

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-48

Approved: December 12, 2023

Re: Gregory A. Mancini

QUESTION PRESENTED:

The Petitioner, a member of the North Kingstown Town Council, a municipal elected position, who in his private capacity is employed by BuildRI, a non-profit trade organization that promotes the union construction industry, requests an advisory opinion regarding whether the Code of Ethics permits him to participate in Town Council discussions and decision-making concerning the Town Council's anticipated request of the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot relating to potential municipal construction projects in North Kingstown; participate in the drafting or approval of the draft of any bond question(s) that may result from that authorization; and publicly advocate in his private capacity for the passage of any or all bond questions related to those potential municipal construction projects.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Kingstown Town Council, a municipal elected position, who in his private capacity is employed by BuildRI, a non-profit trade organization that promotes the union construction industry, is permitted by the Code of Ethics to participate in Town Council discussions and decision-making concerning the Town Council's anticipated request of the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot relating to potential municipal construction projects in North Kingstown; participate in the drafting or approval of the draft of any bond question(s) that may result from that authorization; and publicly advocate in his private capacity for the passage of any or all bond questions related to those potential municipal construction projects.

The Petitioner is the President of the North Kingstown Town Council ("Town Council"). He has served continuously in that capacity since his initial election to the Town Council in 2018. The Petitioner represents that the Town Council is expected to ask the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot that, if approved by the citizens of the Town of North Kingstown ("Town" or "North Kingstown"), could result in the construction of one or more of the following: a new Public Safety Complex, a new Recreation Center, and one or two new middle schools (or the renovation of at least one middle school). The Petitioner further represents that, if and when the General Assembly passes the requested legislation, the Town Council would be tasked with assisting bond counsel with the

drafting of the bond questions and/or approving any drafts of those bond questions for placement on the ballot.

In his private capacity, the Petitioner has been employed since 2000 as the Executive Director and General Counsel for BuildRI. He describes BuildRI as a trade organization composed of four contractor associations and nine trade unions which promotes the union construction industry to the public and to private and public construction users. He states that members of contractor associations and trade unions affiliated with BuildRI would likely be among those to work on construction projects in North Kingstown that were approved by the citizens of that town.

It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in the Town Council's anticipated request of the General Assembly to pass legislation authorizing the placement of one or more bond questions on the ballot and in the drafting or approval of the draft of those bond question(s). The Petitioner also seeks guidance regarding whether he may, in his private capacity, publicly advocate for the passage of any or all of the bond questions related to the potential municipal construction projects.¹

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 in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest with the proper discharge of his duties exists if a public official has reason to believe or expect that he, his family member, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Additionally, the Code of Ethics prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Ethics Commission has previously opined that a public official was not prohibited from participating in discussions and decision-making concerning construction projects in which there would be no direct financial impact upon himself or any family member, his business associate, or his employer. *See, eg.*, A.O. 2011-1 (opining that a member of the Block Island Housing Board could participate in general Housing Board discussions and voting concerning construction projects which would not directly financially impact his business associate). *Contra* A.O. 2007-24 (opining that the Chair of the Cranston School Committee was required to continue to recuse from participating and voting on matters which came before the School Committee where it was reasonably foreseeable that his private employer, the New England Laborers' Union, would be financially impacted by such matters).

¹ In his letter to the Ethics Commission requesting this advisory opinion, the Petitioner also asked whether the Code of Ethics would permit him to participate in Town Council discussions and decision-making relative to the award of any construction contracts resulting from the approval of a particular ballot question by North Kingstown voters, and whether he could participate in the approval of bond expenditures related to those contracts. The Ethics Commission deems both of those questions to be hypothetical at this time and, thus, not yet ripe for analysis. The Petitioner is encouraged to seek guidance on these matters if and when the subject bond questions are eventually placed on a ballot and approved by the citizens of North Kingstown.

