



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

9th Meeting

DATE: Tuesday, August 16, 2022

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on June 28, 2022.
3. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) 2021 Financial Disclosure;
 - e.) Ethics Administration/Office and Education Updates; and
4. Advisory Opinions.
 - a.) Renu Englehart, a member of the East Greenwich Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits her from appearing, as a member of the public, during public hearings of the East Greenwich Planning Board, over which the East Greenwich Town Council has appointing authority, to provide public comment on a proposed major development of property located within a mile of the Petitioner's home. [Staff Attorney Papa]

- b.) Jo Anne Santos, the Tax Collector for the Town of Charlestown, requests an advisory opinion regarding whether the Code of Ethics prohibits her from simultaneously serving as the part-time Tax Collector for the Charlestown Fire District, a quasi-public municipal appointed position. [Staff Attorney Papa]
 - c.) The Members of the Westerly School Committee, by and through its legal counsel, request an advisory opinion regarding whether the Code of Ethics prohibits the School Committee from requesting of the Westerly Town Council that a referendum question be placed on the November 2022 ballot whereby Westerly voters would determine whether members of the School Committee should receive a stipend for their service. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on June 28, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Carlos E. Tobon, Complaint No. 2022-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) Preliminary Investigation No. 2022-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) In re: Stephen P. Mattscheck, Complaint No. 2022-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - e.) In re: Calvin Ellis, Complaint No. 2022-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - f.) In re: Dan Patterson, Complaint No. 2022-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - g.) In re: Timothy Milisauskas, Complaint No. 2022-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - h.) In re: Richard Nassaney, Complaint No. 2022-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - i.) Discussion and review re: Legal Counsel's contract, pursuant to R.I. Gen. Laws § 42-46-5(a)(1).
 - j.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on August 16, 2022.

7. Report on actions taken in Executive Session.
8. Discussion and potential vote re: Legal Counsel's contract.
9. New Business proposed for future Commission agendas and general comments from the Commission.
10. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on August 11, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 16, 2022

Re: Renu Englehart

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from appearing, as a member of the public, during public hearings of the East Greenwich Planning Board, over which the East Greenwich Town Council has appointing authority, to provide public comment on a proposed major development of property located within a mile of the Petitioner's home.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Town Council, a municipal elected position, is not prohibited by the Code of Ethics from appearing, as a member of the public, during public hearings of the East Greenwich Planning Board, over which the East Greenwich Town Council has appointing authority, to provide public comment on a proposed major development of property located within a mile of the Petitioner's home.

The Petitioner is a member of the East Greenwich Town Council ("Town Council"), having served in that position since her election in 2018. She represents that before the East Greenwich Planning Board ("Planning Board"), over which the Town Council has appointing authority, is a Master Plan Review for a Major Residential development ("development") of property located within a mile of the Petitioner's home. The Petitioner explains that the subject property is comprised of just over 80 acres and is currently vacant. She adds that the developer intends to build approximately 410 new dwelling units on the property in a variety of housing types and styles, ranging from multi-story apartment buildings to small single-family cottages. The Petitioner states that the development is the largest proposed in East Greenwich to date. She represents that, because the applicant will deed-restrict more than 25% of the total units as affordable, the development qualifies as a Comprehensive Permit submission. The Petitioner states that such submissions are reviewed solely by the Planning Board and that the Town Council will have no part in the permitting process. She further states that any appeal of an unfavorable decision of the Planning Board would be heard by the State Housing Appeals Board, and not by the Town Council or other municipal boards.

The Petitioner represents that she does not live within the 200-foot radius of the subject property and that she did not receive an abutter's notice. The Petitioner further represents that the development would not be visible from her property and that she is currently not certain whether

and to what extent her property would or could be financially impacted because of the development. However, given the development's proximity to the Petitioner's residence, she is concerned about the amount of traffic and infrastructure needs associated with it. The Petitioner is also concerned with the source and amount of drinking water to be utilized by the development, given that her property is dependent on well water. Thus, the Petitioner would like to participate as a member of the public during the public comment section of the Planning Board's public hearings and voice her concerns relative to the proposed development. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from doing so.

The Code of Ethics prohibits a public official from using her public position, or confidential information received through her public position, to obtain financial gain, other than that provided by law, for herself, her family member, her business associate, or her employer. R.I. Gen. Laws § 36-14-5(d). The Code of Ethics also specifically prohibits a public official from representing herself or authorizing another person to appear on her behalf before a state or municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Section 36-14-5(e)(1); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). However, the Code of Ethics contains a "Public Forum Exception" which provides that it shall not be a violation of the Code of Ethics for any person to publicly express her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or her spouse or dependent child. Commission Regulation 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003) ("Regulation 1.2.3").

