



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

1st Meeting

DATE: Tuesday, January 11, 2022

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Daniel J. McKee's Executive Order No. 22-01, this meeting will not be conducted in-person at the Rhode Island Ethics Commission. Rather, it will be conducted remotely in Zoom webinar format in order to minimize any possible transmission of COVID-19.

REMOTE MEETING ACCESS: Any member of the public who wishes to attend and view this video meeting may do so by:

- Clicking this link to join the webinar:
<https://us02web.zoom.us/j/85650299644>
and using Webinar ID: 856 5029 9644
- Or using iPhone one-tap US:
 - +16465588656,,85650299644# or
 - +13017158592,,85650299644#
- Or by Telephone, Dial (for higher quality, dial a number based on your current location) US:
 - +1 646 558 8656 or
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 - +1 253 215 8782 or
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 - 833 548 0276 (Toll Free) or
 - 833 548 0282 (Toll Free) or
 - 877 853 5247 (Toll Free) or
 - 888 788 0099 (Toll Free)
- International numbers available:
<https://us02web.zoom.us/j/kckwdqTJ5W>
Webinar ID: 856 5029 9644

1. Call to Order.
2. Discussion of Remote Meeting Format; Identifying and Troubleshooting any Remote Meeting Issues.
3. Motion to approve minutes of Open Session held on November 16, 2021.
4. Director's Report: Status report and updates regarding:
 - a.) Discussion of impact of COVID-19 crisis on Ethics Commission operations and staffing;
 - b.) Complaints and investigations pending;
 - c.) Advisory opinions pending;
 - d.) Access to Public Records Act requests since last meeting;
 - e.) Administration/Office Updates.
5. Advisory Opinions (petitioners may participate remotely).
 - a.) John Picozzi, a member of the Lincoln School Committee, 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. [Staff Attorney Papa]
 - b.) Suzanna L. Alba, a member of the Smithfield Town Council, requests an advisory opinion regarding whether she may participate in Town Council discussions and decision-making relative to the interview, selection, and appointment of members to a sub-committee tasked with proposing to the Town Council a plan for the long-term use of a piece of property owned by the Town of Smithfield, given that the Petitioner's personal residence is located in close proximity to the subject property. [Staff Attorney Papa]
 - c.) Kelley Morris Salvatore, a member of the State Housing Appeals Board, 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. [Staff Attorney Radiches]
 - d.) The Honorable Sandra Cano, a legislator serving as a member of the Rhode Island Senate, 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. [Staff Attorney Radiches]

6. New Business proposed for future Commission agendas and general comments from the Commission.
7. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on November 16, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Anthony Silva, Complaint No. 2021-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) Motion to return to Open Session.

NOTE ON REPORTING OUT OF ACTIONS TAKEN IN EXECUTIVE SESSION: *After the Commission votes to go into Executive Session, the Open Session Zoom meeting will temporarily close and viewers will not be able to join the Executive Session which is being held in a separate Zoom meeting. At the conclusion of the Executive Session, which has no set duration, the Commission will reconvene in the Open Session meeting solely for the purpose of reporting out any actions taken in Executive Session and sealing the executive session minutes. You may rejoin the Open Session by following the same instructions on Page 1 of this agenda that you followed to join the original Open Session meeting. If you attempt to rejoin the Open Session Zoom meeting while the Executive Session portion is occurring, you will see a message that the meeting host is in another meeting. Eventually, once the Executive Session meeting concludes, the host will reconvene the Open Session meeting and you will be able to view the Commission Chair report out any actions taken in Executive Session. Alternatively, it may be more convenient for you to view a written report of any actions taken in Executive Session by visiting our website (<https://ethics.ri.gov/>) later in the day.*

8. Motion to seal minutes of Executive Session held on January 11, 2022.
9. Report on actions taken in Executive Session.
10. 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 January 6, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: 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 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)

§ 36-14-5(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 soliciting 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

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: 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 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-00-00-1.1.4 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

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 11, 2022

Re: Suzanna L. Alba

QUESTION PRESENTED:

The Petitioner, a member of the Smithfield Town Council, a municipal elected position, requests an advisory opinion regarding whether she may participate in Town Council discussions and decision-making relative to the interview, selection, and appointment of members to a sub-committee tasked with proposing to the Town Council a plan for the long-term use of a piece of property owned by the Town of Smithfield, given that the Petitioner's personal residence is located in close proximity to the subject property.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Smithfield Town Council, a municipal elected position, may participate in Town Council discussions and decision-making relative to the interview, selection, and appointment of members to a sub-committee tasked with proposing to the Town Council a plan for the long-term use of a piece of property owned by the Town of Smithfield, notwithstanding that the Petitioner's personal residence is located in close proximity to the subject property.

