

ADOPTED BY THE COMMITTEE ON ETHICS ON DECEMBER 9, 2014

**113TH CONGRESS, 2ND SESSION
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO
REPRESENTATIVE TOM PETRI**

DECEMBER 11, 2014

KAC Mr. CONAWAY from the Committee on Ethics submitted the following

REPORT

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ONE HUNDRED THIRTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 11, 2014

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The Honorable Karen L. Haas
Clerk, House of Representatives
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative Tom Petri."

Sincerely,


K. Michael Conaway
Chairman


Linda T. Sánchez
Ranking Member

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DECEMBER 11, 2014

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R E P O R T

In accordance with House Rule XI, clauses 3(a)(2) and 3(b), the Committee on Ethics (Committee) hereby submits the following Report to the House of Representatives:

I. INTRODUCTION

On July 2, 2014, the Office of Congressional Ethics (OCE) transmitted to the Committee a Report and Findings (OCE's Referral) regarding Representative Tom Petri. OCE reviewed allegations that Representative Petri or his congressional office improperly performed official acts on behalf of four companies in which he had a significant financial interest. OCE did not recommend that the Committee further review allegations related to his official actions related to two of the companies. OCE also found that with respect to his actions relating to the other two companies, in many instances Representative Petri sought and relied upon Committee advice. However, OCE's Referral found substantial reason to believe that Representative Petri did not seek Committee guidance in several specific instances, and improperly performed official acts on behalf of the two companies in which he had a financial interest.

This Report, adopted by the Committee on December 9, 2014, resolves the allegations OCE transmitted on July 2, 2014. The Committee unanimously determined that it would be inequitable to issue a sanction to Representative Petri based on the facts of this matter. Over the course of several years, Representative Petri's staff proactively and repeatedly consulted with the Committee's staff on whether and how Representative Petri could lawfully and properly engage in official actions on behalf of entities in which he had a financial interest. Representative Petri or his office also consistently followed the informal advice and guidance they received from the Committee. OCE acknowledged in its Referral that Representative Petri did seek this guidance, but found that his efforts in this regard in several specific instances were unsatisfactory and incomplete. The Committee disagreed with that interpretation of the evidence. Representative Petri repeatedly sought guidance on substantially all matters under review, and should have been entitled to rely on that guidance, particularly in a matter where the rules governing the conduct

require a fact-specific analysis, as is the case with the rules governing conflicts of interest in the House.

Although the Committee acknowledges that its informal, staff-level advice is not a categorical shield from future adverse actions, such advice is nevertheless necessary to enable the House community to successfully navigate standards of conduct.¹ Members and their staff are encouraged to diligently request the Committee’s advice and, upon doing so, rely on the advice to engage in the vetted official actions. In this case, Representative Petri repeatedly sought advice from the Committee staff on the official actions in question, and appears to have substantially complied with that advice. The Committee concluded that, on these facts, Representative Petri was entitled to rely on the staff-level analysis of his conduct and their contemporaneous advice, and it would be inequitable to subject his conduct to an additional review at this later date. Therefore, the Committee will take no further action in this matter.

II. HOUSE RULES, LAWS, REGULATIONS, AND OTHER STANDARDS OF CONDUCT

The Code of Ethics, section 5, provides that any person in government service should “never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.” The *House Ethics Manual* notes that the Committee “has cautioned all Members ‘to avoid situations in which even an inference might be drawn suggesting improper action.’”² Additionally, the *Ethics Manual* cautions that when a Member considers taking official action that may affect his or her financial interest, such as “sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency,” the Member’s decision to engage in this action requires “added circumspection.”³ The *Ethics Manual* further urges a Member to contact the Committee for guidance to assist him or her with this decision.⁴

House Rule XXIII, clause 3 states that a Member “may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”

¹ Committee Rule 3(k) states that the Committee “may take no adverse action in regard to any conduct that has been undertaken in reliance on a written opinion if the conduct conforms to the specific facts addressed in the opinion.” See also Committee Rule 3(l) (“[i]nformation provided to the Committee by a Member, officer, or employee seeking advice may not be used as the basis for initiating an investigation...if such Member officer or employee acts in good faith in accordance with the written advice of the Committee.”).

² Code of Ethics for Government Service ¶ 5; *House Ethics Manual* at 27 (2008) (hereinafter *Ethics Manual*).

³ *Ethics Manual* at 237 (2008).

⁴ *Id.*

Finally, House Rule XXIII, clauses 1 and 2, provide that a Member “shall behave at all times in a manner that shall reflect creditably on the House,” and “shall adhere to the spirit and the letter of the Rules of the House....”

