

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2021-56

Approved: November 16, 2021

Re: Robert R. Moreau

QUESTION PRESENTED:

The Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon him in carrying out his official duties, given that his sister is employed by the Housing Authority as a Data Entry Clerk.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the Housing Authority for the City of Woonsocket, an employee position at a municipal public corporation, is prohibited by the Code of Ethics from participating in any Housing Authority matter in which his sister will be financially impacted or receive an employment advantage. The Petitioner is also prohibited from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of his sister. The Petitioner is further prohibited from participating in negotiations relative to an employee contract or collective bargaining agreement that addresses or affects his sister's employment, compensation, or benefits, but may provide information relative to Housing Authority operations to those persons involved in the negotiations of such an employee contract or collective bargaining agreement, provided that it is not reasonably foreseeable that the Petitioner's sister will be financially impacted by the Petitioner's official activity, and further provided that the Petitioner is not present during the negotiations of such an employee contract or collective bargaining agreement.

The Petitioner states that he is employed as the Executive Director of the Housing Authority for the City of Woonsocket ("Woonsocket Housing Authority" or "WHA"), having been hired for that position by the WHA Board of Commissioners ("Board") on January 1, 2019. He informs that the WHA employs approximately 50 full-time employees and 15 part-time employees. The Petitioner identifies among his responsibilities as Executive Director the leadership and management of the WHA and the establishment and administration of Board policies. He offers as an example of the establishment and administration of Board policies his implementation earlier this year of a "floating holiday" for all WHA employees who are members of the American Federation of State, County and Municipal Employees ("AFSCME" or "union") in response to President Biden's declaration of June 19th ("Juneteenth") as a federal holiday. The Petitioner explains that, because all federal holidays must be observed under the Collective Bargaining Agreement ("CBA")

currently in place between the WHA and the union, he collaborated with union leaders to determine the manner in which observation of the holiday would be implemented.

The Petitioner represents that, immediately prior to becoming Executive Director, he worked as the WHA's Director of Security, a position he held for nearly a decade after having been hired in April of 2009 by a former WHA Executive Director. He further represents that, in April of 2016, during his tenure as Director of Security, his sister was hired by the WHA Executive Director at the time for the position of Data Entry Clerk. The Petitioner identifies the responsibilities of a Data Entry Clerk as follows: processing applications from individuals seeking public housing; verifying the accuracy of information and documentation provided by those applicants; and setting up applicant interviews. The Petitioner explains that, after passing an entrance exam required for candidates seeking the position of Data Entry Clerk, his sister was interviewed by an independent panel of WHA employees that did not include the Petitioner. He emphasizes that, as Director of Security, he was not involved in his sister's hiring and did not supervise her.

The Petitioner states that, presently, his sister continues to be employed by the WHA as a Data Entry Clerk and that she is a union member. He further states that his sister reports directly to the WHA's Service Center Manager who, in turn, reports directly to the Petitioner in his role as Executive Director. He adds that disciplinary matters, including such matters that could potentially involve the Petitioner's sister, are normally brought by the Service Center Manager to the attention of the WHA's Human Resources Director, who would then seek input from the Executive Director with regard to any form of disciplinary action contemplated.

The Petitioner states that he does not participate in discussions or decision-making relative to either WHA budgetary line items or approving or rejecting the entire budget as a whole, as responsibility for those matters lies with the Board. The Petitioner further states that, while he does not expect to be asked to assist the WHA's legal counsel with the negotiation of an employee contract or collective bargaining anytime in the next 18-24 months, he does expect to be asked to participate in such negotiation eventually. He adds that he will not be expected to participate in the decision to approve or reject an employee contract or collective bargaining agreement as a whole, given that such responsibility lies with the Board.

The Petitioner states that, in the event that a question about the language in an existing CBA arises, or if an existing CBA is silent on a particular matter, he will communicate with union officers in order to seek a resolution. He cites as an example the recent resolution of the interpretation of language in the current CBA addressing the manner in which a union employee would be paid for being called back to work for any number of hours in addition to those for which he or she had been scheduled ("call-back language"). He adds that his sister is not subject to the call-back language portion of the CBA. The Petitioner states that the CBA also outlines training opportunities for WHA employees who are union members, the implementation of which requires decision-making by the Executive Director.

Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, it is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding what restrictions, if any, the Code of Ethics places upon him in carrying out his

Executive Director duties, given that his sister is employed by the WHA as a Data Entry Clerk and is a member of the union.

Under the Code of Ethics, a public official or employee 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 or employee will have an interest that is in substantial conflict with the proper discharge of his duties or employment in the public interest if it is reasonably foreseeable that a direct monetary gain or loss will accrue, by reason of the public official or employee's activity, to the public official or employee himself, his family member, his business associate, or to any business by which the public official is employed or which the public official represents. Section 36-14-7(a).

However, section 36-14-7(b) of the Code of Ethics, often referred to as the "class exception," states that a public official or employee will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, any person within his family, any business associate, or any business by which he is employed or which he represents "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group."¹ Additionally, section 36-14-5(d) prohibits a public official or employee 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 the public official is employed or which the public official represents.

Participation in Matters That Involve or Financially Impact the Petitioner's Sister

Under the general nepotism prohibitions of the Code of Ethics, a public official or employee shall not participate in any matter as part of his public duties if he has reason to believe or expect that any person within his family or any household member is a party to or participant in such matter or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004) ("Regulation 1.3.1"). The definition of "any person within his [] family" specifically includes "sister." Regulation 1.3.1(A)(2). Notably, Regulation 1.3.1(B)(1) not only prohibits actions by a public official or employee that would financially impact his family member, but also applies when such actions involve a family member as a party or participant, regardless of the potential for financial impact. Further, under Regulation 1.3.1(B)(1), a public official or employee is prohibited from participating in matters that may bestow an employment advantage upon a family member. Such an advantage, which might not appear to be a direct financial gain, could be some type of opportunity (such as an educational or

¹ When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official or employee; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

travel experience) or resource (such as access to enhanced technology) that the family member would not otherwise have had but for the public official or employee's participation.

Thus, in the event that the Petitioner's sister would be directly financially impacted or obtain an employment advantage by reason of the Petitioner's official activity, the Petitioner is required to recuse in accordance with section 36-14-6. See, e.g., A.O. 2019-19 (opining, *inter alia*, that a member of the Warwick School Committee was prohibited by the Code of Ethics from participating in any School Committee matter in which his mother was a party or participant, or in which she would be financially impacted or receive an employment advantage); A.O. 2013-8 (opining that a Bristol Town Council member was prohibited by the Code of Ethics from participating in the Town Council's appointment of a new harbormaster and the Town Council's review of any amendments to the harbormaster's job description, given that his brother was then serving as interim harbormaster and was also one of nineteen applicants for the permanent harbormaster position). An example of a matter from which the Petitioner would be required to recuse would include, though not be limited to, the exercise of discretion by the Petitioner when selecting training opportunities for his sister that are not made available to other similarly situated employees. To the extent that the Petitioner were to select training opportunities that would also be available to and appropriate for all other Data Entry Clerks and similarly situated WHA employees, the "class exception" would likely apply to such decision-making. The Petitioner is encouraged to consult with the Ethics Commission regarding such matters.

Advocacy/ Supervision of Petitioner's Sister

Regulation 1.3.1 also prohibits a public official from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of any person within his family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission. Regulation 1.3.1(B)(2)(a)&(b). See, e.g., A.O. 2016-26 (opining that a lieutenant in the East Greenwich Fire Department was not prohibited from serving in that position upon the hiring of his brother as a probationary firefighter in the same department, provided that certain procedures were followed so that the lieutenant was removed from personnel decisions or other matters that particularly affected his brother). Here, the Petitioner represents that he was not involved in his sister's hiring and plays no role in his sister's day-to-day supervision. However, in response to the Petitioner's disclosure that in the event of a potential disciplinary matter involving his sister which has reached the attention of the Housing Authority's Human Resources Director the matter would then be brought before the Executive Director, the Petitioner is advised that he is prohibited from participating in such matter and must recuse consistent with section 36-14-6 and/or seek additional guidance from the Ethics Commission regarding the potential approval of a proposed alternate chain of command.²

² While not determinative of the instant request for an advisory opinion, we note that section 18-17 of the WHA's own personnel regulations appears to prohibit the Petitioner from serving in a position in which he works directly above his sister's immediate superior. <https://ecode360.com/14482761>.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also addresses a public official or employee's participation in collective bargaining/employee contracts. It specifically prohibits a public official or employee 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. 1.3.1(B)(4)(a). However, a public official or employee may participate 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 his 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. 1.3.1(B)(4)(b). See General Commission Advisory 2009-1. 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.