The Petitioner has served as a member of the Smithfield Town Council ("Town Council") since her election thereto in 2012 and as Town Council President since 2018. The Petitioner explains that she resides in a single-family home located at 85 Colwell Road in the Town of Smithfield ("Town" or "Smithfield") which is in close proximity to a 114-acre property, also known as the Camp Shepard property ("Camp Shepard property" or "Property"),¹ acquired by the Town in October of 2020 from the Greater Providence Young Men's Christian Association, Inc. ("YMCA").²

The Petitioner represents that the Town Council is considering selling a portion of the Camp Shepard property and that she has recused from Town Council discussions and votes relative to such sale. As to the remaining portion of the Property, the Town Council has passed a resolution creating the Camp Shepard Sub-Committee ("Sub-Committee") which is tasked with proposing to the Town Council a long-term plan for the use of that portion of the Property. The Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in the Town Council discussions and decision-making relative to the interview, selection, and appointment of members of the Sub-Committee. During a telephone conversation with Commission Staff, the Town

¹ The Camp Shepard property is located at 71 Colwell Road in Smithfield.

² The YMCA is a non-profit corporation located in Providence.

Manager stated that the Sub-Committee has no role in the Town Council's decision whether to sell any portion of the Camp Shepard property. Rather, the Sub-Committee will be charged with developing and recommending proposed uses for the remaining portion of the property that are expected to be primarily recreational in nature, citing as examples trails, a splash park, day camps, and the like. The Town Manager further states that proposed uses are expected to be consistent with the Town's Comprehensive Community Plan.

The goals of the Sub-Committee identified in the resolution include the following: to facilitate community engagement in creating a long-term plan for the property and identifying those uses that may be most suitable for the residents of the Town; to identify strategies that will delineate proposed recreational, leisure and cultural uses consistent with the goals of the Town's Comprehensive Community Plan; to engage and work with any necessary consultants to develop a comprehensive plan and long-term vision for the property; and to present recommendations to the Town Council on how to achieve these goals. The resolution specifies that the Sub-Committee will be comprised of nine members who will serve at the pleasure of the Town Council and will include a Town Council member selected by the Town Council, a member of the Asset Management Commission, the Director of Parks and Recreation Department, the Town Planner, the Town Manager, the Director of the Smithfield YMCA, and three Town residents to be selected by the Town Council. The Petitioner states that she does not wish to serve, nor will she serve, on the Sub-Committee. The Town Manager confirmed that he has already issued an advertisement soliciting applications from residents of the Town who wish to serve on the Sub-Committee and stated that the only requirements are that the applicants be residents of the Town and registered voters. The Town Manager noted that he will receive all of the applications, which he will later forward to the Town Council. The Petitioner explains that for these appointments the Town Council will follow its routine procedure for reviewing, interviewing, and appointing members of other Town boards and commissions. Specifically, the Town Council will interview all of the applicants in executive session where each Town Council member will have the opportunity to ask questions of the applicants. The Town Council will then vote to appoint three of the applicants to the Sub-Committee.

The Petitioner's official actions relative to the purchase of the Camp Shepard property were the subject to an ethics complaint filed against her in 2020, Complaint No. 2020-5 ("Complaint"), in which it was alleged that the Petitioner violated the Code of Ethics by taking official actions that would have resulted in a financial impact upon her as an abutting property owner. The investigation of the Complaint revealed that the Petitioner's property, although not directly adjoining, is located within 60 feet of the Camp Shepard property.³ The Camp Shepard property had been used as a summer camp from 1970 until its closure in 2008. Since the closure of the camp, the property has been dormant, neglected, and unkept. In 2018, the YMCA began discussions with Town officials, including the Petitioner and the former and the current Town Managers, concerning a possible sale of the Camp Shepard property to the Town. The Town Manager had the authority to negotiate with the YMCA and he periodically apprised the Petitioner in her capacity as Town Council President of the status of the negotiations. The investigation

³ The investigation revealed that the Camp Shepard property and the Petitioner's property are separated by land, primarily woodlands, owned by Laurence and Kathryn Sasso, and is subject to a conservation easement granted by the Sassos to the Smithfield Land Trust.

revealed that the Petitioner participated in a Camp Shepard property site visit, discussions relative to the Town's plans for the property, which included a possibility that the Town might decide in the future to develop the property, and a vote to authorize the Town Manager to execute a purchase and sale agreement with the YMCA. The Petitioner, however, did not participate in the Town Council's vote to authorize the purchase of the Camp Shepard property, which was closed on October 30, 2020.

In reviewing the Complaint, the Ethics Commission first determined that although the Petitioner did not participate in the final Town Council vote to proceed with the purchase of the Camp Shepard property, her prior actions were taken as part of her official duties in the Town's decision to purchase the Property and such actions would be prohibited by the Code of Ethics if the Petitioner had a reason to believe or expect that, as a nearby property owner, she would have been directly financially impacted by the Town's purchase of the Property. The Ethics Commission noted that the Petitioner's property was in such close proximity to the Camp Shepard property that certain decisions that the Town could make regarding the Property might have a corresponding financial impact on the Petitioner's property. However, the Ethics Commission ultimately determined that the totality of the evidence established that it was not reasonably foreseeable that the Petitioner's participation in the Town Council's vote to simply purchase the Camp Shepard property, without taking any other action, would have had any financial impact on her property. The Ethics Commission based its decision on the fact that the vote in which the Petitioner participated was limited to whether the Town would purchase the Camp Shepard property, and that no specific use of the Property was proposed at any of the Town Council's meetings. The Ethics Commission further noted that, at its October 22, 2020 meeting which the Petitioner did not attend, the Town Council discussed the possible formation of a sub-committee to consider the Town's options as to the Property, but that such a sub-committee had yet to be formed. Therefore, any potential financial impact on the Petitioner's property as a result of speculative actions that the Town might take in the future based on recommendations from a sub-committee yet to be formed was remote at the time of her vote and remained remote at the time the Ethics Commission made a decision on the Complaint.