III. BACKGROUND

A. THE COMMITTEE’S ADVISORY FUNCTION

Pursuant to the Ethics Reform Act of 1989, the Committee’s nonpartisan staff is charged with “providing information and guidance to Members, officers and employees of the House regarding any laws, rules, regulations, and other standards of conduct applicable to such individuals in their official capacities, and any interpretations and advisory opinions of the committee.”⁵ The Ethics Reform Act prohibits the Committee from initiating an investigation based on “information provided to the [Committee] by a Member, officer or employee of the House of Representatives when seeking advice regarding prospective conduct...if such Member, officer or employee acts in accordance with the written advice of the committee.”⁶ The Committee formalized these requirements in its own rules, noting the procedures for obtaining a written advisory opinion, and confirming that it would “take no adverse action in regard to any conduct that has been undertaken in reliance on a written opinion if the conduct conforms to the specific facts addressed in the opinion.”⁷

Written advisory opinions, with their specific guidelines for form, process, and due diligence,⁸ are only one method that the Committee’s staff uses to give counsel to Members on the compliance of their prospective conduct. In addition to the more than 900 formal advisory opinions drafted by the Committee’s staff during the previous Congress, the staff fielded more than 40,000 informal requests for guidance, including telephone calls, emails, and in-person requests for guidance on ethics issues during that two-year period.⁹ While the Committee’s staff takes notes on these informal requests, the staff’s notes are not intended to be a verbatim record of the dialogue and, especially where prepared years prior, will not be an exact transcript of the discussion. Instead, the notes kept by Committee staff are intended to give staff context as they advise the House community on ongoing matters, to assist the staff with providing consistent advice, and to refresh the staff’s recollection should a matter require their attention at a later date.

Although informal staff-level guidance does not obtain the same protections as written advisory opinions, informal guidance is not purposeless. These daily dialogues between the House community and the Committee’s staff are a vital part of the Committee’s advisory function. The informal contact between the Committee staff and Members allows Members to take advantage of the Committee’s guidance where an official action is too routine or simple for a formal written letter to be practical or, alternatively, where an official action requires a faster response than is afforded by the often time-consuming process of obtaining a formal advisory

⁵ 2 U.S.C. § 4711.

⁶ *Id.*

⁷ Committee Rule 3(k).

⁸ *See, e.g.*, Committee Rule 3(d), 3(e), 3(g), 3(i).

⁹ *See* Comm. on Ethics, *Summary of Activities: 112th Congress*, H. Rept. 112-739, 112th Cong. 2d Sess at 1 (2012).

opinion. If Members were unable to rely on this informal contact with the Committee to obtain advice on their day-to-day activities, they would be left without the full-time expert staff counsel required by the Ethics Reform Act, and would lack certainty about how their daily, official actions comply with the applicable rules and laws.

B. REPRESENTATIVE PETRI'S INVESTMENTS

Representative Petri was first elected to the House of Representatives in 1979. He has served the 6th congressional district of Wisconsin ever since.

OCE's Referral concluded that Representative Petri and his congressional office performed official actions on behalf of two companies in which he had a financial interest: Oshkosh Corporation (Oshkosh) and Manitowoc Company (Manitowoc).¹⁰

Oshkosh and Manitowoc are two large, publicly-owned companies headquartered in Representative Petri's congressional district. Oshkosh is a manufacturing company focusing in part on vehicles used in military applications. Manitowoc is a manufacturing company that makes cranes and foodservice equipment. Representative Petri purchased stock in both companies in 2006. Since that time, the value of his investment fluctuated, and at times has been in excess of \$500,000 in Oshkosh, and \$250,000 in Manitowoc.

Much of Representative Petri's actions on behalf of Oshkosh concerned a contract awarded to Oshkosh in 2009 to produce vehicles from the Family of Medium Tactical Vehicles for the United States Army. The losing bidders for that contract protested the contract award with the Government Accountability Office (GAO). At least some Members from the Texas congressional delegation interceded on behalf of one of those losing bidders, a Texas corporation, by sending a letter to the Secretary of Defense, as well as seeking legislative action on the Texas company's behalf. In response, Oshkosh sought intercession from the Wisconsin congressional delegation, including Representative Petri, to protect the contract award. As a result, Representative Petri took a number of official actions on Oshkosh's behalf with respect to the 2009 contract bid and relating to other issues.

