

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion 2022-1

Approved: January 11, 2022

Re: John Picozzi

QUESTION PRESENTED:

The Petitioner, a member of the Lincoln School Committee, a municipal elected position, who in his private capacity is the Vice President of the Lincoln Youth Basketball Association, a private non-profit organization, requests an advisory opinion regarding the proper management of any conflicts of interest that might arise as a result of his simultaneous service in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Lincoln School Committee, a municipal elected position, who in his private capacity is the Vice President of the Lincoln Youth Basketball Association, a private non-profit organization, should follow the Ethics Commission's guidance as outlined below relative to the proper management of any conflicts of interest that might arise as a result of his simultaneous service in both positions.

The Petitioner is an elected member of the Lincoln School Committee ("School Committee"), a position that he has held since 2017. In his private capacity, he and several fellow Lincoln residents formed the Lincoln Youth Basketball Association ("LYBA"), a volunteer, non-profit organization which provides a safe environment for children from grades 4 through 8 to enjoy the game of basketball. The Petitioner states that LYBA is governed by a seven-member board consisting of a president, vice president, secretary, two treasurers, and two members at large. He further states that he currently serves as LYBA's Vice President for which he does not receive any remuneration. He also coaches some of the teams. The Petitioner represents that, at times, LYBA's representatives will appear before the School Committee to request permission for LYBA to use the Lincoln School District ("School District") facilities and/or gyms and/or to request a waiver of the fees associated therewith. He further represents that these are standard requests available not only to LYBA, but also to any other organization. He adds that, in those circumstances, he will recuse from participation in any School Committee discussions and decision-making relative to LYBA's requests and that he will not represent LYBA before the School Committee. The Petitioner explains that LYBA solicits and collects donations that help offset the costs associated with teams' participation in basketball tournaments, facilities rental expenses, uniforms, and the like. He states, however, that he will not solicit donations from any of his fellow School Committee members or from School District employees.

Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding the proper management of any conflicts of interest that might arise as a result of his simultaneous service as a member the School Committee and as LYBA's Vice President.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, his family member, his business associate, or his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Code of Ethics further prohibits a public official from representing himself or another individual or business entity before a state or municipal agency of which he is a member or by which he is employed. Sections 36-14-5(e)(1) & (2). These prohibitions apply while the public official is in office and for one year thereafter. Section 36-14-5(e)(4). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1"), a public official must recuse from participation in any matter in which his business associate appears or presents evidence or arguments or authorizes another person, on his or her behalf, to appear or to present 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. Business Associate Relationship and Prohibited Activities

The Ethics Commission has consistently opined that persons are "business associates" of 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 direct and affect the financial objectives of the organization. See, e.g., A.O. 2021-6 (opining that a member of the North Smithfield Planning Board was a business associate of the North Smithfield Heritage Association ("NSHA"), a private non-profit organization of which he served as a member of the Board of Directors and as its President and, thus, was required to recuse from participating in Planning Board matters when the NSHA appeared or presented evidence or arguments); 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).

Here, the Petitioner is LYBA's Vice President and, as such, is LYBA's business associate. Therefore, as the Petitioner correctly anticipates, he will be required to recuse from participating in School Committee discussions and decision-making on matters in which a LYBA representative appears to represent LYBA's interests, and on matters that financially impact LYBA. Such matters

include, but are not limited to, those in which LYBA seeks permission from the School Committee to use School District facilities and/or gyms, or seeks a waiver of fees for the use of such facilities and/or gyms. Notice of recusal shall be filed with the Ethics Commission in accordance with section 36-14-6. Furthermore, the Petitioner is prohibited from using his public office or confidential information received through his public office to obtain financial gain for LYBA, or from representing LYBA's interests before the School Committee.

2. Fundraising Activities

Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) ("Regulation 1.4.4") generally prohibits a person subject to the Code of Ethics from engaging in a financial transaction with a subordinate or person or business for which, in the official's or employee's official duties and responsibilities, he exercises supervisory responsibilities. Regulation 1.4.4(A). However, this prohibition does not apply where such transaction is initiated by the subordinate or the person or business. Regulation 1.4.4(A)(2). The term "subordinate" is defined as "an employee, contractor, consultant, or appointed official of the official's or employee's agency." Regulation 1.4.4(C).

In the instant matter, the Petitioner represents that LYBA and, at times, the Petitioner personally solicit donations that are used to offset costs incurred by LYBA relative to tournament entry fees, facility rentals, uniforms, and the like. The Petitioner states that he will not solicit donations from his fellow School Committee members or from School District employees.

Given the general facts presented by the Petitioner, and without knowing the identity of every business or individual to be solicited by the Petitioner or the particular interest each business or individual may have before the School Committee, the Ethics Commission is unable to provide specific guidance concerning the Petitioner's solicitation of individual donations. The Ethics Commission has previously distinguished between a private organization's solicitation of contributions through a procedure that avoids the direct involvement of a petitioner/public official or employee, versus a petitioner/public official or employee's personal solicitation of contributions to benefit a private entity for which he/she serves as an officer. For example, the Ethics Commission issued Advisory Opinion 2006-10 to the Director of Administration for the West Warwick Public Schools, who also served as the President of the Rhode Island Association of School Business Officials ("RIASBO"), a private not-for-profit professional organization whose members consisted primarily of school employees. There, RIASBO held a Product Showcase and Trade Show for which it sent out invitations to various school vendors inviting them to purchase exhibition space. The Ethics Commission opined that RIASBO could solicit school vendors, but that individual RIASBO members who were public officials subject to the Code of Ethics were prohibited from soliciting vendors having business interests that were subject to such members' supervision as school business officials.

Further, in Advisory Opinion 2020-16, the Ethics Commission opined that a member of the North Providence Town Council, who in his private capacity was the President of a private non-profit organization in North Providence, was prohibited from personally soliciting donations from subordinates as defined in Regulation 1.4.4(C). The Ethics Commission instructed that the petitioner's name was not to appear on any fundraising materials, newsletters or correspondence

sent to his subordinates which solicited donations or any other financial contributions. That petitioner was further prohibited from using his public position to promote the work of his business associate, the organization, and from identifying his public position as part of the advertisement of his work at the organization.

Here, similar to the above-cited advisory opinions, it is the opinion of the Ethics Commission that the Petitioner is prohibited from personally soliciting donations from his subordinates as defined in Regulation 1.4.4(C).¹ Accordingly, the Petitioner's name shall not appear on any fundraising materials or correspondence sent to his subordinates soliciting donations or any other contributions to LYBA. The Petitioner is further prohibited from using his public position to promote LYBA and from identifying his public position as part of the advertisement of his work for LYBA. Finally, the Petitioner shall conduct his LYBA fundraising activities on his own time, without the use of public resources,² or confidential information obtained as part of his public position. The Petitioner is advised to seek further guidance from the Ethics Commission as more specific situations occur that may create a conflict of interest.

This Advisory 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)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011)

Related Advisory Opinions:

A.O. 2021-6

A.O. 2020-16

A.O. 2014-14

A.O. 2006-10

¹ The Ethics Commission acknowledges and commends the Petitioner's willingness to refrain from soliciting donations from his fellow School Committee members. However, the Petitioner's fellow School Committee members are not considered his subordinates as the term is defined by the Code of Ethics. Thus, he is not prohibited from solicitating them, as long as all of the other requirements described in this advisory opinion are followed.

² Public resources may include, but are not limited to, use of the Petitioner's School Committee email address, stationary, and office supplies.

Keywords:

Business Associate

Solicitation

Transactions with Subordinates