



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS

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June 26, 2018

Honorable Nicholas A. Mattiello
Speaker of the House
Chairman, JCLS
State House, Room 3
Providence, RI 02903

Honorable Dominick J. Ruggerio
President of the Senate
Vice Chairman, JCLS
State House, Room 3
Providence, RI 02903

Re: Advisory Opinion – Rhode Island General Laws § 17-23-18

Dear Chairman Mattiello and Vice Chairman Ruggerio:

This letter is in response to the June 13, 2018 request by the Joint Committee on Legislative Services (“JCLS”) for an advisory opinion from the Board of Elections (“Board”) concerning the interpretation and application of R.I. Gen. Laws § 17-23-18, entitled “Political Advertising From Official Budgets Prohibited,” as it relates to the Rhode Island General Assembly’s website and official social media accounts.

You have informed the Board that the General Assembly website and social media accounts “contain pictures of Representatives and Senators in their official capacity” and that the “website and media accounts are used for the purpose of keeping the citizenry informed of the workings of the General Assembly.” June 13, 2018 JCLS Letter. You further indicate that the website has “served as a resource to monitor the legislative process in a transparent manner.” *Id.* You conclude that while public funds are expended for both the website and social media accounts, the purpose for this media is exclusively official government business.

This response is provided to the JCLS and the facts set forth in your letter, both as they relate to the expenditure of public funds and public purpose are assumed to be true.

In responding to your request, the Board's analysis must begin with an examination of the governing statute, which reads in pertinent part:

No elected official shall permit the expenditure of public funds from any official budget under his or her authority for any publication, advertisement, broadcast, or telecast of his or her photograph, voice, or other likeness to be broadcast or distributed to the public during the one hundred and twenty (120) days preceding any primary or general election in which he or she is a candidate.

R.I. Gen. Laws § 17-23-18(a).

When the language of a statutory provision is clear and unambiguous, the Board must give the words their plain and ordinary meaning. *5750 Post Road Medical Offices, LLC v. East Greenwich Fire District*, 138 A.3d 163, 167 (R.I. 2016). It is generally presumed that the General Assembly intends every word of a statute to have a useful purpose and to have some force and effect. *Id.*, citing *Peloquin v. Haven Health Center of Greenville, LLC*, 61 A.3d 419, 425 (R.I. 2013). In "ascertaining and effectuating the legislative intent, 'the plain statutory language itself' is the best indicator." *McCain v. Town of North Providence ex rel. Lombardi*, 41 A.3d 239, 243 (R.I. 2012), quoting *DeMarco v. Travelers Insurance Co.*, 26 A.3d 585, 616 (R.I. 2011). When the Board examines an unambiguous statute, there is no room for statutory construction and the Board must apply the statute as written.

The Board finds that the governing statute is both clear and unambiguous. First, the statute prohibits the broadcast of any "photograph, voice or other likeness" of an elected official. Second, the period of time in which the publication is prohibited is also clear: 120 days preceding any primary or general election in which the elected official is a candidate ("covered period"). Third, the statute only applies to those elected officials who shall be a candidate for any primary or general election. During the covered period, the elected official must not distribute or broadcast any photograph, voice or other likeness from any platform that has been funded by public funds from any official budget. Elected officials who are not a candidate in either a primary or general election are not covered.

You indicate that the purpose for the General Assembly website and social media accounts is to "foster transparency and showcase the official work of the public's elected officials" and to enhance transparency of government. June 13, 2018 JCLS Letter. There is nothing contained in the governing statute that would impede these important purposes. The General Assembly website and social media accounts can continue to convey important information to the public during the covered period. There is nothing contained in the legislation that restricts the message of the elected officials, it only restricts the use and broadcast of the official's image or voice during the covered period. The website and social media accounts can continue to convey all of the work of the members of the General Assembly, including the status of legislation, positions taken on pending legislation, and the work performed for the public. It simply must do so without the use of a photograph, voice or other image of the government official.

The General Assembly specifically exempted the following media platforms from the otherwise broad prohibition: 1) any appearance on Capitol television programming operated by the General Assembly; 2) any television station operated by the Rhode Island PBS Foundation; or 3) special meetings of city or town councils or any local governmental board, agency or other entity. R.I. Gen. Laws § 17-23-18(b). Since the General Assembly enumerated several exceptions to the broadcast prohibition, it appears evident that all other media remain covered. Thus, with the exception of those circumstances set forth under section (b), all other photographs, voice or other likeness are strictly prohibited during the covered period.

This response constitutes the Board's opinion concerning the application of R.I. Gen. Laws § 17-23-18 as it relates to the activities set forth in your request. If there are any changes in the facts, circumstances or assumptions presented, and such circumstances are material, then you may not rely upon the conclusion set forth herein. Please be further advised that this analysis and the conclusions may be impacted by any subsequent change or development in the law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane C. Mederos".

Diane C. Mederos
Chairwoman