



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

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**NOTICE OF OPEN MEETING**

**AGENDA**

**2<sup>nd</sup> Meeting**

**DATE:** Tuesday, February 15, 2022

**TIME:** 9:00 a.m.

**TO ATTEND:** Pursuant to an authorized extension of 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/88941950719>  
and using Webinar ID: 889 4195 0719
- Or using iPhone one-tap US:
  - +16465588656,, 88941950719# or
  - +13017158592,, 88941950719#
- Or by Telephone, Dial (for higher quality, dial a number based on your current location) US:
  - +1 646 558 8656 or
  - +1 301 715 8592 or
  - +1 312 626 6799 or
  - +1 669 900 9128 or
  - +1 253 215 8782 or
  - +1 346 248 7799 or
  - 833 548 0282 (Toll Free) or
  - 877 853 5247 (Toll Free) or
  - 888 788 0099 (Toll Free) or
  - 833 548 0276 (Toll Free)
- International numbers available:  
<https://us02web.zoom.us/j/k1FU5RuJ5>

**Webinar ID: 889 4195 0719**

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 January 11, 2022.
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.) Millicent McGinnes, the Town Clerk for the Town of New Shoreham, who in her private capacity is the owner and operator of Ballard's Oil Company, Inc., requests an advisory opinion regarding whether the Code of Ethics prohibits her from bidding in her private capacity on a contract, through an open and public bidding process, to provide heating oil services to the Town. [Staff Attorney Radiches]
  - b.) Karen Bernardino, the Fiscal Clerk for the Town of North Smithfield, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon her, given that her spouse recently accepted a part-time position as the Electrical Inspector for the Town of North Smithfield. [Staff Attorney Radiches]
  - c.) Eugene Quinn, a member of the East Greenwich School Committee, requests an advisory opinion regarding whether the Code of Ethics prohibits him from having access to, and utilizing, East Greenwich School District employees' payroll data to develop long-term forecasts for the East Greenwich School District's finances and enrollment, given that some of the payroll data may contain confidential and/or nonpublic information. [Staff Attorney Giusti]
  - d.) Alayne White, a member of the Bristol Zoning Board, requests an advisory opinion regarding whether the Code of Ethics prohibits her, in her private capacity, from participation in various activities relative to a proposed mill redevelopment in the Town of Bristol. [Staff Attorney Papa]

6. Discussion and vote to approve the University of Rhode Island's *Policy on Public-Private Partnership in Research and Development*, pursuant to Rhode Island Gen. Laws § 16-59-26(c)(2). [Director Gramitt]
7. Review and discussion of scope and interpretation of financial disclosure requirements relating to real estate interests: R.I. Gen. Laws § 36-14-17(b)(3) and Commission Regulation 520-RICR-00-00-4.6.
8. New Business proposed for future Commission agendas and general comments from the Commission.
9. Motion to go into Executive Session, to wit:
  - a.) Motion to approve minutes of Executive Session held on January 11, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - b.) 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.*

10. Report on actions taken in Executive Session.
11. 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 February 10, 2022*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 15, 2022

**Re: Millicent McGinnes**

### **QUESTION PRESENTED:**

The Petitioner, the Town Clerk for the Town of New Shoreham, a municipal employee position, who in her private capacity is the owner and operator of Ballard's Oil Company, Inc., requests an advisory opinion regarding whether the Code of Ethics prohibits her from bidding in her private capacity on a contract, through an open and public bidding process, to provide heating oil services to the Town.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Town Clerk for the Town of New Shoreham, a municipal employee position, who in her private capacity is the owner and operator of Ballard's Oil Company, Inc., is not prohibited by the Code of Ethics from bidding in her private capacity on a contract, through an open and public bidding process, to provide heating oil services to the Town.

The Petitioner is currently employed by the Town of New Shoreham ("Town" or "New Shoreham") as its Town Clerk ("Clerk"), a position she has held since January 1, 2022. Immediately prior thereto, the Petitioner served as the Deputy Clerk for the Town. The Petitioner states that, consistent with the Town Charter, she was hired for the position of Clerk by the Town Manager with the advice and consent of the Town Council. She adds that a new Deputy Clerk has also been hired by the Town. The Petitioner represents that, in her role as Clerk, she typically works Monday through Friday between the hours of 8:30 am and 4:30 pm. She further represents that she also attends Town Council meetings during the evening and occasionally fills in for staff who might be unavailable to attend a meeting for any of the ten municipal sub-committees that might convene on a particular evening. The Petitioner describes her role as Clerk as administrative in nature, adding that she is primarily responsible for recordkeeping.

