



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

4th Meeting

DATE: Tuesday, April 4, 2023

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on March 7, 2023.
3. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) Financial Disclosure; and
 - e.) Ethics Administration/Office Update.
4. Advisory Opinions.
 - a.) Robert S. DeGregorio, a member of the Warwick Zoning Board of Review, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated. [Staff Attorney Giusti]

- b.) Kimberly Shockley, a member of the Coventry Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in Town Council discussions and decision-making relative to a petition seeking a zoning change of a vacant lot, given that: 1) the lot is in close proximity to the Petitioner's personal residence; and 2) the person requesting the zoning change is the President of a private neighborhood association of which the Petitioner is a member. [Staff Attorney Popova Papa]
 - c.) Anthony J. Melillo, a member of the Cranston School Committee, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in collective bargaining negotiations between the Cranston School Committee and/or its subcommittee and the local teachers' union, given that his former spouse is a teacher employed by the Cranston School Department and a member of the local teachers' union. [Staff Attorney Popova Papa]
 - d.) The Honorable Carol Hagan McEntee, a legislator serving in the Rhode Island House of Representatives, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Bonnet Shores Fire District to hold an election whereby eligible voters would decide whether to approve or reject amendments to the Fire District Charter proposed by the Fire District Charter Commission, given that the Petitioner is an eligible voter in the Fire District. [Staff Attorney Radiches]
 - e.) Mark Aramli, a member of the Newport City Council, asks whether an advisory opinion issued to him last year restricted his ability to participate in the City Council's appointment of persons to the Newport Historic District Commission. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on March 7, 2023, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) Motion to return to Open Session.
6. Report on actions taken in Executive Session.
7. New Business proposed for future Commission agendas and general comments from the Commission.
8. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on March 30, 2023

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 4, 2023

Re: Robert S. DeGregorio

QUESTION PRESENTED:

The Petitioner, a member of the Warwick Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated.¹

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Warwick Zoning Board of Review, a municipal appointed position, is prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated.

The Petitioner is a member of the Warwick Zoning Board of Review ("Zoning Board"), having been appointed to that position in 2022 by the Mayor of the City of Warwick ("City"), and currently serves as the Zoning Board's Vice-Chairperson.² Under state law and the City's Zoning Code of Ordinances ("Zoning Ordinance"), the Zoning Board's powers include hearing and deciding appeals from decisions of the municipal Administrative Officer, the Planning Board, and the Historic District Commission, authorizing hardships, variances, and special use permits, and referring matters to the Planning Board or other municipal boards and agencies, as appropriate, for findings and recommendations.³

In his private capacity, the Petitioner represents that he is employed as a licensed real estate salesperson for The Slocum Agency, Inc. ("Slocum Agency"), and Slocum Homes, Inc. ("Slocum Homes"), both of which are owned by Philip Slocum. The Petitioner further represents that Slocum Agency provides real estate and insurance brokerage services and is comprised of three

¹ The advisory opinion request was submitted by the Petitioner and Philip Slocum, a member of the Warwick Planning Board. Their dual request was consolidated and is addressed in the instant opinion issued only to the Petitioner. As such, the facts represented herein were provided and confirmed by both the Petitioner and Philip Slocum.

² The Zoning Board is comprised of five members and two alternates.

³ See R.I. Gen. Laws §§ 45-23-66, 67, 69, & 70; §§ 45-24-64, & 68; Warwick Zoning Code of Ordinances, Sec. 904.

subsidiary companies including Slocum Homes, which deals primarily in real estate. The Petitioner states that he has been employed by Philip Slocum for more than 30 years and currently serves as the Director of Finance for Slocum Agency, a salaried position, and as a real estate salesperson for Slocum Homes, for which he receives a share of earned commissions.

The Petitioner states that his employer, Philip Slocum, has been a member of the Warwick Planning Board (“Planning Board”) since his appointment thereto in 1999, and that he has served as the Planning Board’s chairperson for the past five years.⁴ The Petitioner further states that, as a Planning Board member, Mr. Slocum participates in the Planning Board’s review and approval or denial of land-development and subdivision applications. The Petitioner represents that decisions of the Planning Board may be appealed to the Zoning Board. In such appeals, the Petitioner states that the Zoning Board’s review is limited to whether the Planning Board heard the subject application properly; whether the Planning Board followed all appropriate actions such as providing notice and considering the evidence and testimony; and whether there were any facts that supported the Planning Board’s decision.

