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SUPERIOR COURT OF NEW JERSEY  
COUNTY OF CAPE MAY  
LAW DIVISION – CRIMINAL  
INDICTMENT NO. 23-3-00038-S  
CASE NO. CPM-22-000535

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STATE OF NEW JERSEY, :

Plaintiff, :

v. :

STEVEN E. MIKULSKI, :

Defendant. :

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CRIMINAL ACTION

**STATE’S RESPONSE TO  
DEFENDANT’S MOTION IN  
LIMINE**

TO: HON. BERNARD E. DELURY, JR., P.J.Cr.  
Cape May County Courthouse  
Criminal Division  
9 North Main Street  
Cape May Courthouse, New Jersey 08210

DAVID A. STEFANKIEWICZ, ESQ.  
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North Wildwood, New Jersey 08260

Please accept this brief in response to defendant Steven E. Mikulski’s motion in limine to preclude the State’s use of certain evidence and arguments at trial. For the reasons set forth herein, defendant’s motion should be denied.

Relevant Facts and Procedural History

On July 31, 2023, a State Grand Jury returned Indictment No. 23-3-00038-S charging defendant, Steven E. Mikulski, with second-degree Official Misconduct, in violation of N.J.S.A. 2C:30-2 (Count Three), second-degree Theft by Unlawful Taking, in violation of N.J.S.A.

2C:20-3 (Count Six), third-degree Tampering with Public Records, in violation of N.J.S.A. 2C:28-7a(2) (Count Nine), and fourth-degree Falsifying or Tampering with Records, in violation of N.J.S.A. 2C:21-4a (Count Twelve).<sup>1</sup>

The central allegations of this matter are as follows: state law requires local elected officials to work full-time in their positions to participate in the publicly funded State Health Benefits Program (SHBP); defendant, as a locally elected Wildwood City commissioner, was neither working full-time hours nor maintaining a set schedule; instead, he simply relied upon a resolution declaring the commissioners to be full-time employees, at least in name, in order to gain access to SHBP coverage any way.

Pursuant to N.J.S.A. 52:14-17.26, locally elected and appointed officials must be “full-time” employees of their respective localities “whose hours of work are fixed at 35 or more per week” to qualify for employer-provided SHBP health benefits. This stipulation has existed since 2010, prior to which there was no such hourly requirement regarding the participation of local elected officials in the SHBP. Wildwood also has two long-standing resolutions on the subject, both passed in June 2011. The first, Resolution No. 226-6-11, formally recognized that legislative change and set forth that, to be eligible for SHBP participation as “full-time” city employees, elected officials may not work “less than thirty-five (35) hours per week.” The second, Resolution No. 227-6-11, simply declared “that each member of the Board of Commissioners of the City of Wildwood is hereby considered a full-time employee, and works a minimum of thirty-five (35) hours per week for the City of Wildwood.”

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<sup>1</sup> This indictment further charged co-defendants Ernest V. Troiano, Jr. and Peter J. Byron separately and individually with those same four offenses. The former is pending trial. The latter has resolved by way of a negotiated plea.

Following his initial election, defendant Mikulski assumed his commissioner's post in 2020. Initially, he was classified as a part-time employee and advised by city officials that, despite the resolutions described above, city commissioner posts were not really full-time jobs. He was further advised at the time that the matter, concerning the commissioners' SHBP participation, was under criminal investigation. Regardless, defendant insisted that he would be working full-time hours as a commissioner and that he wanted to participate in the SHBP. He subsequently consulted with the city's solicitor and its labor counsel, who in turn generated a short memorandum on the issue. Dated February 6, 2020, the document briefly describes the city's 2011 health-benefits resolutions and the legislative history behind N.J.S.A. 52:14-17.26 before reaching its ultimate conclusion.

The City of Wildwood Commissioners are eligible for State Health Benefits only if they are actually full-time employees in their capacity as Commissioners who work at least 35 hours per week, regardless of Resolution 227-6-11 designating them as such. The Commissioners should keep complete, accurate time records of all of their hours worked in their capacity as Commissioners to support their eligibility for State Health Benefits.

The memorandum actually states that recommendation multiple times: "If it is questionable as to whether the City of Wildwood Commissioners are truly full-time employees working a minimum of 35 hours per week, they should keep complete, accurate records of their hours worked to support their eligibility." Notably, nowhere does that memorandum state that the commissioners do indeed qualify as "full-time" workers, nor does it conclude that they are entitled to SHBP benefits.

