

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-35

Approved: September 12, 2023

Re: Shaun P. Galligan

QUESTION PRESENTED:

The Petitioner, a member of the Warwick School Committee, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in collective bargaining negotiations with the Warwick Teachers' Union, given that his brother is a principal within the Warwick School Department and, although the brother is not a member of the Warwick Teachers' Union and has his own employment contract separate from the Union contract, the brother's salary percentage increase is based on the annual teachers' salary percentage increase negotiated under the Warwick Teachers' Union contract.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Warwick School Committee, a municipal elected position, is prohibited by the Code of Ethics from participating in collective bargaining negotiations with the Warwick Teachers' Union, given that his brother is a principal within the Warwick School Department, notwithstanding that the brother is not a member of the Warwick Teachers' Union and has his own employment contract separate from the Union contract, because the brother's salary percentage increase is based on the annual teachers' salary percentage increase negotiated under the Warwick Teachers' Union contract. The Petitioner may, however, participate in the decision to accept or reject the Union contract as a whole, provided that his brother is 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.

The Petitioner is a member of the Warwick School Committee ("School Committee"). He states that his brother ("brother") is employed as the principal at the Warwick Neck Elementary School, which is a school within the Warwick Public School system. The Petitioner further states that his brother's employment contract is for a term of three years and is separate from the Warwick Teachers' Union ("WTU") contract. The Petitioner represents that his brother's contract expires at the end of next year and that the Petitioner intends to recuse from participation in his brother's employment contract renewal process.

The Petitioner states that his brother's employment contract contains a provision specifying that the brother's "salary shall be increased based on the WTU salary increase percentage for the same year." The Petitioner further states that all of the other school administrators' employment contracts contain similar language. The Petitioner clarifies that school administrators include the following positions: Superintendent; Assistant Superintendent; Directors of Curriculum,

Information Technology, Secondary Education, and Elementary Education; Principals; and Vice Principals. The Petitioner states that, historically, the practice has been to give all of the school administrators the same salary percentage increase as the one negotiated under the WTU contract for the WTU members.

The Petitioner represents that the School Committee is currently in the process of collective bargaining negotiations with the WTU relative to a union contract that extends beyond the one-year contract that was recently negotiated.¹ Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in the negotiations with the WTU and in a vote on the final contract.

Commission Regulation 520-RICR-00-00-1.3.1 entitled Prohibited Activities-Nepotism (36-14-5004) (“Regulation 1.3.1”) contains specific regulations aimed at curbing nepotism. Regulation 1.3.1(B)(4)(a) specifically addresses participation in collective bargaining/employee contracts and provides that “[n]o person subject to the Code of Ethics shall participate in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of any person within his or her family or a household member.” 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.

However, Regulation 1.3.1(B)(4)(b) provides that a person subject to the Code of Ethics may participate in a decision to accept or reject an entire employee contract or collective bargaining agreement that has been negotiated by others, provided that the person within his or her 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. 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 not to constitute a substantial conflict of interest in violation of the Code of Ethics.

The Ethics Commission has issued numerous advisory opinions interpreting Regulation 1.3.1. In Advisory Opinion 2011-17, for example, the Ethics Commission reviewed a fact pattern similar to the one presented in the instant request. There, a Tiverton Town Council member was prohibited from participating in contract negotiations with the local police officers’ union because his father’s hourly rate as a special officer, a non-union position working construction or traffic details, was subject to the hourly pay rate for private details negotiated in the collective bargaining agreement with the local police officers’ union. That petitioner could, however, participate in the Town Council’s decision to accept or reject the union contract in its entirety once negotiated by the other Town Council members and the local police officers’ union, provided that his father 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 other similarly situated members of that union. See also

¹ The Petitioner further represents that the one-year contract was negotiated without his participation. However, he voted on the contract as a whole after it was negotiated by his peers.

A.O. 2011-14 (opining that a member of the Foster-Glocester Regional School Committee was prohibited from participating in contract negotiations between the School Committee and the teachers' union, given that her husband was a member of the teachers' union, but could participate in the School Committee's decision to accept or reject a contract in its entirety once negotiated by others, provided that her husband 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 other similarly situated members of the teachers' union).

In the instant matter, the Petitioner's brother is not a member of the teachers' union. Although the brother's employment contract is separate from the WTU contract, his annual percentage salary increase will be based on or the same as that for which the WTU members negotiated through collective bargaining between the School Committee and the WTU. Accordingly, based on the Petitioner's representations, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is prohibited from participating in the collective bargaining negotiations of the WTU contract. He is advised to recuse consistent with the provisions of section 36-14-6. The Petitioner may, however, participate in the decision to accept or reject the WTU contract as a whole, provided that his brother will 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.

Finally, although the Petitioner is permitted to participate in the discussion to approve or reject the contract as a whole, the Ethics Commission is aware that a general discussion can quickly devolve into a more narrow review of specific contractual provisions. The Petitioner must be vigilant to identify such instances where a general conversation begins to focus on individual aspects of the contract that are likely to financially impact his brother. In such circumstances, the Petitioner must recuse from further participation consistent with the provisions of 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:

§ 36-14-6

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

Related Advisory Opinions:

A.O. 2011-17

A.O. 2011-14

Keywords:

Collective Bargaining

Nepotism