In her private capacity, the Petitioner owns and operates Ballard's Oil Company, Inc. ("Ballard's Oil"), one of two home heating oil companies located in New Shoreham. The Petitioner states that she employs two people to deliver heating oil to clients in New Shoreham. She further states that her duties as the owner of Ballard's Oil mainly involve paperwork, and that she performs those duties outside of her work hours as the Town Clerk, typically on weekends and/or evenings. The Petitioner states that Ballard's Oil currently provides automatic oil delivery to approximately eight to ten municipal buildings in New Shoreham pursuant to a two-year contract with the Town that

will expire on June 30, 2022. The Petitioner states that Ballard's Oil submits its invoices for services provided to the Town to the Town's Finance Department, which is responsible for the issuance of checks for which the Town Finance Director is the signatory. The Petitioner further states that, in her capacity as Clerk, she has no role in the review and payment of invoices submitted to the Finance Department, nor does she exercise supervisory authority over the Finance Director.

The Petitioner represents that, during the month of February in alternating years, the Town solicits bids for services such as the provision of heating oil, so that providers can be selected in anticipation of a two-year contract that begins on July 1<sup>st</sup>. The Petitioner explains that the bid specifications are drafted and advertised through the Town Manager's office, and that the Town Manager accepts and reviews the bids before making recommendations to the Town Council for advice and consent on the award of a contract by the Town Manager. The Petitioner states that all bids are sealed and that she has no knowledge of what is contained in them. She further states that, typically, the lowest bid is accepted. The Petitioner represents that, in her capacity as Clerk, she has no role whatsoever in the bid process. She explains that, in the absence of the Town Manager's administrative assistant, the Clerk might be asked to step in and take minutes at a bid opening but that, were this to happen, the Clerk would exercise no discretion or decision-making authority during the process.

The Petitioner states that, in her private capacity as the owner and operator of Ballard's Oil, she would like to submit a bid in February of 2022 for the opportunity to provide heating oil services to the Town for the next two years beginning July 1, 2022. She seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from doing so.

Under the Code of Ethics, no public employee shall participate in any matter in which she has an interest, nor shall she engage in any business, employment, transaction, or professional activity, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public employee has reason to believe or expect 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). The Code of Ethics further prohibits a public employee from using her public office, or confidential information received through her public office, to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d).

The Code of Ethics also provides that no person subject to the Code of Ethics, or any person within her family or her business associate, or any business entity in which the person or her family member or her business associate has a ten percent (10%) or greater equity interest or five thousand dollar (\$5,000) or greater cash value interest, shall enter into a contract with a state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.<sup>1</sup> Section 36-14-5(h) ("section 5(h)"). Finally, the Code of Ethics prohibits a public employee from

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<sup>1</sup> Contracts for professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details. Section 36-14-(h).

accepting other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of and by reason of her official duties. Section 36-14-5(b) (“section 5(b)”).

As an initial matter, the Ethics Commission finds that sections 5(a), 5(d), and 7(a) of the Code of Ethics are not implicated here because the Petitioner’s proposed conduct of submitting a bid in her private capacity to provide heating oil services to the Town would not require her to take action in her official capacity as Clerk that would financially impact her or her business. The Petitioner states that her role as Clerk is administrative in nature, adding that she is primarily responsible for recordkeeping. The Petitioner further states that she has no role whatsoever in the bid process, that the bids are sealed, and that she has no knowledge of what is contained in them. Additionally, the Petitioner represents that, if Ballard’s Oil is selected to provide heating oil services to the Town, she would have no role in the review and payment of invoices submitted to the Finance Director. For each of these reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by sections 5(a), 5(d), or 7(a) of the Code of Ethics from submitting a bid.