The Ethics Commission has also previously opined that the Code of Ethics did not prohibit a public official from participating in activities in a private capacity relating to local issues of public interest. For example, in Advisory Opinion 2022-8, a member of the Bristol Zoning Board was not prohibited from, among other things, co-signing letters in her private capacity to the Planning Board and Town Council relative to a redevelopment in town, or from writing letters in her private capacity as a Bristol resident and business owner to the editor of the local newspaper regarding that redevelopment. See also A.O. 2008-1 (opining that a member of the Johnston Board of Canvassers was not prohibited in his private capacity as a citizen from participating in political fundraising, soliciting political party memberships, making political contributions, or writing letters to the editor and editorials concerning political issues).

In the instant matter, neither the Petitioner's participation in the Town Council's request of the General Assembly to pass legislation authorizing the Town Council to place one or more questions on a ballot, nor the Petitioner's participation in the drafting or approval of the draft of any ballot question(s) that may result, would directly financially impact BuildRI, his employer. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in those activities. Regarding the Petitioner's other inquiry, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit him from advocating in his private capacity for the passage of any or all of bond questions related to the potential construction projects that are the subject of this advisory opinion.

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)

Related Advisory Opinions:

A.O. 2022-8

A.O. 2011-1

A.O. 2008-1

A.O. 2007-24

Keywords:

Conflict of Interest

Financial Interest

Private Employment

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RHODE ISLAND
ETHICS COMMISSION
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Gregory A. Mancini
61 Main Street
North Kingstown, RI 02852
greg@gregmancini.com
401-294-5211

November 10, 2023

Rhode Island Ethics Commission
c/o ethics.email@ethics.ri.gov
40 Fountain Street, 8th Floor
Providence, RI 02903

Re: Advisory Opinion Request

To Whom it May Concern:

The undersigned requests an advisory opinion regarding the following facts and unique circumstances:

Name and Official Position

Gregory Mancini, current town council president of the town of North Kingstown.

Daytime contact information, jurisdiction, and office powers

1. Daytime contact information: Phone number is 401-553-2100, email is gam@sinapilaw.com.
2. Jurisdiction: The town of North Kingstown
3. Relevant office powers: Among other powers, the town council has the authority to decide whether or not to ask the general assembly and the voters for bonded indebtedness for the purpose of town capital construction projects.

Summary of Relevant Facts

I am the executive director and general counsel for BuildRI—a nonprofit labor/management partnership that advocates on behalf the union construction industry. I am also *of counsel* at the law firm of Sinapi Law and Associates, as well as a state special education hearing officer.

As executive director and general counsel for BuildRI I am charged with advocating for, negotiating, and drafting construction project labor agreements on behalf of the union contractors and workers for large construction projects (usually defined as \$25 million or greater in construction costs) in the private and public sectors. I also lobby on behalf of this organization at the general assembly and with our federal delegation. I am a salaried employee that does not have a direct interest in whether or not any one particular project is union or not. Moreover, advocating for our coalition contractors and union members on these projects is only a portion of my responsibilities.

Earlier this year a resolution came before the North Kingstown town council that asked the general assembly to approve ballot questions for three potential town construction projects, all of which were \$25 million or greater. At that time these projects were in the conceptual stage. There was no construction and/or bid documents developed. In fact, it was not even determined whether or not any entity that is part of the BuildRI labor/management coalition would bid and/or be qualified to bid on these potential projects.

Even if such a contractor wanted to bid, and was subsequently qualified, they would still have to be the low bidder in order to be awarded the contract. But as indicated above these proposed projects did not even have construction bid documents developed. They were all conceptual. Nevertheless, out of an abundance of caution I decided to recuse myself from voting on matters related to these proposed projects, including the resolution to the general assembly before our body.

The council subsequently voted to put these projects on the ballot for a special election by a vote of 4-0. Much to my surprise thereafter several citizens suggested that my "recusal" should extend to not be able to advocate for passage of these bonds in the special election in any respect. These citizens suggested that I could not write a letter to the editor, could not assist in private advocacy campaigns, and virtually anything else in any non-governmental capacity. In fact, I was informed that a citizen or citizens would be filing an ethics complaint against me for some advocacy I did do, including putting a lawn sign supporting the bond questions in front of my house.¹ By the time I had heard this allegation it was too late to file to this body for an advisory opinion as to what I can and cannot do.