The Petitioner explains that there are currently pending before the Zoning Board two appeals of a Planning Board decision to approve a conditional master plan of a major land development project that was filed by applicants seeking to construct a contractor trades storage facility with associated parking. The Petitioner states that the applicants have appealed the Planning Board’s decision on the basis that the Planning Board committed procedural errors by the manner in which it approved their application and the conditions it attached to its approval. The Petitioner states that a second appeal was filed by abutters to the subject land development project who seek a reversal of the Board’s approval. The Petitioner explains that Mr. Slocum participated in the Planning Board’s review of the subject application and was one of the three members who opposed the Planning Board’s decision to approve the application. The Petitioner further explains that the appeals to the Zoning Board will involve the Zoning Board’s review of the entire record of the Planning Board’s master plan hearings including documents filed by the applicants and objectors, audio recordings of the hearing, and the Planning Board’s decision. The Petitioner informs that while his employer will not physically appear before the Zoning Board during the appellate proceedings, the Planning Board and its members are parties to the appeal and will be represented by the City’s assistant solicitor.

Cognizant of the Code of Ethics and in the interest of avoiding any potential conflicts in carrying out his public duties, the Petitioner seeks guidance as to whether he may participate in the Zoning Board’s consideration of the appeals.

The Code of Ethics requires a public official to recuse from participation when his employer, business associate, or family member, either personally or through an authorized representative, appears or presents evidence or arguments before his municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”). An exception found at Regulation 1.2.1(B)(1) provides that a public official is not required to recuse when his employer, business associate, or family member is before the public official’s agency solely in an official capacity as a duly authorized member or employee of

⁴ The Planning Board consists of seven members.

another state or municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the employer, business associate, or family member is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

The Ethics Commission considered a similar set of facts in Advisory Opinion 2022-3, which asked whether a member of the State Housing Appeals Board (“SHAB”) could participate in the SHAB’s consideration of an appeal from a decision of the Town of Lincoln Planning Board of Review (“Planning Board”), given that the petitioner’s brother-in-law was a member of the Planning Board and participated in the decision being appealed. The Ethics Commission considered the brother-in-law to be a “participant” in the appeal since he was a member of the Planning Board which authorized the Town Solicitor to represent its interests before the SHAB.⁵ For support, the Commission relied on its opinion in A.O. 2021-45 in which it found that a member of the Burrillville Zoning Board of Review would be prohibited by both Regulation 1.2.1(A) and the nepotism provisions of Regulation 1.3.1(B)(1) from participating in appeals to the Zoning Board by parties aggrieved by a decision of the Building Official, who was the petitioner’s father-in-law.

In the instant matter, while the individual members of the Planning Board such as Mr. Slocum have no personal financial interests in the appeals and will not personally present any evidence or arguments in the course of the appeals before the Zoning Board, the Planning Board as a body is a party to the appeals, the decision in which the members participated is the subject of the appeals, and the Planning Board will be represented before the Zoning Board by the City’s assistant solicitor. Under these circumstances, and consistent with our reasoning in Advisory Opinion 2022-3, it is our opinion that Regulation 1.2.1(A) requires the Petitioner to recuse from the instant appeals before the Zoning Board of the Planning Board decision in which Mr. Slocum participated.

The exception to Regulation 1.2.1(A)’s application, found at section 1.2.1(B)(1), for situations in which one’s employer is before one’s agency solely in an official capacity as a member of another state or municipal agency to participate in non-adversarial information sharing is not applicable here, because the appellate process is by its very nature adversarial. Appeals to the Zoning Board filed by parties aggrieved by a Planning Board decision at which the Planning Board is represented by legal counsel is adversarial by its nature. An adversary proceeding is “a hearing involving a dispute between opposing parties.”⁶ In contrast, non-adversarial or ministerial functions include activities such as providing status reports, seeking approval to advertise bids, submitting or retrieving papers, and submitting bills or invoices. See A.O. 2016-11 (opining that a Tiverton Town Council member was not required to recuse when her spouse, the Town’s Director of Public Works, appeared before the Council seeking approval to advertise or award a public bid, requesting emergency funding to repair equipment, or providing status reports on the budget and operations of the Department of Public Works on the basis that these constituted non-adversarial information sharing and coordination of activities between the Council and one of its municipal departments); A.O. 2001-52. Here, the Zoning Board’s power to review the record in the aggrieved parties’

⁵ The Commission also relied on the nepotism provisions of Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004), which prohibits participation in matters in which one’s family member is either a party or participant.

⁶ Black’s Law Dictionary, 58 (8th ed. 2004).

appeals of a Planning Board decision in which the Planning Board is a party renders such proceedings adversarial. For this reason, the exception found at Regulation 1.2.1(B)(1) is not applicable. See A.O. 2022-3 (opining that the exception found at Regulation 1.2.1(B)(1) did not apply because the appellate proceedings before the State Housing Appeals Board were adversarial).