In past advisory opinions, the Ethics Commission has advised public officials about their rights under the "Public Forum Exception" primarily in situations where a petitioner was an abutter to a property under consideration, resulting in a rebuttable presumption of financial impact upon the petitioner. See A.O. 2020-33 (opining that a member of the West Warwick Town Council could address the Planning Board, the Zoning Board, and/or the Town Council, upon recusal, during public hearings regarding a proposed development of property located across the street from his personal residence, provided that he did not receive access or priority not available to any other member of the public); A.O. 2019-41 (opining that a member of the Middletown Town Council could attend and speak at public hearings before the Planning Board and/or, potentially, the Zoning Board regarding a proposed development of property located across the street from her personal residence, provided the petitioner did not receive access or priority not available to any other member of the public); and A.O. 2003-15 (opining that a member of the Scituate Town Council could, upon recusal, attend and provide public comment at meetings of the Zoning Board regarding a special use permit application for property to which he was an abutter, provided that he did not receive special access or priority not available to any other member of the public).

Here, unlike in the above-cited advisory opinions, the Petitioner is not an abutter to the proposed development and has not received an abutter's notice; thus, there is no rebuttable presumption of financial impact upon her or her family relative to the proposed development. Also, she is not certain at this time whether and to what extent the development would or could financially impact her property. However, given the magnitude of the development, a proposed construction of 410 new dwelling units to be located on just over 80 acres of land, which the Petitioner describes to be the largest proposed development in East Greenwich to date, the development qualifies as a matter

of general public concern justifying the application of the Public Forum Exception. Accordingly, it is the opinion of the Ethics Commission that the Petitioner, in her capacity as a member of the public, may appear and address the Planning Board during the public comment section of its public hearings regarding the proposed development of property located within one mile of her residence, provided that she does not receive access or priority not available to any other member of the public. The Petitioner is advised that she may not use her public position in any way to influence members of the Planning Board regarding this or any other matter. See section 36-14-5(d). Finally, in the unlikely event that any aspect of this proposed development comes before the Town Council, the Petitioner is strongly encouraged to recuse from participation therein and/or to seek further guidance from the Ethics Commission.

This Draft 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(d)

§ 36-14-5(e)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003)

Related Advisory Opinions:

A.O. 2020-33

A.O. 2019-41

A.O. 2003-15

Keywords:

Public Forum Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 16, 2022

Re: Jo Anne Santos

QUESTION PRESENTED:

The Petitioner, the Tax Collector for the Town of Charlestown, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from simultaneously serving as the part-time Tax Collector for the Charlestown Fire District, a quasi-public municipal appointed position.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Tax Collector for the Town of Charlestown, a municipal appointed position, is not prohibited by the Code of Ethics from simultaneously serving as the part-time Tax Collector for the Charlestown Fire District, a quasi-public municipal appointed position.

The Petitioner is the Tax Collector for the Town of Charlestown ("Charlestown Tax Collector"), having served in that position since her appointment by the Charlestown Town Council in 1996. She states that her normal working hours are Monday through Friday, 8:30 a.m. to 4:30 p.m. The Petitioner represents that her duties include, among others, the following: preparation and collection of town taxes; supervision of town Tax Sales; familiarity with the General Laws of Rhode Island pertaining to tax collection; depositing funds; collecting delinquent taxes; blocking motor vehicle registrations due to delinquencies; providing tax information to banks, title companies, and individuals; and verifying that all taxes are paid prior to issuing a business license or renewal.

The Petitioner states that the Town of Charlestown ("Charlestown" or "Town") has four different fire districts,¹ one of which is the Charlestown Fire District ("Fire District").² She represents that the Fire District is governed by a five-member Board of Engineers elected by the Fire District taxpayers. The Petitioner states that the Fire District has its own Tax Collector ("Fire District Tax Collector"), appointed by the Board of Engineers. The Petitioner further states that the current

¹ The Petitioner informs that the four Fire Districts are Charlestown Fire District, Dunne's Corners Fire District, Shady Harbor Fire District, and Central Beach Fire District.

² "The Charlestown Fire District was formed through legislation in 1974. The [Fire] District was given the authority to provide for fire protection and other emergencies in the portion of Charlestown not covered by the Dunns Corners Fire District." <https://www.charlestownfd.org/about> (last accessed July 27, 2022).