At that point, defendant's employment status was changed to full-time and he was granted health benefits provided that he justified his full-time status by documenting his hours. Defendant complied, regularly completing, certifying and submitting standardized timesheets used by all city employees. Those timesheets, however, show only that defendant's self-certified

hours were irregular and highly varied, that they did not uniformly amount to 35 or more each week and, further, that in various instances he did not work at all during given weeks. In essence, by his own self-certified admissions, defendant was not regularly working at least 35 hours each week to qualify as a full-time employee who was eligible to participate in the SHBP.

#### Testimony of Other Wildwood City Commissioners

Defendant seeks to preclude the State from presenting certain testimony from his fellow commissioners regarding the duties and responsibilities those positions hold and the amount of time or hours they regularly require. Defendant suggests such information is irrelevant and could potentially confuse jurors. He is mistaken on both counts.

Wildwood is governed by a three-member board of commissioners from which one of those commissioners is also appointed mayor. Since the 2010 change in the state health benefits law requiring local elected officials to maintain full-time 35-hour weekly schedules to participate in the SHBP, only five people have held those commissioner posts. Those people would include defendant and his two co-defendants, Troiano and Byron. The latter already has entered a guilty plea while acknowledging he was not regularly working the requisite full-time hours to lawfully participate in the SHBP. The remaining two people, former Commissioner [REDACTED] and current Commissioner [REDACTED], who were not indicted in this case, have likewise acknowledged that the commissioners' positions indeed, in reality, generally only involve an amount of work requiring part-time hours, about 15 to 20 hours a week.

These people all held the same position, the same elective office in the same city. Testimony describing those positions, and the work and amount of time they typically demand, is anything but irrelevant. It negates the fiction created by the 2011 resolution that simply declared commissioners to be full-time employees. It reinforces the notion, as confirmed by the array of

city officials who will also testify, that none of the commissioners were regularly working full-time 35-hour weeks because the commissioners' positions neither call for nor entail regular full-time hours or schedules. Such testimony confirms how full-time work weeks simply are not necessary for a city commissioner's job, which is why, despite the 2011 resolution, that job had always been considered a part-time post. And, for that matter, those truths only find further support in defendant's very own self-certified timesheets, which show a relatively chaotic schedule with work weeks that often involved less, if not far less, than the requisite full-time 35 hours required for SHBP participation.

#### Sick, Personal and Vacation Days

Defendant similarly seeks to bar as irrelevant or confusing evidence from the State showing how the commissioners are the only purportedly "full-time" city employees who do not receive any annually allocated or banked time off, such as vacation and sick days. He is again mistaken. As, in reality, non-full-time employees who work neither fixed hours nor regular schedules, Wildwood's commissioners have never received, let alone needed, such leave-time benefits because they could simply come and go as they pleased and take time off whenever they chose to do so. This means they are unlike any other actual full-time city employee who would need, if not be entitled to, such allocated time off because, otherwise, they would be expected to regularly report to work 35 hours each week regardless of any need for absence due to illness, vacation, personal reasons and the like. This also means that the only hours that can be credited toward the commissioners' 35-hour weekly requirement for SHBP benefits must actually be worked and cannot be supplemented by a personal day or a day off for any reason in substitution, even if spent assisting an ailing family member. And this is necessary to address the appearance of such absences in defendant's timesheets.

“Opinion” Testimony as to Full or Part Time Status

Defendant further seeks to prevent the State from presenting evidence concerning the commissioners’ general employment status. Such status reflects the city’s understanding of the time or work hours it should expect from a given employee. Such status determines a given employee’s entitlement to certain benefits of his or her employment, such as participation in the SHBP. And the reality of such status for certain positions, such as the commissioner posts, transcends its mere declaration, as full-time, by a 14-year old resolution. Defendant’s eligibility to lawfully participate, as a full-time employee, in the SHBP is not determined by a mere declaration that he is just that, a full-time employee. He must qualify as a full-time employee by working, as required by the state health benefits law, a number of hours “fixed at 35 or more per week.” It is not opinion, but a fact, that if he is not working those hours he is not working “full time.” Testimony to that effect is far from irrelevant.