Accordingly, based upon the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from participating in the consideration of appeals filed by parties aggrieved by a decision of the Warwick Planning Board in which the Petitioner's employer, who serves as a member of the Warwick Planning Board, participated. The Petitioner is advised that if any of the circumstances set forth herein change, he should seek further guidance from the Ethics Commission. All notices of recusal shall be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This Draft 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:

§ 36-14-6

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2022-3

A.O. 2021-45

A.O. 2016-11

A.O. 2001-52

Keywords:

Conflict of Interest

Employer

Recusal

Ministerial

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 4, 2023

Re: Kimberly Shockley

QUESTION PRESENTED:

The Petitioner, a member of the Coventry Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in Town Council discussions and decision-making relative to a petition seeking a zoning change of a vacant lot, given that: 1) the lot is in close proximity to the Petitioner's personal residence; and 2) the person requesting the zoning change is the President of a private neighborhood association of which the Petitioner is a member.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Coventry Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to a petition seeking a zoning change of a vacant lot, notwithstanding that: 1) the lot is in close proximity to the Petitioner's personal residence; and 2) the person requesting the zoning change is the President of a private neighborhood association of which the Petitioner is a member.

The Petitioner is a member of the Coventry Town Council ("Town Council"). She represents that a developer would like to build a housing development with a sports complex ("proposed development") on a vacant lot located at the corner of Nooseneck and Harkney Hill Roads in Coventry ("property"). The Petitioner further represents that the proposed development is currently being reviewed by the Coventry Planning Commission ("Planning Commission") and is not expected to come before the Town Council. However, the Petitioner states that a Coventry resident ("applicant") who lives in the neighborhood known as Wood Estates, which abuts the property, has requested that the Town Council rezone the property from its current mixed-use designation to farmland. The Petitioner explains that such a change in the zoning designation of the property would prohibit the proposed development.

The Petitioner represents that she also lives in Wood Estates and is a dues-paying member of the Wood Estates Residents Association ("WERA"), a private neighborhood organization of homeowners in Wood Estates. The Petitioner states that membership in WERA is optional and that her membership dues entitle her to the use of a local dock, boat launch, beach and outing area, and to the access to events such as barbecues, hayrides, and a Fourth of July parade and fireworks. The Petitioner represents that WERA has officers, but that she is not one of them. However, she further represents that the applicant who has requested that the Town Council rezone the property

is the President of WERA. The Petitioner states that she does not have any familial or business association with the applicant or the developer of the property.

The Petitioner represents that she is unable to see the property from her residence and does not expect to be able to see the proposed development either. She notes that multiple houses and streets separate her residence from the property and that a line of trees separates Wood Estates from the property. The Petitioner states that the proposed development is expected to have its own entrance that will not allow traffic to pass through Wood Estates. She represents that the abutters to the property are other homeowners who live in Wood Estates and that there are no common areas owned by WERA that abut the property. The Petitioner further represents that she is not sure of the exact distance between her residence and the property, but she estimates it to be approximately 1,000 feet. She states that she would not receive an abutter's notice relative to the development or the zoning change of the property. The Petitioner represents that she has no financial interest in the proposed development; has no business, financial, or familial relationship with any of the abutters; and will not otherwise be financially impacted by the proposed development or the request for a zoning change of the property. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in the Town Council's discussions and decision-making relative to the applicant's request for a zoning change of the property.¹

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A conflict of interest exists if a public official has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using her public office, or confidential information received through her public office, to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter in which her business associate appears or presents evidence or arguments before the public official's state or municipal agency. A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7).

¹ In her request for an advisory opinion, the Petitioner also asked whether the Code of Ethics prohibits her from participating in Town Council discussions and decision-making relative to the rezoning of the property, given that her 11-year-old son plays soccer for the sports club that is the anticipated owner of the athletic complex that is part of the proposed development. The Petitioner states that she pays a fee for her son to play for this club but she is not an officer of the club. Under these circumstances, the Petitioner would not be considered a business associate of the sports club, given that her only financial link to the sports club is the fee she pays for her son to play soccer and, therefore, no conflict of interest exists under the Code of Ethics based on such relationship with the club that would require her recusal. See A.O. 2016-18 (opining that a member of the Woonsocket City Council could participate in the City Council's consideration of a Payment in Lieu of Taxes Agreement for Mount Saint Charles Academy, a private Catholic junior-senior high school attended by the petitioner's daughter).

1. Property Located in Close Proximity to Petitioner's Personal Residence

First, the Ethics Commission must ascertain whether the Petitioner will be financially impacted by the official action that is contemplated. In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning property that abuts her own ("abutting property"). See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussion or vote on decisions concerning abutting property, absent reliable evidence that their official action would not affect the financial interests of the public official, either positively or negatively.