Representative Petri's casework for Manitowoc involved a 2012 hardship exemption from diesel fuel regulations the company sought from the U.S. Environmental Protection Agency (EPA). When Manitowoc contacted Representative Petri's office regarding the hardship exemption, his staff contacted the EPA by email and telephone seeking a status update on the process. Later, in August 2013, Representative Petri wrote to the EPA Regional Administrator, urging full consideration of Manitowoc's hardship exemption. That exemption is still under consideration by the EPA.¹¹

¹⁰ OCE also investigated allegations regarding actions taken by Representative Petri and his staff on behalf of Plum Creek Timber Company, but did not recommend further investigation of those actions, because all of those actions affected a large class of similarly situated companies, rather than Plum Creek Timber Company in particular. The Committee concurs in that recommendation.

C. OCE'S REFERRAL

OCE undertook a preliminary review of this matter on February 28, 2014. OCE voted to extend its review on March 28, 2014, and The OCE Board voted to refer the matter to the Committee and adopted its Findings on June 27, 2014. The OCE Referral was transmitted to the Committee on July 2, 2014. OCE provided additional relevant documents in this matter to the Committee on September 30, 2014.

The Committee published OCE's Referral on September 30, 2014, and announced that it would continue its own review of the allegations contained in OCE's Referral pursuant to Committee Rule 18(a).

With respect to the actual official actions taken by Representative Petri and his office on behalf of Oshkosh and Manitowoc, as well as Representative Petri's interest in those two firms, no facts were in dispute. Representative Petri and his staff stated that they had taken the actions alleged. Nevertheless, Representative Petri and his staff also stated that they had only taken those actions based on advice received from Committee staff.

In support of this assertion, Representative Petri provided to OCE a letter sent to him by the Committee's Chief Counsel and Staff Director on May 21, 2014.¹² This letter detailed the records of the Committee and its staff regarding the advice provided to Representative Petri about the matters in question. OCE reviewed that letter and additional documents provided by Representative Petri. OCE found that Representative Petri's consultations with the Committee staff were unsatisfactory and incomplete. Specifically, OCE found that, "in several instances, advice was not sought or the advice provided was based on incomplete or inaccurate information."¹³

IV. FINDINGS

A. REPRESENTATIVE PETRI'S CONTACT WITH THE COMMITTEE

In an interview with OCE, Representative Petri's Chief of Staff stated that, over the course of five years, she repeatedly contacted the Committee staff for ethics guidance when Representative Petri considered taking an official action that involved Oshkosh.¹⁴ E-mail messages the Chief of Staff prepared contemporaneously with her consultations with the Committee staff reflect that she did, in fact, seek the Committee's informal staff-level guidance on a regular basis regarding Representative Petri's contemplated official actions related to Oshkosh. Each time the Chief of Staff asked the Committee staff to review an official action,

¹² The May 21, 2014, letter responded to a request from Representative Petri that Committee staff share their guidance to him with OCE.

¹³ OCE Referral at 28.

¹⁴ As noted more fully below, it appears that Representative Petri and his staff did take official action on behalf of Oshkosh and Manitowoc in situations where they had not explicitly sought the advice of the Committee staff. However, the advice Representative Petri did receive, beginning in 2009, can be read to cover the vast majority of the relevant actions in this matter for which advice would have been required.

the Committee staff ultimately approved it. The Chief of Staff's contemporaneous e-mail records document the type of information she shared with the Committee staff during their consultations. A review of these documents reveals that nearly every time the Chief of Staff sought staff-level guidance from the Committee, she reminded the Committee staff that Representative Petri owned stock in Oshkosh. On occasions when the proposed official action was a letter, the Chief of Staff requested that the Committee staff review drafts of the letter. And every time the Committee's staff dispensed advice, the Chief of Staff simultaneously documented that advice via e-mail to Representative Petri's congressional staff.

Notwithstanding this evidence, the OCE's Referral notes that Representative Petri did not always disclose his financial interest when he took official action on behalf of Oshkosh. When asked during her OCE interview, the Chief of Staff stated that she did not ask the Committee staff why disclosures of stock ownership were required in some official actions but not in others. She stated that she "looked at each instance based on what their [the Committee staff's] advice was for that. . . . If they'd said do it I would have done it as we did do when they said to do it."¹⁵

Despite this regular and consistent contact between Representative Petri's staff and the Committee staff, OCE identified five occasions on which Representative Petri's staff failed to contact the Committee staff for advice prior to acting. Specifically, the evidence suggests that Representative Petri's staff did not seek informal staff-level guidance advice prior to (1) Representative Petri's meetings with Oshkosh officials and Egyptian government representatives in 2006 and 2008; (2) Representative Petri's December 9, 2009, telephone conversation with the Secretary of the Army; (3) Representative Petri's Chief of Staff's communications in November 2011 with the staff of the House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit regarding truck weight limits; (4) Representative Petri's communications with the staff of the House Committee on Foreign Affairs in July 2012 regarding Oshkosh's sale of vehicles to the United Arab Emirates; and (5) Representative Petri and his staff's efforts with respect to Manitowoc in February 2007, November 2012, and August 2013.