Fire District Tax Collector is retiring soon and the Fire District has inquired of the Petitioner whether she would be interested in serving as the interim Fire District Tax Collector, with the possibility of appointment to that position permanently. She represents that the Fire District Tax Collector position is part-time, and has historically required eight to ten work hours per week, on Wednesday and Saturday evenings.³ The Petitioner explains that the Fire District Tax Collector is assisted by an office manager, who is physically present in the Fire District's office during normal working hours. The Petitioner states that, if appointed, she will perform her duties as Fire District Tax Collector outside of her normal working hours as Charlestown Tax Collector, during the evening or on weekends. She further states that the duties of the Fire District Tax Collector are similar to those of the Charlestown Tax Collector, but on a smaller scale,⁴ and pertain only to taxes collected by the Fire District and not by the Town. Lastly, the Petitioner states that the Fire District operates separate and apart from the Town and that the Town does not subsidize the Fire District. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from simultaneously serving as the Charlestown Tax Collector and as the Fire District Tax Collector.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of her official duties if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of the public official's activity, to the public official, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). A business is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted." Section 36-14-2(2). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7). The Ethics Commission has consistently concluded that the Code of Ethics does not consider public entities "businesses" or the relationship between a public official and a public body, such as a state, municipal, or quasi-municipal agency, to be that of "business associates." See, e.g., A.O. 2014-23 (opining that neither the Rhode Island Board of Education Council on Elementary and Secondary Education ("CESE") nor Trinity Academy for the Performing Arts ("TAPA") was considered a "business" under the Code of Ethics and, therefore, the petitioner's memberships on CESE and TAPA did not constitute business associations with those bodies).

Further, a public official is prohibited from using her public office or confidential information received through her public office to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section

³ The Charlestown Fire District describes the tax collector's office as "administered by a part time tax collector and assistant," and "[b]ecause of the part time staffing calls to the office are directed to an answering machine." <https://www.charlestownfd.org/tax-collector> (last accessed July 27, 2022). Members of the public are also encouraged to schedule an appointment to meet the Tax Collector ahead of time, given that the Fire District Tax Collector is in the office very limited number of hours. See id.

⁴ The Fire District is one of four fire districts servicing the Town and, as such, has jurisdiction over only a portion of the properties in the Town.

36-14-5(d). Finally, a public official may not accept other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of her official duties. Section 36-14-5(b).

In prior advisory opinions, the Ethics Commission has consistently concluded that the Code of Ethics does not create an absolute bar against a person's simultaneous service in two different governmental entities, even if they are within the same municipality. Rather, the Ethics Commission has opined that such a determination must be made on a case-by-case basis regarding whether a substantial conflict of interest exists, in either public role, with respect to a petitioner carrying out his duties in the public interest.

In Advisory Opinion 2000-54, for example, the Ethics Commission opined that a petitioner could simultaneously serve as the Tax Assessor for the Town of Charlestown and as the Tax Collector/Assessor for Dunn's Corners Fire District, which serviced part of the Town of Charlestown. There, the only overlap recognized between the duties for those positions was that the taxes collected by the Tax Assessor/Collector for Dunn's Corners Fire District were based on property evaluations set by the Charlestown Town Assessor. The Ethics Commission noted that while there might be overlap in the petitioner's public roles, a substantial conflict of interest was not apparent by the petitioner holding the two positions. Also, in Advisory Opinion 2002-53, the Ethics Commission opined that a clerk for the Coventry Tax Collector could simultaneously serve part-time as the Tax Collector for Hopkins Hill Fire District, one of the seven fire districts in Coventry, given that, while there could be an overlap in the duties, a substantial conflict did not exist. That petitioner was required to recuse from participation and voting on matters financially impacting her spouse who was the Fire District's Fire Chief. See also A.O. 2017-15 (opining that the Interim Town Manager for the Town of New Shoreham who was also the Chairperson of the New Shoreham Library Board of Trustees was not prohibited by the Code of Ethics from simultaneously serving in both positions).

Here, the Petitioner's duties as Tax Collector for the Town and as part-time Tax Collector for the Fire District, although similar in nature and pertaining to taxation of the same properties, are separate and distinct. Further, the Petitioner represents that the Fire District operates separate and apart from the Town and that the Town does not subsidize the Fire District. The Petitioner also states that she will perform her part-time duties as the Fire District Tax Collector outside of her normal working hours as the Charlestown Tax Collector. Thus, based on the facts as represented by the Petitioner, there is no indication that serving in both capacities would create a substantial conflict with respect to carrying out her duties in the public interest in either role. Nor is there any indication that her simultaneous service in both positions would impair the Petitioner's independence of judgment as to her public responsibilities in either position, or require her to disclose confidential information acquired by her in the course of her official duties in either role.