Just as the Ethics Commission has presumed a financial impact for abutting property, the Ethics Commission has applied the opposite presumption of no financial impact relative to property that is near, but not abutting, a subject property. See, e.g., A.O. 2023-14 (opining that a Coventry Planning Commission member could participate in Planning Commission discussions and decision-making relative to a proposed development of real property, notwithstanding that: 1) the development would be located on land that was in close proximity to the petitioner's personal residence; and 2) representatives of a private neighborhood association to which the petitioner belonged were expected to appear before the Planning Commission to provide public comment about the development); A.O. 2003-44 (opining that a member of the Cranston City Council could participate in the Safety Services and Licensing Committee's consideration of a proposed license for a Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, in the absence of evidence indicating a reasonable foreseeability of financial impact).

Here, the Petitioner estimates that her personal residence is located approximately 1,000 feet from the property. Additionally, the Petitioner represents that she will not be financially impacted either by the proposed development or by the request for a zoning change; has no financial interest in the proposed development; and has no business, financial, or familial relationship with any of the abutters to the property. Accordingly, there is no indication or presumption that the Town Council's decision-making concerning a zoning change for the property would financially impact the Petitioner. Therefore, she may participate.

2. Applicant Seeking Rezoning is President of the Neighborhood Organization of Which the Petitioner is a Member

Next, the Ethics Commission must determine whether the Petitioner's participation in the review of an application submitted by the President of the neighborhood organization, of which the Petitioner is a member, would constitute a conflict of interest for the Petitioner, thereby requiring her recusal.

As previously discussed, the Code of Ethics requires the Petitioner's recusal from matters in which her business associate appears to present evidence or arguments before the Town Council. The Ethics Commission has consistently opined that persons are "business associates" of, among others, the entities for which they serve as either officers or members of the Board of Directors, or

in some other leadership position that permits them to affect the financial objectives of the organization. *See, e.g.*, A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“DEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC).

In contrast, however, the Ethics Commission has generally held that mere membership in an organization, as opposed to the holding of a position as a director, officer, or other position of leadership, does not create a business association requiring recusal. *See, e.g.*, A.O. 2023-14, *supra*; A.O. 2013-26 (opining that a Newport City Council member was not prohibited from participating in City Council matters involving the Newport Yacht Club, notwithstanding that her husband was an individual member of the Yacht Club and paid annual dues to the Yacht Club, but was not an officer or member of the Yacht Club’s Board of Directors).

In the present matter, the Petitioner states that she is a dues-paying member of WERA, which entitles her to the use of a local dock, boat launch, beach and outing area, and to the access to events such as barbeques, hayrides, and a Fourth of July parade and fireworks. The Petitioner further states, however, that she is not an officer of WERA. Accordingly, the Petitioner’s mere membership in WERA does not constitute a business associate relationship between the Petitioner and WERA or any of its officers under the Code of Ethics and, for that reason, the Petitioner is not prohibited from participating in Town Council discussions and decision-making relative to the zoning change petition submitted by the President of WERA, nor does she have to recuse when the applicant appears before the Town Council relative to his request.

In summary, and for all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to the applicant’s request for a change of the zoning designation of the property, notwithstanding that the Petitioner’s personal residence is in close proximity to it and that the applicant is the President of the neighborhood association of which the Petitioner is a member.

This Draft 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:
§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2023-14

A.O. 2016-18

A.O. 2014-14

A.O. 2013-26

A.O. 2012-28

A.O. 2012-4

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

A.O. 2003-44

Keywords:

Business Associate

Conflict of Interest

Property Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 4, 2023

Re: Anthony J. Melillo

QUESTION PRESENTED:

The Petitioner, a member of the Cranston School Committee, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in collective bargaining negotiations between the Cranston School Committee and/or its subcommittee and the local teachers' union, given that his former spouse is a teacher employed by the Cranston School Department and a member of the local teachers' union.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Cranston School Committee, a municipal elected position, is not prohibited by the Code of Ethics from participating in collective bargaining negotiations between the Cranston School Committee and/or its subcommittee and the local teachers' union, notwithstanding that his former spouse is a teacher employed by the Cranston School Department and a member of the local teachers' union.

The Petitioner is a member of the Cranston School Committee ("School Committee"). The Petitioner states that last year the School Committee entered into a collective bargaining agreement ("agreement") with the Cranston Teachers' Alliance ("teachers' union"), that includes an option for the agreement to be reopened for the sole purpose of renegotiating teachers' salaries. The Petitioner further states that the School Committee is preparing to reopen the agreement and will create an ad-hoc subcommittee to negotiate with the teachers' union ("subcommittee"). The Petitioner represents that the subcommittee will be authorized to negotiate a tentative agreement with the teachers' union which the subcommittee will then present to the School Committee for consideration and approval.

