

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2021-59

Approve: November 16, 2021

**Re: Nicole Bucka**

### **QUESTION PRESENTED:**

The Petitioner, a member of the East Greenwich School Committee, a municipal elected position, whose spouse is a teacher in the East Greenwich School Department and a member of the East Greenwich teachers' union, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon her ability to: (1) participate in School Department budget discussions; (2) vote to approve or reject as a whole the teachers' collective bargaining/employee contract; and (3) participate in School Committee discussions relative to the collective bargaining/employee contract negotiations for non-teacher unions.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich School Committee, a municipal elected position, whose spouse is a teacher in the East Greenwich School Department and a member of the East Greenwich teachers' union may participate, consistent with the guidance set forth below, in matters relative to: (1) School Department budget discussions; (2) a vote to approve or reject as a whole the teachers' collective bargaining/employee contract; and (3) School Committee discussions relative to the collective bargaining/employee contract negotiations for non-teacher unions.

The Petitioner is a member of the East Greenwich School Committee ("School Committee") to which she was elected on October 5, 2021, following a special election to fill a vacancy. She represents that the School Committee's primary duties include updating and maintaining policies that guide the East Greenwich School District ("School District"), approving and presenting the School District's final budget to the East Greenwich Town Council, negotiating and approving all bargaining unit contracts, and hiring and evaluating the superintendent.

The Petitioner states that her spouse is a teacher in the School District and, until recently, was the Vice-President of the East Greenwich Educator's Association ("Teachers' Union") and a member of its Executive Board. The Petitioner informs that her spouse's term as an officer of the Teachers' Union expired in the end of October of 2021 and that he did not renew his candidacy but remains a member of the Teachers' Union.

The Petitioner expects that the School Committee will begin its discussions and decision-making relative to the School District's budget in January of 2022, followed by collective bargaining/employee contract negotiations with the Teachers' Union in March and/or April. The

Petitioner states that because her spouse is no longer an officer or member of the Teachers' Union's Executive Board, he will not represent the Teachers' Union during the collective bargaining/employee contract negotiation process. The Petitioner explains that, in addition to the Teachers' Union there are two other unions representing school employees, namely the custodial union and the paraprofessional union, for which collective bargaining/employee contract negotiations will also be conducted in March and/or April. She further explains that while preparing for negotiations with one union, the School Committee may discuss strategies or priorities that may also apply to negotiations with another union. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding what restrictions, if any, the Code of Ethics places upon her ability to: (1) participate in School Department budget discussions; (2) vote to approve or reject as a whole the teachers' collective bargaining/employee contract; and (3) participate in School Committee discussions relative to the collective bargaining/employee contract negotiations for non-teacher unions, including when negotiation strategies or priorities are discussed that may affect the teachers' union negotiations.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her 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 her 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, her family member, her business associate, her employer, or any business which the public official represents. Section 36-14-7(a); Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Furthermore, section 36-14-5(d) prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, her employer, her business associate, or any person within her family.

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

Under the general nepotism provisions of the Code of Ethics, a public official shall not participate in any matter as part of her public duties if she has reason to believe or expect that any person within her family or any household member is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage. 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 [] her family" specifically includes "spouse." Regulation 1.3.1(A)(2). Notably, Regulation 1.3.1(B)(1) not only prohibits actions by a public official that would financially impact her family member, but also applies when such actions involve a family member as a party or participant, regardless of whether or not there will be a financial impact to the family member. Furthermore, under Regulation 1.3.1(B)(1) a public official 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 for the official's family member, could be some type of opportunity (such as an educational or travel experience) or resource (such as access to enhanced technology) that the family member would not otherwise have had.

Thus, in the event that the Petitioner's spouse is a party to or participant in a matter before the School Committee, or will be directly financially impacted or will obtain an employment advantage by the School Committee's decision-making, the Petitioner is required to recuse in accordance with section 36-14-6. See, e.g., 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); A.O. 2009-1 (opining that a Scituate Town Council member was prohibited by the Code of Ethics from participating in Town Council matters involving S & C Collins Bus Company, Inc. ("Collins Bus"), one of the three companies that provided school busing services to the Scituate School Department, given that Collins Bus was owned by his mother and he was an employee and officer of Collins Bus).

### Participation in Budgets

Regulation 1.3.1 also 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 [] her family." Regulation 1.3.1(B)(3)(a). However, Regulation 1.3.1(B)(3)(c) provides that the Petitioner 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 [] her 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."

In Advisory Opinion 2021-15, the Ethics Commission opined that a member of the Tiverton Budget Committee was required to recuse from participating in the Budget Committee's discussions and voting on budgetary line items that addressed or affected the employment, compensation, or benefits of his spouse, an employee of the Tiverton School Department, but he could discuss and vote to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that his spouse was 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. 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. 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 could that he vote to approve or reject the budget as a whole).

Therefore, while the Petitioner is prohibited from participating in the School Committee's discussions and decision-making relating to budget line items that would address or affect the employment, compensation or benefits of her spouse, she may participate in the School Committee's discussions and voting to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that her spouse 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.

### Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also addresses a public official's participation in collective bargaining/employee contracts. 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 her family or a household member. 1.3.1(B)(4)(a). However, a public official 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 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. 1.3.1(B)(4)(b). 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, 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.

For example, in Advisory Opinion 2018-49, the Ethics Commission opined 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 teacher with the Cumberland School Department and a member of the local teachers' union. However, the petitioner 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. See also A.O. 2011-14 (opining that a member of the Foster-Glocester Regional School Committee, whose spouse was a teacher in the Foster-Glocester Regional School District and a member of the Foster-Glocester Teachers' Union, was prohibited by the Code of Ethics from participating in contract negotiations between the School Committee and the Foster-Glocester Teachers' Union, but could participate in the School Committee's decision to accept or reject a contract in its entirety once negotiated by the other School Committee members and Foster-Glocester Teachers' Union, provided that her husband was 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 member of the Foster-Glocester Teachers' Union).

Therefore, the Petitioner is prohibited from participating in contract negotiations with the Teachers' Union, given that her spouse is a teacher in the School Department and a member of the Teachers' Union. However, the Petitioner may participate in the School Committee's discussions and decision-making relative to approving or rejecting the contract in its entirety once it has been negotiated by others. 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.

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 more narrow 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 the contract that are likely to financially impact her spouse. Should such instances 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.

Participation in School Committee Discussions Relative to the Collective Bargaining/Employee Contract Negotiations for the Non-Teacher Unions

The Code of Ethics does not prohibit the Petitioner from participating in collective bargaining/employee contract negotiations relative to the custodial and/or the paraprofessional unions, given that her spouse is not a member of either of those unions and provided that the matters discussed do not directly financially impact, or address or affect the employment, compensation or benefits of her spouse. Because the Petitioner does not describe any particular matter pending before the School Committee with regard to a collective bargaining/employee contract for the Teachers' Union, the custodial union, or the paraprofessional union, the Ethics Commission is not in a position to offer any specific guidance at this time. However, the Petitioner is advised that she must recuse from any matters that are considered part of, or could directly impact, the negotiation process with the Teachers' Union. See e.g., A.O. 2013-44 (opining that a North Providence School Committee member was prohibited by the Code of Ethics from participating in the School Committee's discussion and vote regarding whether to request arbitration for the contract negotiations with the Teachers' Union, given that his daughter was a member of the Teachers' Union and such a vote was part of the negotiations process).

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)

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. 2021-15  
A.O. 2018-49  
A.O. 2013-44  
A.O. 2013-8  
A.O. 2011-14  
A.O. 2009-1  
A.O. 2007-30

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