The citizens of North Kingstown subsequently rejected these bonds and now the town council may consider revised bond questions on possible capital improvement in our community. As a consequence, this issue may come before the council in the very near future. Therefore, I request the following advisory opinion.

Advisory Opinion Request

I write to ask whether it is a conflict for me to:

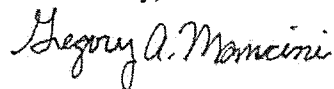
- a) vote in any matter that comes before the town council that involves the potential award of a town public works contract for a construction project when all of the contractors are part of a bidding process with a pool of qualified contractors;
- b) vote in any matter that comes before the town council that involves the potential award of a town public works contract for a large construction project (defined as \$25 million or greater) when all of the contractors are part of a bidding process with a pool of qualified contractors;
- c) publicly advocate for a potential town construction project and/or ballot initiative when I am not performing council functions provided I am not using town of North Kingstown stationary and/or resources.

Time Constraints

qu the fact that the potential issue will soon be before our town council in the near future I respectfully ask that the Ethics Commission provide an opinion to the undersigned as soon as possible.

Thank you for your time and attention to this matter and I look forward to your reply.

Sincerely,



Gregory A. Mancini

¹ Unfortunately, I was never able to find out whether such a complaint was filed because this commission does not disclose that information.

Rhode Island Ethics Commission

November 10, 2023

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October 19, 2023

VIA HAND DELIVERY

Mary Watkins
William M. Davies Career & Technical High School
50 Jenckes Hill Road
Lincoln, RI 02865

Re: Davies Career and Technical High School School PLA discussion

Dear Ms. Watkins:

I. Introduction

BuildRI is a domestic non-profit trade association comprised of *four contractor associations* (the Labor Relations Division of the RI Chapter of the Associated General Contractors, the New England Mechanical Contractors' Ass'n, and the RI, Southeast MA Chapter of the National Electrical Contractors' Ass'n, and the RI Mason Contractors' Ass'n), and *seventeen (17) local trade unions*. Our members have been involved in constructing virtually every major construction project—public or private—in our state.

On behalf of our organization, we submit this correspondence for your consideration regarding the above project.

II. Construction Pre-Hire Agreements

In 1959 Congress amended the National Labor Relations Act in order to “accommodate conditions specific to [the construction] industry. Such conditions include, among others, the short-term nature of employment which makes post hire collective bargaining difficult, the contractor’s need for predictable costs and a steady supply of skilled labor, and a longstanding custom of prehire bargaining in the industry.” *Building & C. Trades Counc. v. Assoc. Bldrs.*, 507 U.S. 218, 231 (1993) (a/k/a the *Boston Harbor* case) quoting S.Rep. No. 187, 86th Cong., 1st Sess. 28, 55-56 (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess., 19-20 (1959). Accordingly, it allowed “employers in the construction industry—but no other employers—to enter into pre-hire agreements...[and] require an employer not to hire other contractors performing work on that particular project site unless they agree to become bound by the terms of that [collective bargaining] agreement.” *Building & C. Trades Counc. v. Assoc. Bldrs.*, 507 U.S. 218, 231 (1993). Under a pre-hire agreement a contractor or business owner is affirmatively and voluntarily deciding to have a collective bargaining relationship with a union or unions. 29 U.S.C. § 158 (f) and (e).

The primary, if not only reason for any private business to voluntarily enter into a pre-hire agreement with a trade union is the economic benefit they receive from their signatory union(s) in return. This economic benefit is immediate access to a pool of skilled labor that trade unions invest millions of dollars in recruiting, training, and



re-training their members so that they work efficiently, timely, and safely in a very hazardous industry¹. This labor pool is also flexible in that it is immediately transferable from contractor-to-contractor without any loss of any benefit or skill. Moreover, signatory employers' access to a virtually unlimited pool of labor is at a fixed collectively bargained for price for the term of their contract (or in this instance project) with their union(s).² That affords contractors the ability to bid knowing what their labor costs are. The more confidence a contractor has in its costs, the sharper its bid price will be, and therefore the greater the benefit to the construction user.

