

DANIEL FRIEDSON
CITY COUNCIL SOLICITOR



CITY OF PITTSBURGH
OFFICE OF CITY COUNCIL
CITY-COUNTY BUILDING

414 Grant Street
Pittsburgh, PA 15219

STATE ETHICS
COMMISSION

2023 JUN - 2 A 8:15

REC'D CLERK'S OFFICE
2023 MAY 31 PM 12:06

Pennsylvania State Ethics Commission

Attention: Legal Division
Finance Building
613 North Street, Room 309
Harrisburg, PA 17120-0400

Re: Resolution Appointing Silas Russell as a Member of the Pittsburgh City Planning Commission

Requestor: Daniel T. Friedson, Esq., Solicitor, Pittsburgh City Council, Authorized Representative of the Honorable Theresa Kail-Smith, President, Pittsburgh City Council.

Applicable Governmental Body: Pittsburgh City Council, governing body of the City of Pittsburgh, a political subdivision, home rule city of the second class of the Commonwealth of Pennsylvania.

City Council President Theresa Kail Smith is seeking guidance from the State Ethics Commission due to a unique situation concerning the propriety and degree of influence SEIU Healthcare Pennsylvania, allegedly may have over the executive and administrative functions of city government, in a ripe controversy with the employer UPMC. In particular, the Mayor's Office nominated Silas Russell, the Executive Vice President of SEIU Healthcare, Pennsylvania to the Planning Commission. The Mayor's Office and the nominee claim there is no wrongdoing and there will not be any wrongdoing.

No intent exists to sway the honorable commission one way or the other. Any reliable legal opinion would acknowledge the opinion of the author cannot supplant that of the State Ethics Commission. President Kail Smith request an opinion from the State Ethics Commission which she and other members of City Council can rely upon for their own actions to be proper and those of a potential appointee to the Planning Commission.

Pursuant to § 214 of the Pittsburgh Home Rule Charter, members of the Planning Commission are to be appointed by the Mayor with the approval of the City Council.

The City Planning Commission is the City's administrative body tasked with granting land use approvals for most large development projects under the Pittsburgh Zoning Code (Title IX of the Pittsburgh Code of Ordinances).

The Planning Commission is a quasi-judicial commission which impacts private land rights and is essential in defining the operational territory of another authority, the Urban Redevelopment Authority. The Planning Commission was established by the City under the authority vested by the General Assembly in the following enactments:

1. Act of March 31, 1927, P.L. 98, No. 69, as amended, 53 P.S. § 25051 et. seq.;
2. Act of May 13, 1927, P.L. 1011, as amended, 53 P.S. 22761 et. seq.

These statutes grant the Planning Commission several important quasi-judicial and administrative powers:

1. Sole authority to regulate the subdivision and consolidation of parcels (lots);
2. Sole authority to adopt and revise the City's comprehensive land-use master plan;
3. The power to make binding recommendations on land-use applications to the City Council, which requires the affirmative vote of 75% (7/9) of Council members to approve in contravention to the Planning Commission's recommendations.
4. The sole power, pursuant to the Urban Redevelopment Act, to certify Redevelopment Areas at the request of the Urban Redevelopment Authority of Pittsburgh ("URA"), a condition precedent to approval for Tax Increment Financing, or for the URA's exercise of eminent domain.

The Pittsburgh Zoning Code, additionally, grants the Planning Commission the sole power to approve or deny most large development projects with no other review by the City.

On or about Friday, March 10, 2023, Pittsburgh Mayor Edward C. Gainey submitted to City Council for its consideration the nomination of Mr. Silas Russell, Executive Vice President and Political Director, SEIU Healthcare Pennsylvania, for appointment as a member of the City Planning Commission.

All nominations for appointment are submitted by the Mayor to the City Council's Committee on Hearings. As President, Ms. Kail-Smith is also Chairwoman of this Committee. Under the Rules of Pittsburgh City Council, legislation submitted by a non-member must have the assent of a member, primarily the relevant Committee chair, in order to be introduced. President

Kail-Smith immediately withheld her assent. As of this writing, the legislation has not been introduced by President Kail-Smith and is not on the City Council's agenda.

Public reporting raised concerns about activities between Silas Russell and Mayor Gainey, which occurred in May and June of 2022. The investigative article, published in April of 2023, can be found here: "KDKA Investigates: SEIU Healthcare's influence over Mayor Ed Gainey's administration":

<https://www.cbsnews.com/pittsburgh/news/seiu-healthcare-influence-over-pittsburgh-mayor-ed-gainey-administration/>, *see also Attachment A. See also Attachment B.*

In January 2023 and March 2023, the Mayor announced it would be pursuing challenges to the tax-exempt status of large, local nonprofits. <https://pittnews.com/article/178385/news/city-to-review-pitt-upmc-property-tax-exemptions/> and <https://www.publicsource.org/pittsburgh-upmc-tax-exempt-properties-mayor-gainey-challenge/> *see also Attachments C and D. See Attachment E.*

Further, an April 2023 article by The Pittsburgh Post-Gazette reports, "Mr. Gainey had initially said after taking office last year that he would negotiate what's known as PILOTS, or payments in lieu of taxes, with UPMC and other local nonprofit giants. Citing unnamed sources, KDKA-TV reported that those negotiations fell apart not because of money, but because Mr. Gainey demanded that SEIU Healthcare be allowed to represent UPMC workers. That closed the door on a \$40 million offer from UPMC to the city." <https://www.post-gazette.com/news/politics-local/2023/04/12/seiu-healthcare-pittsburgh-mayor-ed-gainey/stories/202304120118> *see also Attachment F.*

On May 2, 2023 KDKA asked Mr. Russell about SEIU's influence on City government wherein he and the Mayor denied any influence SEIU derived from campaign contributions totaling \$350,000 : <https://www.cbsnews.com/pittsburgh/video/seiu-healthcare-union-asked-about-influence-on-gainey-administration/> *see also Attachment G.*

May 6, 2023, the TribLive issued an opinion column by Joseph Sabino Mistick, a former City advisor, also raising concern: <https://triblive.com/opinion/joseph-sabino-mistick-gainey-should-be-at-the-head-of-the-table/> *see also Attachment H.*

President Kail-Smith was prepared to allow the nomination to expire at the end of the current legislative session, but recent public reporting now requires, out of an abundance of caution, for President Kail-Smith to seek an advisory opinion from the State Ethics Commission on the propriety of this particular appointment given these facts.

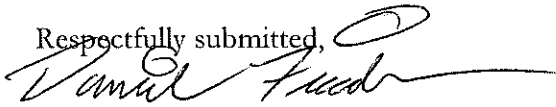
Can the Council introduce, deliberate and take legislative action on the appointment?

If so, what, if any, laws, conflicts of interest and disclosures should Council consider for itself?

If passed, and the appointment is confirmed, what, if any, laws, conflicts of interest and disclosures should this nominee consider for himself?

Please advise.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel Friedson", with a long horizontal flourish extending to the right.

Daniel Friedson

Solicitor to Pittsburgh City Council

CC: Mr. Silas Russell
Mayor Ed Gainey