" disclosure statement. Section 61-8 states that the County's financial disclosure statement can only be revised or amended by the enactment of a local law.

Notwithstanding the clear language contained in Chapter 61, the Ethics Commission has apparently permitted the County Executive (and at least one other officer or employee) to file a

copy of his State financial disclosure form and stated that such submission "complies with the filing requirements of the Suffolk County Financial Disclosure Law."¹

It is my understanding that the Ethics Commission is relying on Section 811 of New York General Municipal Law to justify their action in this matter.

Section 811(1)(a) of General Municipal Law says that the governing body of each "political subdivision" - which is defined as a county, city, town or village having a population of fifty thousand or more - may promulgate a form of financial disclosure for its elected officials, officers and employees or continue the use of an existing financial disclosure form.

Section 811(1)(b) goes on to state that a governing body which requires the completion and filing of annual statements of financial disclosure by its officers and employees shall have the power, if it so chooses, to require the filing of such statements by local political party officials, "provided however, that a person who is subject to the filing requirements of both subdivision two of section seventy-three-a of the public officers law and of this subdivision may satisfy the requirements of this subdivision by filing a copy of the statement filed pursuant to section seventy-three-a of the public officers law with the appropriate body...."

It appears that the Ethics Commission takes the position that the language quoted above is inconsistent with our local financial disclosure law and, further, that the state law provision supersedes our local statute. I have reached the opposite conclusion for the following reasons.

First, it is unclear whether Section 811(1)(b) is, in fact, inconsistent with our local law as this provision could be interpreted to apply only to local political party officials.

However, even assuming an inconsistency between our local law and Section 811 of the General Municipal Law, it is my opinion that the local law provisions should be given effect.

Local governments, including counties, are authorized under home rule provisions to adopt and amend local laws not inconsistent with the provisions of the State Constitution or with any general law relating to their property, affairs or government and the powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of their officers and employees. NY Const, Article IX, section 2(c); Municipal Home Rule Law, section 10.

For home rule purposes, a general law is defined as "[a] law which in terms and effect applies to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages." NY Const, Art IX, section 2(c).

Section 811 is not a general law of the State because it applies only to those counties with a population of 50,000 or more. Additionally, Section 811 applies only to those counties and other political subdivisions that opt to come under it. Therefore, the County's law setting forth financial disclosure requirements for its officers and employees need not be consistent with section 811 of the General Municipal Law.

A Second Department decision which, interestingly, arose from a proceeding initiated by the Suffolk County Ethics Commission, further supports the County's right to impose more stringent financial disclosure requirements upon its officers and employees. In *Suffolk County Ethics Commission v. Neppell*, 307 A.D.2d (2003), Thomas Neppell, then chairman of the Brookhaven Republican Committee, refused to file a financial disclosure form with the Commission arguing

¹ As a member of the Central Pine Barrens Commission, the County Executive is required to file a financial disclosure statement with the State of New York.

that General Municipal Law section 800, et seq., preempted the field of financial disclosure by local governments. Neppell further argued that he was not a "local political party official" within the meaning of General Municipal Law section 810(8)(c).

The Appellate Division rejected Neppell's arguments concluding that nothing in General Municipal Law section 800, et seq. indicated that the State intended to occupy the field of financial disclosure to the exclusion of local law. The court went on to say, "[t]o the extent that Suffolk County Administrative Code section A30-10 imposes more stringent requirements for financial disclosure than General Municipal Law section 800, et seq it cannot be said to inhibit the operation of that law." (emphasis added)

Conclusion

The Suffolk County Ethics Commission is obligated to follow the County's Financial Disclosure Law and should only accept from officers and employees the county form set forth in Chapter 61 of the Suffolk County Code.

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