III. PLAs Generally

PLAs are a project(s) specific pre-hire collective bargaining agreement that supersedes existing collective bargaining agreements for all trades and contractors. The benefits of a PLA to an owner include uniform work and schedule conditions to maximize labor related job efficiencies; assurances that there will be no labor related delay or work stoppages (this includes expedited dispute and grievance procedures, labor/management forums to anticipate and discuss any issues that may arise on the project before they create an issue, and a no strike or no work stoppage provision that applies even when an individual union's collective bargaining agreement expires); and, prompt access to an ample supply of highly skilled labor that work timely and safely at predictable wages. These provisions ensure that projects are completed timely, safely and without interruption. Benefits that, individually, and cumulatively, minimize risk in an otherwise risky undertaking.

By federal law PLAs are required to allow both union and nonunion contractors bid and participate on the project. Subject to negotiation with a project construction manager, the standard public sector PLA in Rhode Island also allows for a nonunion contractor's key personnel to not join any union thereby further enhancing a nonunion company's competitiveness, as well as an addendum that allows an opportunity for recruitment and placement of local residents in our Building Futures construction pre-apprenticeship program.³ Recently, Rhode Island PLAs have also included labor/management forums to recruit and coordinate enhanced MBE/WBE participation.

While there are numerous different risks on any one construction project that a PLA will minimize, there is one risk it can completely eliminate, and that is work stoppages. Work stoppages regularly occur from various disputes on construction sites. Currently, they are also occurring much more frequently across our country in many different industries. However, on a PLA they do not occur. This was evidenced on the URI Chemistry PLA project in 2014 when the Teamsters' union went on strike and refused to deliver concrete to every non-PLA construction project in the state. Consequently, the URI Chemistry building's construction timetable continued with interruption

¹ A recent review of OSHA safety information found at <https://www.osha.gov/injuryreporting> determined that from 1998 to 2022 **there have been 48 work related fatalities in the construction industry in Rhode Island. Of this total only 3 were union workers.** When you consider these results along with the amount of construction completed by local union workers as well as the fact union workers work on the most complex and perilous job sites it clear that the union industry's **unmatched annual multi-million-dollar investment in training** ensures that union workers work safer.

² Local trade unions are part of a network of regional, national, and international unions that also recruit and train their own skilled labor pools. When there is a shortage of labor in part of the country, local trade unions call counterparts in other areas to ask for members of their unions willing to temporarily travel for work.

³ Every standard Rhode Island PLA includes a memorandum of understanding that sets of a goal of utilizing apprentices for up to 15% of all hours worked from graduates of the Building Futures pre-apprenticeship program (www.bfri.org). Building Futures will come into your community to recruit interested applicants into its program. These applicants are trained and if they graduate, they are placed in union apprenticeship programs. Successful graduates will ultimately develop a career in the trades earning a good middle-class wage.

and/or delay. A member of a panel that assessed whether or not to implement a PLA on the University of Rhode Island's Fine Arts Center specifically referenced this incident in analyzing whether or not to implement a PLA for that project. See, *State of Rhode Island, re: University of Rhode Island Fine Arts Center Project Labor Agreement Review Committee*, June 16, 2023, Tr. at 40. He went on to be concerned about the possibility of work stoppages due to collective bargaining agreements expiring.⁴ *Id.* Therefore, when you consider the fact that there could be up to seventeen (17) construction unions on this project with multiple collective bargaining agreements that will expire during the life of the project this is an important and material factor in considering the value of whether or not to implement a PLA.

IV. PLAs in the Private Sector Marketplace

PLAs are regularly utilized on approximately \$50 billion dollars' worth of projects every year primarily in the private sector⁵. In the entire history of RIBCTC prior to 2000 (formation of BuildRI) the RIBCTC entered into seventeen (17) PLAs. Their dollar amount is unknown. Since BuildRI's formation, the RIBCTC has entered into 101 PLAs worth approximately \$9 billion. It includes a compilation of comments from local construction users and contractors regarding their successes in implementing PLAs on many of these local projects.⁶