The Petitioner further represents that his former spouse is employed as a full-time teacher with the Cranston School Department, is a member of the teachers' union, and will be financially impacted by any changes to the agreement. The Petitioner states that his former spouse is not an officer of the teachers' union and will not participate in the negotiations between the School Committee and/or the subcommittee and the teachers' union. The Petitioner notes that: his former spouse does not reside with him; the Petitioner's children, who he shares with his former spouse, are adults and will not be financially impacted by any changes in their mother's salary; and the Petitioner is not a business associate with his former spouse. Cognizant of the Code of Ethics, and desirous to act in conformity therewith, the Petitioner seeks guidance from the Ethics Commission regarding

whether, under the circumstances presented herein, he may participate in School Committee and/or subcommittee negotiations with the teachers' union.¹

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his 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 his official duties if he has reason to believe or expect that a direct monetary gain or a direct monetary loss will accrue, by virtue his public activity, to the public official, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-7(a). Further, section 36-14-5(d) prohibits a public official from using his position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents.

Additionally, Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1") contains specific regulations aimed at curbing nepotism. Pursuant to Regulation 1.3.1(B)(1), a public official may not participate in any matter as part of his public duties if there is reason to believe or expect that any person within his family, or a household member, is a party or a participant in such matter, or will be directly financially impacted or will obtain an employment advantage. Moreover, Regulation 1.3.1(B)(4)(a) specifically 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 his family or a household member.²

The application of the above-cited provisions of the Code of Ethics depends on the Code of Ethics' definition of "any person within his [] family." See Regulation 1.3.1(A)(2). Although the term "spouse" is specifically included among the list of familial relations cited in Regulation 1.3.1(A)(2), the term "former spouse" is not. The familial relationship between the Petitioner and his former spouse concluded upon their divorce.³ Therefore, the Petitioner's former spouse is not a "person within his [] family" as the term is defined by the Code of Ethics. Accordingly, it is the opinion of the Ethics Commission that the above-cited provisions of the Code of Ethics are inapplicable under these circumstances and the Petitioner is not prohibited by the Code of Ethics from participating in School Committee and/or subcommittee negotiations with the teachers' union relative to a potential change in the teachers' salaries.

¹ In his letter requesting the instant advisory opinion, the Petitioner indicated a reference to his step-daughter who was employed as a substitute teacher with the Cranston School Department. The Petitioner represents that his step-daughter no longer holds such a position. Therefore, his question about a potential conflict of interest under the Code of Ethics relative to her former employment with the Cranston School Department is moot.

² A person subject to the Code of Ethics may participate, however, in a decision to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his 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.

³ The term "spouse" is defined as "[o]ne's husband or wife by lawful marriage; a married person." Black's Law Dictionary 1438 (8th ed. 2007).

This Draft 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)

§ 36-14-7(a)

520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004)

Keywords:

Collective Bargaining

Negotiations

Nepotism

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 4, 2023

Re: The Honorable Carol Hagan McEntee

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Bonnet Shores Fire District to hold an election whereby eligible voters would decide whether to approve or reject amendments to the Fire District Charter proposed by the Fire District Charter Commission, given that the Petitioner is an eligible voter in the Fire District.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, is not prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Bonnet Shores Fire District to hold an election whereby qualified voters would decide whether to approve or reject amendments to the Fire District Charter proposed by the Fire District Charter Commission, notwithstanding that the Petitioner is an eligible voter in the Fire District.

The Petitioner is an elected member of the Rhode Island House of Representatives and has served continuously in that capacity since 2015. She represents District 33, which includes the Towns of Narragansett and South Kingstown. The Petitioner states that her primary residence is located within District 33 in South Kingstown, where she is registered to vote. The Petitioner represents that the Bonnet Shores Fire District (“Fire District”) is part of her constituency and that she is an eligible voter in the Fire District in accordance with the current Fire District Charter (“Charter”) through her property ownership within the Fire District since 1988. She explains that she owns a second home in Narragansett that is located in the Fire District and which, while not her primary residence, is a vacation home used frequently by her and members of her family. She further explains that she is also a member of the Bonnet Shores Beach Club (“Beach Club”) in Narragansett and owns a bathhouse condominium unit (“bathhouse”) at the Beach Club. The Petitioner represents that both her vacation home and her bathhouse are located within the Fire District and that she pays real estate taxes to the Fire District on both properties. She further represents that her ownership of either property currently entitles her to vote in Fire District elections, although she is only permitted to cast a single vote.