B. THE EFFECT OF REPRESENTATIVE PETRI'S CONSULTATIONS WITH THE COMMITTEE STAFF

The rules governing conflicts of interest require a fact-specific analysis, and Members are encouraged to conduct that analysis with the guidance of the Committee's nonpartisan, professional staff. Although staff-level advice is not a categorical shield from future adverse actions by this Committee, such advice is nevertheless necessary to enable the House community to successfully navigate standards of conduct.¹⁶ Members and their staff are encouraged to diligently request the Committee's advice and, upon doing so, may rely on the advice to engage

¹⁵ OCE Referral at 22.

¹⁶ Committee Rule 3(k) states that the Committee "may take no adverse action in regard to any conduct that has been undertaken in reliance on a written opinion if the conduct conforms to the specific facts addressed in the opinion." See also Committee Rule 3(l) ("[i]nformation provided to the Committee by a Member, officer, or employee seeking advice may not be used as the basis for initiating an investigation...if such Member officer or employee acts in good faith in accordance with the written advice of the Committee.").

in the vetted official actions. The Committee reviewed the record in this case, and determined that Representative Petri repeatedly sought guidance on the matters under review, and that he substantially complied with that guidance. Representative Petri should be entitled to rely on that guidance for such fact-specific analysis. Therefore, the Committee declines to decide at this time whether, in the absence of that advice, the actions would constitute a violation.

OCE, when confronted with Representative Petri's evidence of consultation with the Committee staff, examined that consultation to determine whether it completely and accurately disclosed the facts of his proposed actions. This is a proper avenue of inquiry. Neither formal advice from the Committee nor informal staff-level guidance will suffice to protect a Member when that advice is based on inaccurate facts, or when that advice endorses a course of action fundamentally different from the course actually taken. Nevertheless, the Committee believes that OCE may have failed to consider some evidence in its proper context, and mistakenly considered some other evidence, when it found that Representative Petri did not fully and accurately disclose the facts of his proposed actions.

OCE relied, in part, on a letter the Committee's Chief Counsel and Staff Director sent to Representative Petri on May 21, 2014, detailing the records maintained by Committee staff regarding advice it provided to Representative Petri on these matters from 2009 through 2013.¹⁷ These records, as noted above, are not a verbatim record of the communication between the Committee's staff and a Member's staff. The notes kept by Committee staff are intended to give staff context as they advise the House community on ongoing matters, to assist the staff with providing consistent advice, and to refresh the staff's recollection should a matter require their attention at a later date. In fact, the informality of these notes is one of the differences between staff-level guidance and formal advisory opinions, which have a more robust memorialization of the facts surrounding a proposed action. But in this case, the notes of Committee staff are not the only evidence pertaining to the advice Representative Petri received.

For example, OCE found that Representative Petri's staff improperly represented to the Committee staff that the October 9, 2009, letter would not specifically mention Oshkosh when, in fact, the letter did name the company. On this issue, OCE's finding was based on the Committee's May 21, 2014, letter to Representative Petri, in which it memorialized its staff's notes. But the context of the October 9, 2009, letter itself makes it unlikely that the Committee staff's notes accurately reflected the nature of the letter. Because that letter was about a bid protest against a contract won by Oshkosh, it does not stand to reason that the letter would not mention Oshkosh. Moreover, even if it did not explicitly mention Oshkosh, given the contract in question and the authors of the letter, the company's identity would be readily apparent. Finally, on a number of other occasions, Representative Petri sought advice from the Committee staff on correspondence that did explicitly name Oshkosh, and took no pains to hide it. Suggesting that he hid that fact this one time appears inconsistent with his course of dealing.

OCE also found that at times, Representative Petri disclosed his ownership of Oshkosh stock in some correspondence with third parties, and failed to disclose it in other correspondence.

¹⁷ See OCE Referral at Ex. 10.

But the Committee staff approved the precise wording of some of that correspondence, at times recommending disclosure and at other times not recommending it. It appears that Representative Petri acted only in response to that advice.

Finally, as noted above, OCE found no evidence that Representative Petri or his staff contacted the Committee or its staff for advice with respect to five discrete issues. This may be true. As a threshold matter, however, it is not a violation of the rules not to seek advice from the Committee or its staff.