Accordingly, based on the facts as represented by the Petitioner, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from simultaneously serving as the Tax Collector for the Town and as the part-time Tax Collector for the Fire District on an interim or permanent basis, provided that she performs her Fire District duties on her own time and without the use of Town equipment or resources, and *vice versa*. The Petitioner is cautioned, however,

that if any particular matter should arise in either of these positions that would financially impact the Petitioner, any person within her family, her business associate or her employer, then the Petitioner must either recuse from participation and/or from taking official action on such matter pursuant to section 34-14-6, or seek further guidance from the Ethics Commission.

This Draft 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:

§ 36-14-2(2)
§ 36-14-2(3)
§ 36-14-2(7)
§ 36-14-5(a)
§ 36-14-5(b)
§ 36-14-5(d)
§ 34-14-6
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2017-15
A.O. 2015-14
A.O. 2014-23
A.O. 2002-53
A.O. 2000-54

Keywords:

Dual Public Roles

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 16, 2022

Re: Members of the Westerly School Committee

QUESTION PRESENTED:

The Petitioners, the members of the Westerly School Committee, by and through its legal counsel, request an advisory opinion regarding whether the Code of Ethics prohibits the School Committee from requesting of the Westerly Town Council that a referendum question be placed on the November 2022 ballot whereby Westerly voters would determine whether members of the School Committee should receive a stipend for their service.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioners, the members of the Westerly School Committee, are not prohibited by the Code of Ethics from requesting of the Westerly Town Council that a referendum question be placed on the November 2022 ballot whereby Westerly voters would determine whether members of the School Committee should receive a stipend for their service.

Attorney William A. Nardone ("Mr. Nardone"), who serves as legal counsel to the Westerly School Committee ("School Committee"), writing on behalf of the School Committee members, states that the School Committee consists of seven members who are elected for staggered four-year terms. He explains that the terms of three members expire in November of 2022, and that the remaining four members are expected to retain their seats for two more years, with terms expiring in November of 2024.¹

Mr. Nardone represents that, subject to a majority vote by the School Committee members, the School Committee would like to request of the Westerly Town Council ("Town Council") that a referendum question be placed on the November 2022 ballot whereby Westerly voters would determine whether members of the School Committee should receive a stipend for their service. He further represents that School Committee members currently do not receive, and historically have not received, a stipend. Mr. Nardone states that such a request by the School Committee to the Town Council would be limited to the sole question of whether members of the School Committee should receive a stipend, and not address the amount of such a stipend or when such a stipend would take effect, adding that responsibility for decisions about those details would rest with the Town Council. He further states that placement on the ballot by the Town Council is one

¹ Of the three members whose terms expire in November of 2022, only one is seeking re-election. That person will face six other candidates for one of three open seats on the School Committee.

of only two ways that a stipend for members of the School Committee could be established; the other would be as the result of a revision to the Town Charter by a Charter Review Commission. Cognizant of the Code of Ethics and desirous of acting in conformance therewith, the members of the School Committee, by and through its legal counsel, seek guidance from the Ethics Commission regarding whether, given the facts as represented, the School Committee members may proceed with their plan.

Under the Code of Ethics, a public official may not participate in any matter in which he or she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his or her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a) ("section 5(a)"). A public official has an interest that is in substantial conflict with the proper discharge of his or her duties or employment in the public interest if he or she has reason to believe or expect that he or she, or any person within his or her family, or his or her business associate, or any business by which he or she is employed or which he or she represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of his or her official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," which means that the probability is greater than "conceivably," but the conflict of interest is not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, a public official may not use his or her public office, or confidential information received through his or her public office, to obtain financial gain, other than that provided by law, for himself or herself, for any person within his or her family, for his or her business associate, or for any business by which he or she is employed or which he or she represents. Section 36-14-5(d) ("section 5(d)").

In September of 2009, the Ethics Commission adopted General Commission Advisory No. 2009-2: Public Officials' Actions Involving Their Own Stipends, Salaries, Compensation or Benefits ("GCA No. 2009-2").² In doing so, the Ethics Commission identified as central to the foundation of the Code of Ethics the core principle that a public official or employee may not take any action, or in any way use his or her position or employment, to obtain financial gain for himself or herself. The Ethics Commission cited the conflict of interest prohibition found at section 5(a), which is further defined in section 7(a), and the prohibition against the use of office to obtain financial gain found in section 5(d), as the provisions from which this fundamental concept flows. Pursuant to GCA No. 2009-2, sections 5(a) and 5(d) prohibit members of a municipal school committee from voting to increase the stipend of incumbent school committee members that would take effect prior to the next election cycle, or before the end of their own term of office; nor may the officials vote or take action that results in a loss of compensation or benefits to themselves.