Turning now to section 5(h) of the Code of Ethics, the Ethics Commission has previously, and with certain conditions attached, allowed municipal public officials to enter into service contracts with the towns in which they served. For example, in Advisory Opinion 2018-42, a member of the North Smithfield Town Council, who in her private capacity was the President and co-owner of North Smithfield Fence, Inc., was not prohibited from providing estimates and submitting bids to perform work for the town and/or its various departments, provided that the contracts for such work were awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. The Ethics Commission further conditioned its opinion on the petitioner not participating in the bid development or selection process. See also A.O. 2008-14 (opining that the Chairperson of the Coventry Planning Commission could respond to a Request for Qualifications to perform municipal engineering services for the town, provided that he did not participate in the bid specification process and that any contract awarded was pursuant to an open and public bidding process); A.O. 2003-5 (opining that a Cumberland School Committee member could provide fundraising services to the Cumberland School District, provided that the contract was awarded through an open and public bidding process).

Here, the Petitioner’s representations indicate that the Town’s solicitation of bids meets the requirements of section 5(h).<sup>2</sup> Accordingly, based on the facts as represented herein, 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 not prohibited from bidding in her private capacity on a contract with the Town to provide heating oil services to the Town. To the extent that the Petitioner is awarded a contract to supply heating oil services to the Town, through an open and public bidding process including prior public notice and subsequent public disclosure of all proposals considered

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<sup>2</sup> The Ethics Commission has previously found that public officials who participate in the bid development process for a public entity place themselves, their family members, and their business associates in a privileged position with respect to other bidders and, thus, violate the “open and public process” required under section 5(h). Given the Petitioner’s representation that in her capacity as Clerk she has no role whatsoever in the bid process, there appears to be no such risk of violation at the present time.

and contracts awarded, the Code of Ethics does not inherently prohibit her from doing so, provided that such private activity would neither impair her independence of judgment nor create an interest in substantial conflict with her public duties.<sup>3</sup> Here, the Petitioner's representations do not indicate that Ballard Oil's provision of heating oil services to the Town would either impair her independence of judgment or create an interest in substantial conflict with her public duties as the Clerk as prohibited by section 5(b). The Petitioner is advised, however, that her bid, and all of her work for Ballard's Oil, must be performed on her own time and without the use of public resources or confidential information obtained as part of her municipal employment as the Town Clerk. Additionally, the Petitioner may not use her public position to promote or advertise her business.

**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)  
§ 36-14-5(h)  
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2018-42  
A.O. 2008-14  
A.O. 2003-5  
GCA 2009-4

Keywords:

Conflict of Interest  
Contracts  
Secondary Employment

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<sup>3</sup> The Ethics Commission examines several factors when considering potential conflicts of interest regarding secondary employment. These factors include, but are not limited to, the nexus between the official's public duties and private employment; whether the employee completes such work outside his or her normal working hours and without the use of public resources; whether the employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.



# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 15, 2022

**Re: Karen Bernardino**

### **QUESTION PRESENTED:**

The Petitioner, the Fiscal Clerk for the Town of North Smithfield, a municipal employee position, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon her, given that her spouse recently accepted a part-time position as the Electrical Inspector for the Town of North Smithfield.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Fiscal Clerk for the Town of North Smithfield, a municipal employee position, may carry out her current duties without running afoul of the Code of Ethics, notwithstanding that her spouse recently accepted a part-time position as the Electrical Inspector for the Town of North Smithfield, given the Petitioner's representation that she has neither discretionary decision-making authority nor any supervisory authority with respect to her spouse's municipal employment.

The Petitioner is employed by the Town of North Smithfield ("Town" or "North Smithfield") as its Fiscal Clerk.<sup>1</sup> She describes her duties as follows: processing payroll; administering all benefits including, but not limited to, those associated with the Family Medical Leave Act ("FMLA") and the Consolidated Omnibus Budget Reconciliation Act ("COBRA"); coordinating interviews; entering information for new employees into the Town's payroll system; assisting the North Smithfield Police Department with its recruitment efforts; posting payments made using the OPAL system; and backing up Accounts Payable data. The Petitioner states that she reports directly to the Town Finance Director and that the Finance Director reports directly to the Town Administrator.