The lack of a requirement to seek advice notwithstanding, in all five circumstances, the Committee believes that either the conduct was consistent with the Committee staff's previously issued advice, or the conduct was not of the sort that would raise concerns about conflicts of interest. The first action – Representative Petri's telephone call – was one of many quite similar contacts for which Representative Petri and his staff had sought informal staff-level guidance repeatedly and contemporaneously. The Committee does not expect, once Members, officers, and employees have received and comprehended advice received from the Committee or its staff, that they will need to call back for duplicative and redundant conversations about the same topic. The same analysis applies with equal force to the simple status check performed when Representative Petri's staff contacted the House Committee on Foreign Affairs.

With respect to the truck weight limits, no evidence exists to suggest that this dialogue requested a specific allowance for Oshkosh's subsidiary, but rather that it affected the entire industry. The Chief of Staff noted that, "my understanding is this wasn't just Oshkosh, it was in general the fire and emergency vehicle association, the whole community. . . . I think it affected the emergency vehicle industry."¹⁸

Finally, with respect to the meetings with Egyptian government representatives, these meetings apparently did not discuss Oshkosh business or Egyptian contracting opportunities specifically. In another case, the Committee decided that, where there was no indication that the Member received a financial benefit from congressional testimony provided by a business colleague, the conflicts of interest rules did not condemn such action.¹⁹ So too is the case here.

And, while the contact with EPA for Manitowoc involved a different company facing a different issue, the contact amounted to a single letter and a status check, similar in many ways to Representative Petri's work for Oshkosh, only less substantial.

OCE was correct to consider potential flaws in Representative Petri's consultations with the Committee and its staff, because substantial compliance with those consultations protected Representative Petri from a substantive review of his conduct. However, in light of all the available evidence, the Committee concluded that Representative Petri's actions related to Manitowoc substantially conformed to advice he received from the Committee staff, and that while not entitled to a rule-based safe harbor for such conformity, it would be inequitable to

¹⁸ OCE Referral at 23.

¹⁹ See Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. Rept. 111-320, 111th Cong. 1st Sess. at 17 (2009).

punish him when he relied on that advice. Taken together, the concerns OCE identified with Representative Petri's consultations are not sufficient to remove this inequity. The Committee notes, however, that the more comprehensive and consistent one's consultation with the Committee or its staff, the more protection the Committee can offer in response to actions related to that consultation. As stated above, the Member is personally responsible for identifying that he may have a conflict of interest. The Member must then exercise due diligence to collect and provide to the Committee accurate and complete information to enable the Committee to appropriately vet the issue and render advice.

V. CONCLUSION

The Committee's nonpartisan staff handles, on average, over 50 informal requests for advice each day of the year. In the last Congress, the Committee fielded more than 40,000 informal requests for guidance. This is in addition to the other work of the Committee – approving travel requests, issuing formal advisory opinions, and investigating matters like the one that makes up the subject of this Report. The informal advice is no less important than the rest of these activities. Such advice requires Members and staff to provide the Committee staff with complete and accurate disclosures of facts and proposed action. Where advice-seekers do not provide complete and accurate disclosure, they should not expect the Committee's advice to shield them from further inquiry.

In this case, the supporting documents and other evidence show that Representative Petri repeatedly sought guidance from the Committee staff and, as evidenced by the contemporaneous email messages, engaged in a substantially complete and accurate – albeit imperfect – level of disclosure in seeking such informal advice. Representative Petri or his office also consistently followed the informal advice and guidance they received from the Committee. The Committee concluded that, on these facts, Representative Petri was entitled to rely on the staff-level analysis of his conduct and their contemporaneous advice, and his conduct appears to have substantially complied with the staff's guidance. Therefore, it would be inequitable to subject his conduct to an additional review at this later date, and the Committee will take no further action in this matter.²⁰

²⁰ Representative Petri is retiring from the House at the conclusion of this Congress, and had announced his intention to retire several months before the Committee receive the referral from OCE. While it is not always possible for the Committee to conclude its inquiries into allegations before a Member departs from the House (thus depriving the Committee of jurisdiction), the Committee does attempt to do so in every case. In this matter, there were not significant facts in dispute, conflicting witness testimony, or a sizeable volume of documents to review. Moreover, the supporting documents provided to the Committee by OCE included a substantial record of consistent efforts by Representative Petri or his official staff to seek – and follow – the Committee's informal advice and guidance. After receiving those supporting documents, the Committee was able to resolve this matter in just over two months. In addition, the Committee appreciates Representative Petri's cooperation with the Committee's investigation, which also contributed to its swift resolution.

VI. STATEMENT UNDER HOUSE RULE XIII, CLAUSE 3(C)

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.