The Petitioner represents that she was recently contacted by the Chair of the Fire District Charter Commission (“Charter Commission”) and asked to introduce legislation that would enable the Fire District, which is within her district as a State Representative, to present for consideration to Fire District voters Charter amendments proposed by the Charter Commission concerning who is eligible to vote at Fire District annual meetings and special elections. The Petitioner clarifies that the establishment of a Charter Commission for the purpose of proposing amendments to the Charter was part of a Consent Judgment entered in the Providence Superior Court on May 26, 2022, in the matter of Mary Burke Patterson, et als. v. The Bonnet Shores Fire District, C.A. No. WC-2020-0130. The Consent Judgment states that the amendments proposed by the Charter Commission are to be presented for approval first to the Rhode Island General Assembly and then to the voters of the Fire District at an annual or special meeting.

The Petitioner states that the subject legislation would enable the Fire District to hold an election that could potentially eliminate the voting rights of certain non-resident individuals and entities that own real estate valued at \$400 or more within the Fire District, such as owners of bathhouse condominium units at the Beach Club. The Petitioner further states that, pursuant to the Consent Judgment, voting rights are to be granted to all persons who reside in the Fire District, whether permanently or seasonally for at least 60 days immediately prior to an election, and who meet all other voting requirements.

The Petitioner explains that, following the General Assembly’s consideration of the enabling legislation containing the proposed Charter amendments, including any changes to those amendments which could occur during the legislative process, the amendments contained within the enabling legislation, if passed by the General Assembly, would take effect only if the eligible voters of the Fire District vote to approve them. The Petitioner further explains that the current voting rights of homeowners in the Fire District who have resided in those homes for at least 60 days immediately prior to an election and who have registered to vote at least 30 days before an election will not be impacted. The Petitioner represents that she falls within this category of homeowners.

The Petitioner states that, since this request for legislation concerns who is eligible to vote at the Fire District annual meetings and special elections, it could conceivably eventually affect her current voting rights in the Fire District as a homeowner within the Fire District and as a Beach Club bathhouse owner. Specifically, in the event that a vote by eligible Fire District voters on whether to approve or reject the proposed Charter amendments were to occur during a special election rather than at the annual meeting held in June, it is conceivable, though highly unlikely, that the special election could be held outside of the summer and neighboring months, in which case the Petitioner might not meet the eligibility requirement of residing in her home for at least 60 days prior to the election. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from participating in the legislative activities outlined herein concerning the subject enabling legislation.

A person subject to the Code of Ethics may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her

duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if the Petitioner has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed, will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is “reasonably foreseeable,” that is, when the probability is greater than “conceivably,” but the conflict of interest is not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). A public official also may not use her office for pecuniary gain, other than as provided by law, for herself, any person within her family, her employer, her business associate, or any business that she represents. Section 36-14-5(d).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner will be financially impacted by the official action that is under consideration. If a financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in legislative activities and decision-making relative to the issue. For example, in Advisory Opinion 2005-40, a legislator serving in the Rhode Island House of Representatives was allowed to participate in House deliberations and voting on legislation that authorized family child care providers to engage in collective negotiations with certain state agencies, notwithstanding that the petitioner was a licensed family child care provider. There, the petitioner’s status as a family child care provider was inactive. Because she did not utilize her license, did not participate in the Starting Right Child Care Assistance Program administered by the Rhode Island Department of Human Services that provided financial assistance for authorized child care services rendered to eligible children by approved child care providers, and had no plans to do so in the reasonably foreseeable future, it did not appear that the petitioner stood to be financially impacted by the legislation at issue, notwithstanding her licensure. See also A.O. 2001-20 (opining that a legislator serving in the Rhode Island House of Representatives who was employed as a police officer for the City of Cranston was not prohibited from sponsoring and/or advocating for the passage of legislation that would allow the City of Cranston to finance the unfunded liability in its police and fire pension system because although the petitioner, upon retirement, would be a pensioner receiving payments from the system, the proposed legislation would not affect whether and to what extent he would receive future pension benefits from the system, and any benefit that would accrue to him as a result of the proposed legislation was at best speculative and remote).

Here, the official legislative activity contemplated by the Petitioner will not impact her voting rights in the Fire District. Based upon the facts as represented, although it is conceivable that the Petitioner’s voting rights in the Fire District could be at stake, that scenario is not reasonably foreseeable. She owns a home within the Fire District and, based upon the Petitioner’s representation that annual elections in the Fire District are held in June and all special elections are held during the summer and neighboring months, it is not reasonably foreseeable that the Petitioner will not meet the residency requirements that would allow her to vote in a Fire District election.¹ Also, even if it were reasonably foreseeable that the official legislative activity contemplated by the Petitioner could impact her voting rights in the Fire District, there is no

¹ The Petitioner states that she is already a registered Fire District voter.

financial impact attached to her right to vote.² Finally, even if there were a financial impact attached to the Petitioner's right to vote, in this case such a financial impact would be indirect, as opposed to direct, given the intervening activity of the eligible Fire District voters who will decide whether to approve or reject the proposed amendments.

