

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion 2022-3

Approved: January 11, 2022

Re: Kelley Morris Salvatore

QUESTION PRESENTED:

The Petitioner, a member of the State Housing Appeals Board, a state appointed position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in the consideration of an appeal that was filed by a party aggrieved by a decision of the Lincoln Planning Board, given that the Petitioner's brother-in-law, a member of the Lincoln Planning Board, participated in said decision.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the State Housing Appeals Board, a state appointed position, is prohibited by the Code of Ethics from participating in the consideration of an appeal that was filed by a party aggrieved by a decision of the Lincoln Planning Board, given that the Petitioner's brother-in-law, a member of the Lincoln Planning Board, participated in said decision.

The Petitioner is a member of the State Housing Appeals Board ("SHAB"), having been appointed to the SHAB in 2013 by former Governor Gina Raimondo, and currently serves as the SHAB's Chairperson. The Petitioner states that the SHAB hears appeals of local review board decisions relating to applications for comprehensive permits filed under the provisions of the Low and Moderate Income Housing Act. The Petitioner further states that appeals to the SHAB are filed under circumstances where an application has either been denied by a local review board or was granted with conditions and requirements that make the building or operation of the proposed housing infeasible. She adds that an applicant has the statutory right to appeal to the SHAB for its review of the application's merits and the local review board's decision.

The Petitioner explains that there is presently pending before the SHAB an appeal of a denial by the Lincoln Planning Board of Review ("Planning Board") of a comprehensive permit application filed by Women's Development Corporation and Judith and Paul Randall (the "subject application"). The Petitioner states that her brother-in-law, Thomas Salvatore, is a member of the Planning Board and participated in the Planning Board's review and unanimous decision to deny the subject application. The Petitioner represents that the appeal to the SHAB of the Planning Board's denial of the subject application will include the SHAB's review of the record of the proceedings before the Planning Board; the filing of briefs by the parties; oral argument by the parties' attorneys; the SHAB's public deliberations; and the SHAB's issuance of a written decision

stating its findings and conclusions. The Petitioner explains that, while her brother-in-law will not physically appear before the SHAB during the appellate proceedings, the Planning Board is a party to the appeal and will be represented before the SHAB by the Town of Lincoln's solicitor.

The Petitioner states that there are currently two vacancies on the SHAB, which means that there are five members presently serving instead of seven members. She explains that the presence and participation of four SHAB members constitutes a quorum. The Petitioner states that the scheduling of the instant appeal has been postponed pending the Petitioner's receipt of a formal advisory opinion from the Ethics Commission addressing whether the Petitioner may participate. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in the appeal currently pending before the SHAB in which the Planning Board is a party, given that her brother-in-law, a member of the Planning Board, participated in the Planning Board's decision that is the subject of the appeal.

The Code of Ethics contains specific regulations aimed at curbing nepotism. Under the general nepotism provisions of Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”), a public official shall not participate in any matter as part of her public duties if she has reason to believe or expect that any person within her family is a party to or a participant in such matter, will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage. The definition of “[a]ny person within [] her family” specifically includes brother-in-law. Regulation 1.3.1(A)(2). Notably, Regulation 1.3.1(B)(1) not only prohibits actions by a public official that would financially impact her family member, but also applies when such actions involve a family member as a party or participant, regardless of the potential for financial impact.

Buttressing the nepotism prohibitions within the Code of Ethics, Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”) states that a public official must also recuse from participation in her official capacity when any person within her family appears or presents evidence or arguments before her state agency. Such an appearance or presentation of evidence or arguments would include not only that by a public official's family member, but by anyone else pursuant to that family member's authorization and/or direction. Commission Regulation 520-RICR-00-00-1.1.4(A)(1)(a) & (b) Representing Oneself or Others, Defined (36-14-5016). An exception found at Regulation 1.2.1(B)(1) states that a public official is not required to recuse pursuant to this or any other provision of the Code of Ethics when her family member is before her state agency solely in an official capacity as a duly authorized member or employee of another state or municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the family member is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.¹

Last year, in Advisory Opinion 2021-45, the Ethics Commission unanimously opined that a petitioner, if appointed to fill a then current vacancy on the Burrillville Zoning Board of Review

¹ The Ethics Commission adopted what is now Regulation 1.2.1(B)(1) in 2012 to expressly exempt situations in which family members who simultaneously hold public positions work together in their official capacities, provided that neither family member has a personal financial interest, or is a party or participant, in the particular proceeding in which both are involved in their official capacities.

(“Zoning Board”), would then be prohibited by the Code of Ethics from participating in discussions and voting relative to any Zoning Board matter in which his father-in-law, the Burrillville Building Official, would be financially impacted, was a party or participant, would receive an employment advantage, or appeared or presented evidence or arguments. The Ethics Commission specified that the petitioner would be required to recuse from participating in appeals to the Zoning Board by parties aggrieved by a decision of the Building Official. However, consistent with Regulation 1.2.1(B)(1), the petitioner was advised that he would not be required to recuse were his father-in-law to appear before the Zoning Board in his official capacity as the Town Building Official to participate in non-adversarial information sharing or coordination of activities between the Building Official and the Zoning Board, provided that the petitioner’s father-in-law was not otherwise a party or participant, and had no personal financial interest, in the matter under discussion. See also A.O. 2019-2 (opining that a member-elect of the Scituate Town Council was not prohibited from participating in Town Council discussions and decision-making relative to matters involving the Scituate School Committee of which his wife was a member-elect, provided that all requirements of Regulation 1.2.1(B)(1) were satisfied); A.O. 2018-59 (opining that a member of the Westerly Town Council was not prohibited from participating in the Town Council’s discussions and decision-making relative to matters involving the Westerly School Committee and/or the Elementary School Redesign Committee, notwithstanding that his wife was then serving on both committees, provided that neither the petitioner nor his wife had a personal financial interest in any matter under discussion and that all other requirements of Regulation 1.2.1(B)(1) were satisfied).

Here, the Petitioner’s brother-in-law is a member of a municipal agency that is an adverse party to an appeal before the SHAB. The SHAB’s review of the record of the proceedings before the Planning Board, including those actions taken by the Planning Board members who participated in the decision to deny the subject application, makes the Petitioner’s brother-in-law a participant in the appeal. The potential for financial impact upon the Petitioner’s brother-in-law is not a required element of Regulation 1.3.1’s prohibitions. Further, the anticipated appearance or presentation of evidence or arguments before the SHAB by the Town of Lincoln’s solicitor pursuant to the Planning Board’s authorization and/or direction requires the Petitioner to recuse consistent with the provisions of Regulation 1.2.1. The exception found at Regulation 1.2.1(B)(1) does not apply here because the appellate proceedings before the SHAB are 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 an appeal that was filed by a party aggrieved by a decision of the Lincoln Planning Board, given that the Petitioner’s brother-in-law participated in said decision and the Lincoln Planning Board is an adverse party to the appeal. Notice of the recusal shall be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 36-14-6.

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:

§ 36-14-6

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

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. 2021-45

A.O. 2019-2

A.O. 2018-59

Keywords:

Family Member

Nepotism

Recusal