

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-24

Approved: 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 that “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 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(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