The Petitioner states that, in light of the resolution of the Complaint and the advice from the Ethics Commission to seek further guidance regarding future actions relative to the Camp Shepard property, she now seeks an advisory opinion regarding whether she may participate in the interview, selection, and appointment of the members of the Sub-Committee.

No person subject to the Code of Ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, 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 person subject to the Code of Ethics has an interest which is in substantial conflict with the proper discharge of her duties if she has reason to believe that she, her family member, 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). Additionally, a person subject to the Code of Ethics shall not use her public office for pecuniary gain, other than that provided by law, for herself, her family member, her business associate, or her business by which she is employed or which she represents. Section 36-14-5(d).

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 abutting property or a property located in close proximity to the owner's property. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Given this presumption, the Ethics Commission has frequently stated that a public official may not participate in discussions and decision-making on matters concerning abutting property absent evidence that the official action would not impact the financial interest of the public official or the public official's family member. For example, in Advisory Opinion 2016-13, the Ethics Commission opined that a member of the Bristol Planning Board was prohibited from participating in the Planning Board's consideration of a proposed hotel development, given that his first cousins owned properties within the area requiring notice and would be financially impacted by the Planning Board's decision. Similarly, in Advisory Opinion 2005-66, the Ethics Commission opined that a member of the Warren Planning Board was prohibited from participating in matters before the Planning Board relating to a housing development that was to be located on property adjacent to property owned by his mother. See also A.O. 2005-7; A.O. 2003-13; and A.O. 2002-30. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussions or voting concerning property which abuts or is in close proximity with their own, absent reliable evidence that their official actions would not affect the financial interests of the public officials, either positively or negatively.

Instances in which the presumption of financial impact was found to be sufficiently rebutted include the following: A.O. 99-148 (presumption rebutted where a petitioner provided independent evidence from a licensed appraiser that his property would not be financially affected by a proposed zoning change); A.O. 98-92 (presumption rebutted where only a small fraction of the petitioner's back yard was within 200 feet of the area at issue; the proposed cul-de-sac would not be visible from her property; and where she represented that there would be no financial impact on her property); A.O. 98-35 (presumption rebutted where the requested height variance was minor; the subject dwelling was not adjacent to the petitioner's property; and the petitioner represented that the variance would have no financial impact on his property).

Here, the Petitioner represents that she did not participate in the Town Council's discussions relative to the potential sale of a portion of the Camp Shepard property. The Town Manager states that the Sub-Committee will be charged with creating and proposing to the Town Council for consideration a long-term plan for the use of the remaining portion of the Camp Shepard property that is consistent with the Town's Comprehensive Community Plan. Further, it is the Town Manager's understanding that the Town Council will be responsible for any potential sale of a portion of the Camp Shepard property, where the Sub-Committee will be responsible only for proposing a plan for recreational uses of the remaining portion of the Property. Additionally, the official actions under consideration in this advisory opinion are the Petitioner's participation in the interview, selection, and appointment of the members of the Sub-Committee, not the Town Council's discussions and decision-making relative to any proposed uses of the Camp Shepard property.

Based on the above representations, prior advisory opinions issued, the Ethics Commission's decision in Complaint No. 2020-5, and the applicable provisions of the Code of Ethics, it is the

opinion of the Ethics Commission that the Petitioner may participate in the Town Council's discussions and decision-making relative to the interview, selection and appointment of the members of the Sub-Committee, given that such participation will not have any direct financial impact upon the Petitioner or her property, and provided that none of the applicants are members of her family as defined under the Code of Ethics, her business associates, or her employer, under which circumstances she would be required to recuse from the interview, selection, and appointment of any of the applicants. The Petitioner is further advised that she must recuse from any Town Council discussions and decision-making relative to any updates and/or specific use proposals by the Sub-Committee, or seek further guidance from the Ethics Commission prior to participating in such discussions and decision-making. Notice of recusal shall be filed with the Ethics Commission in accordance 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(a)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2016-13
A.O. 2012-4
A.O. 2007-18
A.O. 2006-37
A.O. 2005-66
A.O. 2005-16
A.O. 2005-7
A.O. 2003-13
A.O. 2002-30
A.O. 99-148
A.O. 98-92
A.O. 98-35

Other Related Authority

Complaint No. 2020-5

Keywords:

Abutter
Property Interest
Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: 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 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(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

DRAFT