

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No.2023-17

Approved: April 4, 2023

**Re: Anthony J. Melillo**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Cranston School Committee, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in collective bargaining negotiations between the Cranston School Committee and/or its subcommittee and the local teachers' union, given that his former spouse is a teacher employed by the Cranston School Department and a member of the local teachers' union.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Cranston School Committee, a municipal elected position, is not prohibited by the Code of Ethics from participating in collective bargaining negotiations between the Cranston School Committee and/or its subcommittee and the local teachers' union, notwithstanding that his former spouse is a teacher employed by the Cranston School Department and a member of the local teachers' union.

The Petitioner is a member of the Cranston School Committee ("School Committee"). The Petitioner states that last year the School Committee entered into a collective bargaining agreement ("agreement") with the Cranston Teachers' Alliance ("teachers' union"), that includes an option for the agreement to be reopened for the sole purpose of renegotiating teachers' salaries. The Petitioner further states that the School Committee is preparing to reopen the agreement and will create an ad-hoc subcommittee to negotiate with the teachers' union ("subcommittee"). The Petitioner represents that the subcommittee will be authorized to negotiate a tentative agreement with the teachers' union which the subcommittee will then present to the School Committee for consideration and approval.

The Petitioner further represents that his former spouse is employed as a full-time teacher with the Cranston School Department, is a member of the teachers' union, and will be financially impacted by any changes to the agreement. The Petitioner states that his former spouse is not an officer of the teachers' union and will not participate in the negotiations between the School Committee and/or the subcommittee and the teachers' union. The Petitioner notes that: his former spouse does not reside with him; the Petitioner's children, who he shares with his former spouse, are adults and will not be financially impacted by any changes in their mother's salary; and the Petitioner is not a business associate with his former spouse. Cognizant of the Code of Ethics, and desirous to act in conformity therewith, the Petitioner seeks guidance from the Ethics Commission regarding

whether, under the circumstances presented herein, he may participate in School Committee and/or subcommittee negotiations with the teachers' union.<sup>1</sup>

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 his official duties if he has reason to believe or expect that a direct monetary gain or a direct monetary loss will accrue, by virtue his public activity, to the public official, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-7(a). Further, section 36-14-5(d) prohibits a public official from using his position or confidential information received through his 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.

Additionally, Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1") contains specific regulations aimed at curbing nepotism. Pursuant to Regulation 1.3.1(B)(1), a public official may not participate in any matter as part of his public duties if there is reason to believe or expect that any person within his family, or a household member, is a party or a participant in such matter, or will be directly financially impacted or will obtain an employment advantage. Moreover, Regulation 1.3.1(B)(4)(a) specifically 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.<sup>2</sup>

The application of the above-cited provisions of the Code of Ethics depends on the Code of Ethics' definition of "any person within his [] family." See Regulation 1.3.1(A)(2). Although the term "spouse" is specifically included among the list of familial relations cited in Regulation 1.3.1(A)(2), the term "former spouse" is not. The familial relationship between the Petitioner and his former spouse concluded upon their divorce.<sup>3</sup> Therefore, the Petitioner's former spouse is not a "person within his [] family" as the term is defined by the Code of Ethics. Accordingly, it is the opinion of the Ethics Commission that the above-cited provisions of the Code of Ethics are inapplicable under these circumstances and the Petitioner is not prohibited by the Code of Ethics from participating in School Committee and/or subcommittee negotiations with the teachers' union relative to a potential change in the teachers' salaries.

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<sup>1</sup> In his letter requesting the instant advisory opinion, the Petitioner indicated a reference to his step-daughter who was employed as a substitute teacher with the Cranston School Department. The Petitioner represents that his step-daughter no longer holds such a position. Therefore, his question about a potential conflict of interest under the Code of Ethics relative to her former employment with the Cranston School Department is moot.

<sup>2</sup> A person subject to the Code of Ethics may participate, however, in a decision to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his family or household member is 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.

<sup>3</sup> The term "spouse" is defined as "[o]ne's husband or wife by lawful marriage; a married person." Black's Law Dictionary 1438 (8<sup>th</sup> ed. 2007).

**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)

§ 36-14-7(a)

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

Keywords:

Collective Bargaining

Negotiations

Nepotism