

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-7

Approved: February 15, 2022

Re: Eugene Quinn

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich School Committee, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from having access to, and utilizing, East Greenwich School District employees' payroll data to develop long-term forecasts for the East Greenwich School District's finances and enrollment, given that some of the payroll data may contain confidential and/or nonpublic information.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich School Committee, a municipal elected position, is not prohibited by the Code of Ethics from having access to, and utilizing, East Greenwich School District employees' payroll data to develop long-term forecasts for the East Greenwich School District's finances and enrollment, notwithstanding that some of the payroll data may contain confidential and/or nonpublic information, provided that his access and use of confidential and/or nonpublic information is solely in his capacity as a duly authorized member of the School Committee and that he does not disclose or utilize such information for financial gain.

The Petitioner is a member of the East Greenwich School Committee ("School Committee"), having been elected to said position in November 2018.¹ In his private capacity, the Petitioner is an adjunct Assistant Professor of Mathematics and Actuarial Mathematics Program Co-Director at Stonehill College in Easton, Massachusetts. The Petitioner represents that, as a resident of the Town of East Greenwich ("Town") and prior to his election to the School Committee, he attended East Greenwich Town Council ("Town Council") public meetings at which he presented evidence he obtained from publicly available sources to refute claims regarding the rate of tax growth in the Town. He further represents that as a candidate for School Committee, he focused his campaign on the public's need for evidence-based decision-making by the Town.

The Petitioner explains that since his election to the School Committee, he has directed his efforts toward building a data foundation to support long-term financial planning by the Town Council and the East Greenwich School District ("School District") which includes an analysis of the reasons for the Town's high tax rate. The Petitioner states that, based on his 45 years of

¹ The Petitioner represents that he also served as a member of the East Greenwich Finance Subcommittee from October 2017 until his election to the School Committee in November 2018.

professional and academic experience using statistical models, he believes that the Town could improve its budget and forecasting process by taking employees' salary steps into account, given that personnel costs are the largest component of the Town's finances. The Petitioner explains that at the start of the budget cycle following his election, he requested access from the School District's accountant to a historical record of salary steps for Town employees to assist him in creating a forecasting database. The Petitioner states that the Human Resources Director provided him with a payroll summary report but with certain data redacted based on her belief that said data was not public information. The Petitioner represents that the redacted information, which included check numbers and dates, was necessary to reconstruct the payment history, prompting him to request an unredacted copy from the Superintendent. The Petitioner states that the Superintendent agreed to release to him the information he requested on the grounds that salary data is "essentially public."² The Petitioner explains that he was able to use the unredacted information to build a database of salary histories for approximately 1,000 employees to replace a manual and less efficient system.

The Petitioner informs that, recently, concerns were raised by another School Committee member regarding whether the Petitioner should have continued access to unredacted payroll data to further his work and, as a result, the Superintendent is no longer providing the Petitioner with updated data. He explains that while he was able to complete the coding and construct a database which represented almost four years of labor, there is still work to be done to validate the model before it is ready for production use by the Town. He represents that the Superintendent supports his work and would reconsider providing him the data he needs to complete the project if the Ethics Commission issues an advisory opinion finding that the Petitioner is not precluded by the Code of Ethics from having access to, and utilizing, nonpublic payroll data in furtherance of his project.

The Petitioner states that he volunteered to perform this project based on his civic duty to the Town and because he believes that the database he has designed will benefit the School District in long-term financial planning and budget forecasting. He represents that he did not request, nor does he receive, any compensation for his work beyond his stipend as a School Committee member. Finally, the Petitioner represents that he does not expect to publish, sell, or otherwise derive a financial benefit from his work or his forecasting model. The Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from having access to, and utilizing, confidential and/or nonpublic School District employee payroll data to develop long-term forecasts for the School District's finances and enrollment.