Moreover, defendant continually refers to that resolution (flatly declaring the commissioners to be full-time employees working at least 35 hours a week) as some overarching, irrefutable designation and justification for his entitlement to SHBP participation. Yet this overlooks various evidence to the contrary, such as the city’s personnel documents and records describing the commissioners at varying times as full-time, part-time or “unclassified.” It further ignores how such documents and testimonial accounts confirm that, prior to the change in the state health benefits law, when it did not matter how many hours the commissioners worked to participate in the SHBP, they had been considered part-time. If nothing else, this evidence all speaks to the meaninglessness of such blind designations when it comes to the commissioners’ positions.

“Improper Expert Opinion by Investigator”

The State has no intention of qualifying its New Jersey State Police detective-witness as an expert. Nor does the State intend to have the same opine on defendant’s employment status. This witness, as could various other witnesses, and as the detective-witness did before the State Grand Jury, could certainly testify that defendant’s timesheets showed his hours to be irregular and varied, that his hours did not uniformly amount to 35 or more each week, and that he in various instances did not work at all during given weeks. These are facts. Further, as cited and quoted by defendant’s brief, the detective-witness basically did testify to the State Grand Jury: that the applicable SHBP-eligibility statute defines a full-time employee as one whose hours are fixed at 35 per week; that the legal memorandum (obtained by defendant from city attorneys prior to demanding SHBP benefits) advised defendant of the same; that defendant’s self-reported and self-certified timesheets showed he was not working those hours; and that that would therefore appear to show he would not be a full-time employee as defined by the statute and the legal memorandum. This was not expert testimony, nor did it require an expert to weigh in, nor was there any intimation that the detective-witness possessed any sort of interpretive expertise on the subject beyond the ken of any lay person who could easily surmise the same. To that extent, this was not even opinion testimony, but purely based on relevant, admissible facts.

Defendant’s Restaurant Ownership

Defendant seeks to preclude any reference at trial to his ownership of a personal business, a restaurant, yet he offers little basis to bar the admission of this relevant fact. All of Wildwood’s commissioners during the subject period, not just defendant, similarly had other sources of income, jobs or businesses. But the State’s reference to defendant’s restaurant, and in fact to all of the commissioners’ other jobs or businesses, would not simply serve to establish the

permissible inference that defendant, or any of the other commissioners, could not devote a full 35 hours per week to the city. It more importantly shows that defendant, like all the commissioners, had ample time to pursue other livelihoods because the commissioners' positions, in reality and as various city officials will confirm at trial, did not regularly require nearly as many weekly work hours as defendant suggests, let alone 35.

Three former commissioners will testify that they did not regularly work 35 hours per week for the city, typically not even close to that. The work was not there to warrant such hours. These former commissioners also drew their primary livelihoods from other sources. Former Commissioner ██████ owned a hardware store. Former Commissioner and Mayor Byron was a realtor who also held other jobs while in office. Commissioner ██████ has a full-time job with county government and is officially considered and classified as a part-time city employee (despite the 2011 resolution declaring those positions to require full-time hours). Likewise, defendant's co-defendant, Mayor Troiano, owns a masonry company. This is all relevant and admissible information from which a juror could fairly infer that such financial pursuits are normal, if not necessary, because the commissioner positions are, in reality, just part-time obligations.

#### “What Constitutes Work”

To be clear, despite defendant's suggestion to the contrary, the State has never taken the position that only hours worked in City Hall, or only hours spent doing certain types of work, count toward the 35-hour weekly requirement for lawful SHBP participation. Moreover, until it can be shown otherwise, the State has accepted the validity of defendant's timesheets and that they reflect the specific number of hours defendant personally certified he was working during a given week, regardless of what he may have been doing during that time. It is those very



timesheets that show, by defendant's own admission, that he maintained an irregular and highly varied schedule, that his hours did not uniformly amount to 35 or more each week and, further, that at various times he did not work at all during given weeks. In essence, by his own admission, unless he is now acknowledging his knowing falsification of official city records, defendant was not regularly working at least 35 hours each week to qualify as a full-time employee who was eligible to participate in the SHBP.

Conclusion

For the reasons set forth herein, defendant's motion to preclude the State from introducing various specified evidence and testimony at trial should be denied.

MATTHEW J. PLATKIN  
Attorney General of New Jersey

By:

*/s/ Laura Croce, D.A.G.*

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Deputy Attorney General  
Deputy Bureau Chief  
Office of Public Integrity and  
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Corruption Bureau

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