Regulation 1.3.1(B)(4)'s 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, an official's participation in a contract issue that is seemingly unrelated to a family member can still have a resulting impact on other areas of the contract that would directly affect the family member. However, the Ethics Commission has allowed a municipal employee to provide information to those persons involved in the negotiations of a collective bargaining agreement. In Advisory Opinion 2021-4, the Ethics Commission opined that the Chief of the Lime Rock Fire Department ("Fire Department") was not prohibited by the Code of Ethics from continuing to provide information to the Chair of the Board of Commissioners for the Fire Department concerning the negotiation of a collective bargaining agreement addressing the employment of firefighters within the Fire Department, notwithstanding that a firefighter within the Fire Department had recently become the petitioner's son-in-law.

That petitioner had represented that his consultations with the Chair were limited to providing information relative to Fire Department operations, and specifically excluded financial matters such as firefighter compensation or benefits. Furthermore, the petitioner had stated that he did not attend the collective bargaining agreement negotiation sessions, was not actively involved in those negotiations, and had no voting authority over the collective bargaining agreement which would eventually be presented to members of the Board of Commissioners for consideration. The Ethics Commission determined that the petitioner's communications with the Chair did not rise to the level of participation in negotiations relative to the collective bargaining agreement and, therefore, did not trigger the provisions of Regulation 1.3.1(b)(4)(a). Nor was it reasonably foreseeable that such communications would result in a direct financial impact upon the petitioner's son-in-law as prohibited by Regulation 1.3.1(b)(1).

Here, the Petitioner must recuse from participating in any negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation, or benefits of his sister. However, the Petitioner is not prohibited from providing information relative to WHA operations to those persons involved in the negotiation of a collective bargaining

agreement between the WHA and the union, provided that it is not reasonably foreseeable that the Petitioner's sister will be financially impacted by the Petitioner's official activity to any greater extent than any other similarly situated employee of the WHA.

The Petitioner's example of collaborating with union leaders concerning the implementation of a floating holiday in response to the addition of Juneteenth as a federal holiday that is to be observed under the CBA does not constitute the negotiation of an employee contract or collective bargaining agreement. Rather, the decision to give WHA employees who are union members a floating holiday constitutes the accomplishment of a contract provision previously negotiated. Similarly, the Petitioner's example of communicating with union officers to interpret the language addressing the manner of compensation as regards the call-back language of the CBA (language to which the Petitioner's sister is not even subject) does not constitute the negotiating of an employee contract or collective bargaining agreement but, rather, amounts to an interpretation or clarification of an employee contract or collective bargaining agreement provision that had already been negotiated and voted on by others, and which applies to a group of similarly situated employees. The Petitioner is not prohibited from discussing or interpreting a union contract that was negotiated by others and that applies to a similarly situated group of employees that may include his sister.

Conclusion

In conclusion, in consideration of the facts as represented, 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 by the Code of Ethics from participating in any WHA matter in which his sister is a party or participant, or by which his sister will be financially impacted or receive an employment advantage other than as a member of a class of similarly situated employees. The Petitioner is also prohibited from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of his sister. Further, the Petitioner is prohibited from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects his sister's employment, compensation, or benefits. However, the Petitioner may provide information relative to WHA operations to those persons involved in the negotiations of such an employee contract or collective bargaining agreement between the WHA and the union, provided that it is not reasonably foreseeable that the Petitioner's sister will be financially impacted by the Petitioner's official activity, and further provided that the Petitioner is not present during the negotiations of such an employee contract or collective bargaining agreement. Notice of recusal in any instance shall be filed with the Ethics Commission consistent with section 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest arise.

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)

§ 36-14-7(b)

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

Related Advisory Opinions:

A.O. 2021-4

A.O. 2019-19

A.O. 2016-26

A.O. 2013-8

General Commission Advisory 2009-1

Keywords:

Conflict of Interest

Nepotism