As an initial matter, the Ethics Commission takes no position as to whether the data and information sought by the Petitioner is confidential, protected from disclosure, or is considered a "public record" pursuant to the Rhode Island Access to Public Records Act.³ Rather, for the purposes of this advisory opinion, we accept the Petitioner's representation that the data contains "confidential" information. Furthermore, this opinion solely addresses the question of whether the

² The Petitioner represents that the Superintendent initially granted him access to the unredacted payroll data on the grounds that said data is "essentially public." The Petitioner then consulted with legal counsel for the School District who informed him that while municipal salaries are public records, other information contained in the salary records of municipal employees, such as home addresses, check numbers, and check dates, is not accessible to the public.

³ Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

Petitioner's access and use of the confidential data is prohibited by the Code of Ethics, and does not seek to address whether such access or use is permitted or prohibited by any other applicable Rhode Island or Town statutes, regulations, charter provisions, ordinances, bylaws, or policies.

The Code of Ethics provides that no public official or employee shall have an interest or engage in any business, employment, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws §§ 36-14-5(a). A substantial conflict of interest exists if a public official or employee has reason to believe or expect that he, any person within his family, a business associate or an employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code also prohibits a public official or employee from engaging in any employment that would impair his independence of judgment as to his public duties. Section 36-14-5(b). Further, a public official or employee is prohibited from disclosing, for pecuniary gain, confidential information acquired by him in the course of his official duties. Section 36-14-5(c). Finally, a public official or employee is prohibited from using his public position or confidential information received through his position to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Ethics Commission has issued a number of advisory opinions in which it has given approval for a public official or employee to accept outside or secondary employment provided that, among other things, the public official or employee would not use any confidential information acquired through his public employment to benefit himself, his private employer, or a business associate. See, e.g., A.O. 2014-11 (opining that a securities examiner in the Division of Securities Regulation at the Department of Business Regulation was not prohibited by the Code of Ethics from engaging in private employment as a real estate salesperson, provided that he did so on his own time, outside of his public office, without the use of state resources and equipment, and that he did not use any confidential information acquired through his public employment to benefit himself or his clients); A.O. 2011-20 (opining that a senior planner at the Rhode Island Department of Administration, Division of Planning was not prohibited by the Code of Ethics from working in his private capacity as a real estate salesperson, provided that all such work was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment); and A.O. 2006-17 (opining that an East Providence Police Lieutenant could apply for a private investigator's license and operate a business in the City of East Providence provided that, among other things, he had no involvement with matters subject to the East Providence Police Department's official jurisdiction, that he did not accept any cases or perform any work within the City of East Providence for as long as he was employed by the East Providence Police Department, and that he did not disclose any confidential information he obtained in the course of his employment with the Police Department).

Here, the Petitioner represents that, to the extent that the Town provides the confidential payroll data for which he is requesting access, he will only use said data to complete the project he has undertaken to assist the Town and its School District in its long-term financial planning and budget forecasting and that said data will not be used in his collegiate instructions or to pursue other private employment or financial gain. The Petitioner expressly represents that he does not receive any compensation or remuneration for his work beyond his stipend as a School Committee member

and that he does not intend to publish his work or sell the forecasting model that he is creating for the Town. The Petitioner's representations made herein do not appear to create a substantial conflict for him to have access to, and utilize, Town and School District employees' payroll data to develop long-term forecasts strictly for use by the School District in its finances and enrollment. The Petitioner is prohibited, however, from disclosing or otherwise utilizing confidential information that he receives as a result of his position as a School Committee member to obtain a private advantage or financial gain for himself, a private employer, or a business associate consistent with section 36-14-5(a)–(d). The Petitioner is further advised that if his intended use of the payroll data or the forecasting model for the Town and its School District should change, he should seek further guidance from the Ethics Commission before pursuing any personal financial objective.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)
§ 36-14-5(b)
§ 36-14-5(c)
§ 36-14-5(d)
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2014-11
A.O. 2011-20
A.O. 2006-17

Keywords:

Confidential Information
Private employment