

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion 2022-4

Approved: January 11, 2022

Re: The Honorable Sandra Cano

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether she may accept employment by the City of Pawtucket as its Director of Commerce and serve simultaneously in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, is not prohibited by the Code of Ethics from accepting employment by the City of Pawtucket as its Director of Commerce and serving simultaneously in both positions.

The Petitioner is a member of the Rhode Island Senate, representing District 8 in the City of Pawtucket. Initially elected during a special election in April of 2018, the Petitioner was later re-elected in November of the same year. She serves as the Chair of the Senate Education Committee and as a member of the Senate Finance Committee. The Petitioner states that she was recently offered the position of Director of Commerce in the Office of Economic Development for the City of Pawtucket. She further states that she would like to accept the offer, subject to the issuance of an advisory opinion by the Ethics Commission that she is permitted to do so under the Code of Ethics.¹

The Petitioner informs that the Director of Commerce is a department head and cabinet level position in the City of Pawtucket (“City” or “Pawtucket”), adding that the Director of Commerce is accountable for economic development efforts in the City that include administering economic development programs and assisting in the retention of existing businesses and the attraction of new businesses to the City. The Petitioner further informs that the Director of Commerce is a direct appointment of the Mayor but reports directly to the City’s Director of Administration on a day-to-day basis. She adds that the salary for the Director of Commerce is funded entirely by the City. The Petitioner identifies among the duties of the Director of Commerce the following: developing and implementing an economic development strategy for the City; leading economic development and job-creation initiatives in accordance with the priorities of the Mayor; directing

¹ The Petitioner is currently employed by Navigant Credit Union as the Assistant Vice President for Community Development. She states that it is her intent to leave her current position in order to accept the position of Director of Commerce for the City of Pawtucket if allowed to do so under the Code of Ethics.

all functions of the Department of Planning and Redevelopment, including planning, zoning, and economic development; formulating an effective marketing strategy to make businesses aware of the advantages of locating in Pawtucket; and working with state and federal government partners to maximize resources available for economic development efforts.

In response to an inquiry by Ethics Commission Staff regarding the nature of the aforementioned work with state government partners “to maximize resources available for economic development efforts,” the Petitioner offered, by way of examples, potential tax incentives or assistance with the recruitment of office staff that the state might offer to a business that is willing to relocate to Pawtucket. The Petitioner emphasizes that she would not appear before the Rhode Island General Assembly in her capacity as Pawtucket’s Director of Commerce. She adds that, in the event that she, in her capacity as the Director of Commerce, had reason to appear before the Rhode Island General Assembly, the City’s Director of Planning or Director of Administration would instead appear in her place.² It is in the context of the foregoing representations that the Petitioner seeks advice from the Ethics Commission regarding whether she is permitted under the Code of Ethics to accept appointment to the position of Pawtucket’s Director of Commerce while simultaneously serving as a state senator.

Under the Code of Ethics, a public official may not accept other employment that would impair her independence of judgment or require her to disclose confidential information acquired in the course of her official duties. R.I. Gen. Laws § 36-14-5(b). Additionally, the Code of Ethics prohibits a public official from using her public position or confidential information received through her public position to obtain financial gain, other than that provided by law, for herself, her family member, her business associate, or her employer. Section 36-14-5(d). Further, a public official may not participate in any matter in which she has an interest that is in substantial conflict with the proper discharge of her duties or employment in the public interest. Section 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that she, her family member, 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).

The aforementioned provisions of the Code of Ethics do not create an absolute bar to simultaneous service as a member of the General Assembly and as Pawtucket’s Director of Commerce. Rather, the provisions cited require a case-by-case determination regarding whether a substantial conflict of interest exists with respect to the carrying out by Petitioner of her official duties in either of her public roles. In Advisory Opinion 2019-1, the Ethics Commission opined that a Rhode Island senator who had recently been selected to serve as Smithfield’s Assistant Solicitor for criminal prosecutions was not prohibited from simultaneously serving in both positions. There, the Ethics Commission saw no indication that the petitioner’s simultaneous service as a senator and as an assistant solicitor presented an inherent conflict of interest under the Code of Ethics, adding that it

² Although an appearance before the Rhode Island General Assembly by Pawtucket’s Director of Planning or Director of Administration was raised as a hypothetical, Ethics Commission Staff discussed with the Petitioner certain relevant sections of the Code of Ethics that would prohibit a public official from directing a subordinate to perform an activity that would be prohibited if performed by the public official herself. Because the Petitioner identified Pawtucket’s Director of Planning as a subordinate to the Director of Commerce, the Petitioner was advised to seek further guidance from the Ethics Commission in the event that an appearance by the Director of Planning in place of the Petitioner in her role as the Director of Commerce is ever actually anticipated.

was unlikely that the petitioner's service as Smithfield's Assistant Solicitor would impact his responsibilities as a State senator, and vice versa, given the different spheres of responsibilities that fell to those respective positions. See also A.O. 2010-60 (opining that a member-elect of the Rhode Island Senate was not prohibited from simultaneously serving as an appointed member of the North Kingstown Harbor Management Commission); A.O. 2004-18 (opining that a member of the Rhode Island House of Representatives was not prohibited from seeking and accepting employment as the Solicitor for the Town of Warren while simultaneously serving as a member of the General Assembly, given that the duties of a state legislator and town solicitor are separate and distinct, absent some other relationship, or unless some issue came before one of the forums in which the petitioner served that directly impacted the other); A.O. 2002-24 (opining that a state senator could accept employment as legal counsel to a municipal housing authority, given that his simultaneous service in both positions did not present an inherent conflict of interest under the Code of Ethics because the spheres of responsibility that fell to those respective positions were different).

Here, based upon the facts as represented, the analysis of the relevant provisions of the Code of Ethics, and the review of prior advisory opinions issued, there is no indication that the Petitioner's simultaneous service as a senator and as Pawtucket's Director of Commerce would present an inherent conflict of interest under the Code of Ethics. It is unlikely that the Petitioner's service as Pawtucket's Director of Commerce would impact her responsibilities as a state senator, and vice versa, given the different spheres of responsibilities that fall to those respective positions. Therefore, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from accepting employment by the City of Pawtucket as its Director of Commerce and simultaneously serving as a state senator.

However, the Petitioner is advised that if any matter should come before her as she is carrying out her official duties in either of her public roles that presents any potential conflict of interest not otherwise contemplated in this advisory opinion, she should either recuse from participation in said matter consistent with the provisions of R.I. Gen. Laws § 36-14-6 or seek further guidance from the Ethics Commission.

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:

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2019-1

A.O. 2010-60

A.O. 2004-18

A.O. 2002-24

Keywords:

Dual Public Roles