The Petitioner states that her spouse recently accepted a part-time position with the Town as its Electrical Inspector. She explains that, after the Town's annual budget was passed in July of 2021, the Town Administrator approached the Petitioner to inquire as to whether the Petitioner's spouse

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<sup>1</sup> The Petitioner states that in the coming weeks her title may change from "Fiscal Clerk" to "Benefits & Payroll Coordinator" but that her duties and responsibilities will not change.

might be interested in accepting a part-time position with the Town as its Electrical Inspector.<sup>2</sup> The Petitioner further explains that she suggested to the Town Administrator that he contact her spouse directly, which the Town Administrator then did. The Petitioner states that she did not participate in the conversation between the Town Administrator and her spouse nor was she present for it. The Petitioner expressly represents that she did not take part in the creation of the job description for the position of Electrical Inspector, the interview process, or the decision to hire her spouse.

The Petitioner represents that the Electrical Inspector reports directly to the Town Building Official and that the Building Official reports directly to the Town Administrator. She further represents that the Electrical Inspector is one of three positions in the Town for which a stipend, as opposed to a salary, is paid each month.<sup>3</sup> The Petitioner explains that the stipends for all three of these positions are not based on the number of hours worked or the number of inspections completed, but on the flat dollar amount that has been designated for each position in the Town's annual budget. The Petitioner states that, as Fiscal Clerk, she is responsible for entering monthly stipend information into the Town's payroll system so that the Town's payroll company can then issue the appropriate checks. She explains that there are checks and balances in place relative to this procedure which include the Town Administrator signing off on the timesheets and the stipend payments to be issued and the Finance Director checking the Petitioner's work for accuracy once the Petitioner has entered all of the information into the payroll system. The Petitioner represents that she has no discretionary decision-making role or supervisory authority over the position of Electrical Inspector and that she does not have any influence over the compensation received by the Electrical Inspector. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding what restrictions, if any, the Code of Ethics places on her during the performance of her public duties.

The Code of Ethics provides that a public employee may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A public employee will have an interest that is in substantial conflict with the proper discharge of her duties in the public interest if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of the public employee's activity, to the public employee, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). Pursuant to section 36-14-5(d), a public employee is prohibited from using her position, or confidential information received through her position, to obtain financial gain, other than that provided by law, for herself, her family member, her business associate, or any business by which she is employed or which she represents. The definition of "any person within [] her family" specifically includes "spouse." Commission Regulation 520-RICR-00-00-1.3.1(A)(2) Prohibited Activities – Nepotism (36-14-5004) ("Regulation 1.3.1").

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<sup>2</sup> The Petitioner states that the Town Administrator's inquiry followed the recent death of the gentleman who had served for many years as the Town's Electrical Inspector.

<sup>3</sup> The other two positions are the Plumbing & Mechanical Inspector and the Tree Warden.

Under the general nepotism prohibitions of the Code of Ethics, specifically Regulation 1.3.1(B)(1), a public employee 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, or any household member, is a party to or a participant in such matter, or will derive a direct monetary gain, suffer a direct monetary loss, or obtain an employment advantage as a result of her participation. Further, Regulation 1.3.1 (B)(2) prohibits a public employee from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of any person within her family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission.

In Advisory Opinion 2021-7, the Ethics Commission considered a very similar set of facts concerning a married couple employed by the same municipality. The petitioner in that matter was the Administrative and Payroll Clerk for the Johnston Police Department. She sought an advisory opinion regarding what restrictions, if any, the Code of Ethics placed upon her, given that her spouse was the Deputy Chief of the Johnston Police Department. The petitioner represented that no Johnston Police Department employees reported directly to her and, thus, she had no supervisory role in the Police Department. She further represented that any payroll and employee time records or accruals recorded by her required final approval by the Chief of Police. The Ethics Commission opined that she could carry out her duties without running afoul of the Code of Ethics, given that she had no discretionary or decision-making authority that would allow her to use her position to benefit her spouse's financial interests, nor did she exercise any supervisory authority over her spouse. See also A.O. 2008-17 (opining that the Finance Director for the Town of Lincoln did not violate the Code of Ethics by processing payments for the Town's legal notices that were carried in a newspaper owned by his brother, given that the petitioner's duties did not involve selecting the newspaper, but only required him to process the payment vouchers that had been approved by the Town Administrator and the Town Council and, as such, the Finance Director's actions were ministerial in nature and did not involve the exercise of any discretionary authority that could affect the financial interests of his brother).