V. PLAs are Regularly Utilized on Public Works Projects

In 1993, the U.S. Supreme Court held that "to the extent that a private purchase may choose a contractor based upon that contractor's willingness to enter into a pre-hire agreement, a public entity as purchaser should be permitted to do the same" when the public entity is "acting in the role of purchaser of construction services"; provided it is complying with its own bidding laws. *Boston Harbor*, 507 U.S. at 231. And as a consequence, just like the private sector, PLAs are regularly utilized by both the federal and state governments on a regular basis.

a. The Federal Government Now Requires PLAs on "large-scale" Public Works Projects

Since 2009 "it [has been] the policy of the Federal Government to encourage executive agencies to consider requiring the use of project labor agreements in connection with large-scale construction projects in order to promote economy and efficiency in Federal procurement." See, EO No. 13502, February 9, 2009. The federal government had defined "large scale" construction projects as those projects "where the total cost to the Federal Government is \$25 million or more." *Id.* In 2022, ***President Biden made PLAs mandatory on federal projects*** of \$35 million or more. See, EO No. 14063, February 4, 2022. Specifically, his executive order said that federal agencies were to "require every contractor or subcontractor engaged in construction on [a large scale] project [now defined as \$35 million or more] to agree, for that project, to negotiate or become a party to a project labor agreement..." *Id.*

⁴ The average collective bargaining agreement for the seventeen crafts of the Rhode Island Building and Construction Trades Council is between 2-4 years. They are also staggered. Therefore, every year and certainly every other year there is a CBA that will be expiring.

⁵ See, *Project Labor Agreements*, by Gerard M. Waites, Esq. and Scott M. Seedorf, Esq. September, 2019.

⁶ These are comments by local professionals on local projects who actually participated on these projects as opposed to conclusions in studies completed by organizations who pick their own professional hires who purportedly study projects, none of which are in Rhode Island, to attain a desired outcome. This is best exemplified by the fact that these organizations have to provide a study that is contrary to their advocacy and positions.

Mary Watkins
October 19, 2023
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b. PLAs on Public Works Projects in Rhode Island

Rhode Island is one of only three (3) states that have adopted a heightened standard for analyzing whether or not PLAs are allowable under its procurement laws. Under this standard any public entity that includes a PLA as a bid specification in a public contract must establish that “(1) the size and complexity of the project are such that a PLA supports the goals and objectives of the state purchases act, and (2) the record demonstrates that the awarding authority has conducted an objective reasoned study using reviewable criteria in determining that the adoption of a PLA helps to achieve the goals of the state purchases act.” *Associated Builders & Contractors of RI, et al. v. Department of Administration*, 787 A.2d 1179, 1189 (R.I. 2002). The court reasoned:

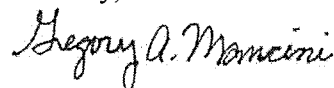
[A]s the size and complexity of a project increases so too does the premium on timely completion, and for certain projects, the potential benefits of a PLA, such as the ban on work stoppages, may come to outweigh the anticompetitive impact of such agreements. Moreover, the assurance of predictable costs and the procurement of a steady supply of labor should not depend on whether the owner of the project is a private entity or public entity. *Id.*

At last count, since this state supreme court decision in 2001 local and state government agencies in Rhode Island have conducted thirty-six (36) “independent objective reasoned” studies using reviewable criteria to determine whether the adoption of a PLA would “achieve the goals of the state purchases act”. These studies were completed by local officials with firsthand knowledge of the Rhode Island marketplace. *In each instance* (36 for 36) the awarding authority determined that implementing a PLA does in fact “achieve the goals of the state purchases act.”⁷

In addition, there are several public agencies conducting feasibility studies for at least ten (10) upcoming public works construction projects. We believe that is due to current market conditions. These include uncertainty in our labor market as well as unpredictable and escalating construction costs, and other market uncertainties.

We ask your school building committee to conduct an independent feasibility study to determine whether your project warrants a project labor agreement.

Sincerely,



Gregory A. Mancini
Executive Director/General Counsel

cc: Rhode Island Building and Construction Trades Council

⁷ Rhode Island College did a feasibility study for 3 projects in 2014 and only recommended a PLA for 2 of the 3 projects. That was because the 3rd project's size was under \$10 million. Accordingly, its size did not meet the legal standard.