Accordingly, for all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Fire District to hold an annual meeting or special election whereby eligible voters would decide whether to approve or reject amendments to the Charter. The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that she, or a member of her family, her business associate, or any business by which she is employed or which she represents could be directly financially impacted by her participation in the aforementioned legislative activities, she must recuse from further participation consistent with section 36-14-6, or seek further guidance from the Ethics Commission.

This Draft 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)

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2005-40

A.O. 2001-20

Keywords:

Financial Interest

² The Ethics Commission recognizes that the exercise of one's right to vote could result in a direct or indirect financial impact upon that person and/or others.

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 4, 2023

Re: Mark Aramli

QUESTION PRESENTED:

The Petitioner, a member of the Newport City Council, a municipal elected position, asks whether an advisory opinion issued to him last year restricted his ability to participate in the City Council's appointment of persons to the Newport Historic District Commission.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the advisory opinion issued last year to the Petitioner did not restrict, or address, the Petitioner's participation in the City Council's appointment of persons to the Newport Historic District Commission. However, based on additional facts provided by the Petitioner, this advisory opinion provides further guidance and conditions relative to the Petitioner's pending appeal from a decision of the Historic District Commission.

The Petitioner was elected to serve a two-year term as a member of the Newport City Council ("City Council") on November 8, 2022. As part of his City Council duties, the Petitioner participates in the appointment of members to various boards and commissions in the City of Newport, including the Newport Zoning Board of Review ("ZBR") and the Newport Historic District Commission ("HDC"). Prior to becoming a candidate for public office, the Petitioner filed with the ZBR an appeal from a decision of the HDC denying his application to construct a home within a Newport Historic District. That appeal was the subject of Advisory Opinion 2022-36, which was issued to the Petitioner after his election to the City Council. Therein, the Ethics Commission granted the Petitioner's request for a hardship exception, allowing him to appear before the ZBR relative to his appeal from the HDC's decision. However, pursuant to R.I. Gen. Laws § 36-14-5(e) ("section 5(e)")(1)(iii), the Petitioner was required to recuse from the City Council's appointment or reappointment of any persons to the ZBR until after the election cycle for his City Council seat following the complete resolution of his appeal before the ZBR, including any further appeals of the ZBR's decision, if applicable. Additionally, the Ethics Commission required that, prior to the ZBR's consideration of his appeal, the Petitioner inform the ZBR members of his receipt of the advisory opinion and that, consistent therewith, he would recuse from their reappointments as set forth within that advisory opinion.¹

¹ The Petitioner informs that, due to ongoing delays in the transmittal of the full record of the HDC proceedings at which his application was heard and ultimately denied, his appeal to the ZBR has yet to be scheduled.

Currently, the Petitioner informs that the ZBR could grant his appeal, deny his appeal, or remand the matter to the HDC. He explains that remands occur infrequently, when the ZBR is unable to adjudicate an appeal because of an error made by the HDC. The Petitioner further explains that a remand to the HDC will usually concern a deficiency in the record, such as a lack of findings of fact and/or conclusions of law.² The Petitioner states that the ZBR's remand of a matter to the HDC generally does not cause the HDC to reconsider an application or its decision to deny it. The Petitioner adds that it is unlikely that he would be required to represent himself before the HDC in the event of a remand. The Petitioner explains that, if the ZBR remands his matter to the HDC, he has several options. The Petitioner represents that he may continue pursuing the appeal following the HDC's activity on remand; appeal the matter directly to the Superior Court; withdraw his appeal and file a new application before the HDC; or simply abandon the project. The potential remand of the Petitioner's appeal to the HDC was neither anticipated nor addressed by the Ethics Commission when it considered and issued Advisory Opinion 2022-36. Therefore, the Petitioner seeks clarification as to whether, and at what point, he should recuse from the City Council's appointment or reappointment of any persons to the HDC under the circumstances.