In order to determine whether section 5(a) is implicated here, the Ethics Commission must first ascertain whether the members of the School Committee would be directly financially impacted by the action they are contemplating. Specifically, if a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioners are not prohibited by the Code of Ethics from requesting of the Town Council that the above-described referendum question be

² GCA No. 2009-2 was adopted by unanimous vote of the Ethics Commission on September 22, 2009, to replace Amended General Commission Advisory (GCA) 6 (Salary Raises for Public Officials), which was withdrawn immediately following the vote to adopt GCA No. 2009-2.

placed on the November 2022 ballot. Here, even if the Town Council ultimately were to vote to place the referendum question on the ballot (something over which the School Committee has no control), and even if the Westerly electorate ultimately were to vote to pass the referendum question that would allow for members of the School Committee to receive a stipend for their service (also something over which the School Committee has no control), any financial impact upon the members of the School Committee as a result of its vote to request action by the Town Council would be hypothetical and indirect.³ See A.O. 2021-25 (opining that a legislator serving as a member of the Rhode Island Senate could participate in Senate discussions and voting relative to proposed legislation that would allow Twin River Casino Hotel to extend its debt leverage ratio limits during the extension of its lottery contract with the State of Rhode Island because, notwithstanding that the petitioner was privately employed by a commercial lending institution which currently serviced Twin River Casino Hotel, the financial impact of the legislation upon the petitioner's employer was both hypothetical and indirect). Also, in the event that the Town Council were to place the referendum question on the ballot and Westerly voters were to approve it, both the amount of the stipend and its effective date are details that would remain to be determined sometime in the future. For each of the above reasons, there is nothing in the facts as represented to indicate that the Petitioners would be directly financially impacted by voting to make this request of the Town Council.

Nor does it appear from the facts as represented that section 5(d) prohibits the Petitioners from requesting of the Westerly Town Council that the subject referendum question be placed on the November 2022 ballot. Notably, the prohibitions found at sections 5(a) and 5(d) of the Code of Ethics do not prevent a state or municipal employee from requesting a raise from his or her supervisor in the ordinary course of employment, regardless of whether said supervisor is an individual or an entity. GCA No. 2009-2. In that instance, the employee is regarded as acting in his or her private capacity as opposed to taking official action such as voting, or directing the activity of a subordinate. *Id.* Generally speaking, the prohibitions set forth in the Code of Ethics adhere to actions that state and municipal officials and employees undertake in their public capacities and do not apply to actions that they take as private citizens, unless such actions are specifically proscribed by the Code of Ethics.⁴ Here, each School Committee member can be compared to a state or municipal employee who is not prohibited by the Code of Ethics from requesting a raise from his or her supervisor in the ordinary course of employment, be that supervisor an entity or an individual. Each School Committee member would be acting as an individual who happens to be a public employee, as opposed to a public official taking official action, such as voting, or directing a subordinate to take some action. Nor would the members of the School Committee be directly financially impacted as a result of their proposed conduct, as

³ Two of the current School Committee members, whose terms expire in November 2022, are not seeking re-election; therefore, neither would realize any financial benefit should a stipend for members of the School Committee be implemented following a vote by Westerly citizens to do so.

⁴ Examples of actions taken by public officials as private citizens specifically proscribed by the Code of Ethics include, but are not limited to, the acceptance of secondary employment that impairs one's independence of judgment as to his or her official duties (See section 36-14-5(b)) and representing oneself or others before the state or municipal agency of which one is a member or by which one is employed during the period of one's service and for one year following one's departure from said service. (See section 36-14-5(e); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5006)).

any potential eventual financial impact would depend upon the independent actions of the Town Council and, later, the Westerly electorate.

Accordingly, based on the facts as represented, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the members of the School Committee are not prohibited by the Code of Ethics from requesting of the Town Council that a referendum question be placed on the November 2022 ballot for consideration by Westerly voters of whether the members of the School Committee should receive a stipend for their service. In the event that the question is placed on the ballot by the Town Council, and ultimately approved by the citizens of Westerly, it would remain to be determined what the amount of such a stipend would be and when it would take effect. To the extent that either of those questions were to eventually land before the School Committee, its members would be advised to seek further guidance from the Ethics Commission before participating in any discussion or decision-making relative thereto.

This Draft 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(d)

§ 36-14-5(e)

§ 36-14-7(a)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5006)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2021-25

G.C.A. No. 2009-2

Keywords:

Conflict of Interest