

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-34

Approved: December 13, 2022

Re: James Restivo

QUESTION PRESENTED:

The Petitioner, a member of the South Kingstown School Committee, a municipal elected position, whose spouse is employed by the South Kingstown School District as a teaching assistant, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon his ability to participate in School Committee discussions and voting relative to the School District budget and to the contract negotiations with the labor union representing the teaching assistants.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the South Kingstown School Committee, a municipal elected position, whose spouse is employed by the South Kingstown School District as a teaching assistant, shall be in compliance with the provisions of the Code of Ethics by following the guidelines outlined in this advisory opinion.

The Petitioner is a newly elected member of the South Kingstown School Committee (“School Committee”). He represents that his spouse is employed by the South Kingstown School District (“School District”) as a teaching assistant and is a member of the labor union which represents the educational support personnel, including employees in clerical, secretarial, and teaching assistant positions (“Union”). The Petitioner states that his School Committee duties may include participating in discussions and voting relative to the School District budget and the contract negotiations with various labor unions, including his spouse’s Union. The Petitioner further states that, while the School District budget is expected to be reviewed sometime in the months of April and May of next year, the School Committee and representatives from the School District Administration are presently in ongoing contract negotiations with the Union, from which the Petitioner plans to recuse because of his spouse’s employment. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding what limitations, if any, the Code of Ethics places upon his ability to participate in the School Committee discussions and voting relative to the School District budget and to the contract negotiations with the Union.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that 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 public official will have an interest that is in substantial conflict with the proper discharge of his 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, his family member, his business

associate, his employer, or any business by which he is employed or which he represents. Section 36-14-7(a); Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Further, section 36-14-5(d) prohibits a public official from using his public position or confidential information received through his public position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents.

In addition to the above-cited provisions, the Code of Ethics contains specific prohibitions targeting nepotism which are embodied in Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”). The regulation addresses the prohibitions against nepotism in general, and also provides specific guidance about various matters including those raised by the Petitioner in his request for this advisory opinion.

Participation in Budgets

Regulation 1.3.1 addresses a public official’s participation in budgets that could financially impact or involve the public official’s family member. Specifically, a public official is prohibited from participating “in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family[.]” Regulation 1.3.1(B)(3)(a). However, Regulation 1.3.1(B)(3)(c) provides that a public official is not prohibited from participating “in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his [] family . . . is impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.”

Applying Regulation 1.3.1 under an analogous fact pattern, in Advisory Opinion 2021-59 the Ethics Commission opined that a member of the East Greenwich School Committee was required to recuse from participating in the School Committee’s discussions and voting on budgetary line items that addressed or affected the employment, compensation, or benefits of her spouse, a teacher in the East Greenwich School Department, but that she could discuss and vote to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that her spouse would be impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. See also A.O. 2007-30 (opining that an East Providence School Committee member was prohibited by the Code of Ethics from participating in any budgetary line items relative to bus monitors, given that he had a family member who was employed as a bus monitor, but that he could vote to approve or reject the budget as a whole).

The basis for allowing participation relative to a budget as a whole is an assumption that a vote on the entire budget is sufficiently remote from most particular line items so as not to constitute a substantial conflict of interest in violation of the Code of Ethics. Therefore, while the Petitioner is prohibited from participating in the School Committee’s discussions and decision-making relating to budgetary line items that would address or affect the employment, compensation or benefits of his spouse, he may participate in the School Committee’s discussions and voting to approve or reject other budgetary line items and the entire School District budget as a whole, provided that his spouse would be impacted by the entire budget as a member of a significant and

definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also specifically addresses a public official's participation in collective bargaining/employee contracts that impact a family member. Specifically, it prohibits a public official from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation, or benefits of any person within his family or a household member. Regulation 1.3.1(B)(4)(a). This blanket prohibition against involvement in contract negotiations is based on an understanding that, during negotiations, the impact of decisions as to individual components of a contract can be difficult to predict. For that reason, a public official's participation in a contract issue that is seemingly unrelated to a family member can have a resulting impact on other areas of the contract that would directly affect the family member.

Although barred from participating in the contract negotiations, the public official may participate in the ultimate vote to accept or reject the entire employee contract or collective bargaining agreement as a whole, provided that the person within his family or household member would be impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. Regulation 1.3.1(B)(4)(b). The basis for allowing such participation is an assumption that a vote on an entire contract, once negotiated by others, is sufficiently remote from individual contract issues impacting a family member so as to not constitute a substantial conflict of interest in violation of the Code of Ethics.

For example, in Advisory Opinion 2019-19 the Ethics Commission opined that a member of the Warwick School Committee was prohibited from participating in the negotiation of the teachers' union contract, given that his mother was a member and an officer of the teachers' union. However, the petitioner could participate in the School Committee's discussion and decision-making relative to approving or rejecting the contract in its entirety once it had been negotiated by others. See also A.O. 2018-49 (opining that a member of the Cumberland School Committee was prohibited from participating in the negotiation of the teachers' union contract, given that his spouse was a teacher with the Cumberland School Department and a member of the local teachers' union, but could participate in the vote to ratify the contract in its entirety, provided that his spouse would be impacted by the contract as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class).

Consistent with Regulation 1.3.1(B)(4) and prior advisory opinions issued involving similar facts, the instant Petitioner is prohibited from participating in contract negotiations with the Union, given that his spouse is a teaching assistant in the School District and a member of the Union. However, the Petitioner may participate in the School Committee's decision to accept or reject the contract or the collective bargaining agreement as a whole, once it has been negotiated by others, provided that his spouse will be impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

Although the Petitioner is permitted to participate in the overall vote to approve or reject the contract as a whole, the Ethics Commission is aware that a general discussion can quickly devolve into a narrower review of specific contractual provisions. As such, the Petitioner must be vigilant about recognizing instances where a general conversation begins to focus on individual aspects of a contract that are likely to financially impact his spouse. Should such an instance arise, the Petitioner must recuse from further participation in that discussion pursuant to section 36-14-6 or seek further guidance from the Ethics Commission.

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(d)

§ 36-14-6

§ 36-14-7(a)

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

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2021-59

A.O. 2019-19

A.O. 2018-49

A.O. 2007-30

Keywords:

Nepotism

Budget

Collective Bargaining

Recusal