In Advisory Opinion 2022-36, the Ethics Commission's analysis included the relevant provisions of the Code of Ethics that prohibit a public official from representing himself or authorizing another person to appear on his behalf before a municipal agency for which he is the appointing authority. Section 5(e); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists to support allowing the official to appear or be represented before a subsidiary agency, this prohibition continues while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receipt of a hardship exception, the public official must also "[f]ollow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter." Section 5(e)(1)(iii). See, e.g., A.O. 2014-4 (granting a hardship exception to a member of the Portsmouth Town Council and permitting him to represent himself before the Portsmouth Zoning Board in order to seek a variance for his personal residence, provided that, in order to avoid any appearance of impropriety, he recused from the Town Council's appointment or reappointment of any person to the Zoning Board until after the election cycle following the resolution of his applications for zoning relief).

The Petitioner's proposed conduct in Advisory Opinion 2022-36 fell squarely within the Code of Ethics' prohibition against representing himself before the ZBR over which he has appointing authority. Having determined that section 5(e)'s prohibitions applied to the Petitioner, the Ethics Commission then determined that the unique circumstances represented by the Petitioner justified a finding of hardship to permit him to appear before the ZBR, subject to the condition that he recuse from the City Council's appointment or reappointment of any persons to the ZBR until after the election cycle for his City Council seat following the complete resolution of his appeal before the ZBR, including any further appeals of the ZBR's decision.

² The Petitioner represents that the remand of his appeal to the HDC based on a deficiency of the record is highly unlikely, given the details contained within the HDC's Decision Letter. He explains that his attorney and opposing counsel reviewed the Decision Letter thoroughly in anticipation of the Petitioner's appeal.

Consistent with prior advisory opinions in which questions of hardship were reviewed, the Ethics Commission considered that the subject property of the Petitioner's appeal was that on which the Petitioner intended to construct the principal residence in which he planned to reside with his family. Also, the Petitioner's interest in that property was pre-existing to his public office. Having previously granted hardship exceptions on a number of occasions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences, the Ethics Commission relied in part upon Advisory Opinion 2021-42. Therein, a hardship exception was granted to a member of the North Kingstown Town Council, permitting him to represent himself before the North Kingstown Historic District Commission ("NKHDC"), and/or potentially the North Kingstown Zoning Board of Review ("NKZBR"), entities over which the Town Council had appointing authority. That petitioner was seeking to install a small portable shed in the backyard of his home, which was located within the Town of North Kingstown's Historic District. The changes sought by that petitioner to his home's exterior were subject to the jurisdiction of the NKHDC, denials by which were appealable to the NKZBR. The Ethics Commission allowed that petitioner to represent himself, either personally or through a representative, before the NKHDC and, in the event of an appeal, the NKZBR. However, in order to avoid even the appearance of impropriety, that petitioner was required to recuse from the Town Council's appointment or reappointment of any persons to the NKHDC and, in the event of an appeal, the NKZBR, until after the election cycle for his Town Council seat following the complete resolution of the NKHDC's review of his application and the NKZBR's potential consideration of an appeal of the NKHDC's decision.

When the instant Petitioner submitted his request for an advisory opinion last year, he did not ask for a hardship exception allowing him to appear before the HDC in the event of the ZBR's remand of the matter to the HDC. The Ethics Commission has since been informed by the Petitioner that his appeal to the ZBR could result in a remand to the HDC, though such remands are infrequent, and it is unlikely that he would be required to appear before the HDC in the event of a remand.

Based upon the Petitioner's representation that his appeal to the ZBR could conceivably result in a remand to the HDC, and in the event that the Petitioner or his legal counsel is then required to appear before the HDC on remand, the hardship exception previously granted to the Petitioner in Advisory Opinion 2022-36 shall extend to allow the Petitioner to represent himself, either personally or through his legal counsel, before the HDC for the sole purpose of that remand. The hardship exception would likewise be extended if the remand requires the HDC to reconsider the Petitioner's application or its decision to deny it.³ As a condition of the extension of that hardship exception, and to avoid even an appearance of impropriety, if and when the ZBR issues a remand under these circumstances, the Petitioner must at that point recuse from the City Council's appointment or reappointment of any persons to the HDC until after the election cycle for his City

³ The extension of the hardship exception granted to the Petitioner allowing him to appear before the HDC in the event of a remand does not allow the Petitioner to appear before the HDC for any other reason. This would include, but not be limited to, pursuing a new application to construct a home within a Newport Historic District. While the Petitioner is a member of the City Council, and for a period of one year following the termination of his service on the City Council, if the Petitioner wishes to appear before the HDC for any reason other than the remand of the subject appeal to the ZBR, he must seek a separate hardship exception from the Ethics Commission.

Council seat following the complete resolution of the remand before the HDC. Notice of recusal shall be filed consistent with section 36-14-6.

This Draft 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(e)

§ 36-14-6

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2022-36

A.O. 2021-42

A.O. 2014-4

Keywords:

Hardship Exception