Here, the Petitioner's description of her public duties in regard to the position of Electrical Inspector suggests that those duties are purely ministerial in nature. The Petitioner also represents that she has no discretionary decision-making role or supervisory authority over the position of Electrical Inspector and that she is not in a position to make any decision that would financially impact her spouse. Accordingly, based on the Petitioner's representations, and consistent with the applicable provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may carry out her current duties as North Smithfield's Fiscal Clerk without running afoul of the Code of Ethics, notwithstanding that her spouse is employed by the same municipality as its Electrical Inspector. The Petitioner is advised, however, that should her duties enlarge or change to include any discretionary decision-making role or authority with regard to her spouse, she should either recuse from participation in any such matter consistent with the provisions of section 36-14-6, and/or request 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)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2021-7

A.O. 2008-17

Keywords:

Nepotism

Family: Public Employment

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 15, 2022

Re: Eugene Quinn

### QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich School Committee, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from having access to, and utilizing, East Greenwich School District employees' payroll data to develop long-term forecasts for the East Greenwich School District's finances and enrollment, given that some of the payroll data may contain confidential and/or nonpublic information.

### RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich School Committee, a municipal elected position, is not prohibited by the Code of Ethics from having access to, and utilizing, East Greenwich School District employees' payroll data to develop long-term forecasts for the East Greenwich School District's finances and enrollment, notwithstanding that some of the payroll data may contain confidential and/or nonpublic information, provided that his access and use of confidential and/or nonpublic information is solely in his capacity as a duly authorized member of the School Committee and that he does not disclose or utilize such information for financial gain.

The Petitioner is a member of the East Greenwich School Committee ("School Committee"), having been elected to said position in November 2018.<sup>1</sup> In his private capacity, the Petitioner is an adjunct Assistant Professor of Mathematics and Actuarial Mathematics Program Co-Director at Stonehill College in Easton, Massachusetts. The Petitioner represents that, as a resident of the Town of East Greenwich ("Town") and prior to his election to the School Committee, he attended East Greenwich Town Council ("Town Council") public meetings at which he presented evidence he obtained from publicly available sources to refute claims regarding the rate of tax growth in the Town. He further represents that as a candidate for School Committee, he focused his campaign on the public's need for evidence-based decision-making by the Town.

The Petitioner explains that since his election to the School Committee, he has directed his efforts toward building a data foundation to support long-term financial planning by the Town Council and the East Greenwich School District ("School District") which includes an analysis of the reasons for the Town's high tax rate. The Petitioner states that, based on his 45 years of

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<sup>1</sup> The Petitioner represents that he also served as a member of the East Greenwich Finance Subcommittee from October 2017 until his election to the School Committee in November 2018.

professional and academic experience using statistical models, he believes that the Town could improve its budget and forecasting process by taking employees' salary steps into account, given that personnel costs are the largest component of the Town's finances. The Petitioner explains that at the start of the budget cycle following his election, he requested access from the School District's accountant to a historical record of salary steps for Town employees to assist him in creating a forecasting database. The Petitioner states that the Human Resources Director provided him with a payroll summary report but with certain data redacted based on her belief that said data was not public information. The Petitioner represents that the redacted information, which included check numbers and dates, was necessary to reconstruct the payment history, prompting him to request an unredacted copy from the Superintendent. The Petitioner states that the Superintendent agreed to release to him the information he requested on the grounds that salary data is "essentially public."<sup>2</sup> The Petitioner explains that he was able to use the unredacted information to build a database of salary histories for approximately 1,000 employees to replace a manual and less efficient system.

The Petitioner informs that, recently, concerns were raised by another School Committee member regarding whether the Petitioner should have continued access to unredacted payroll data to further his work and, as a result, the Superintendent is no longer providing the Petitioner with updated data. He explains that while he was able to complete the coding and construct a database which represented almost four years of labor, there is still work to be done to validate the model before it is ready for production use by the Town. He represents that the Superintendent supports his work and would reconsider providing him the data he needs to complete the project if the Ethics Commission issues an advisory opinion finding that the Petitioner is not precluded by the Code of Ethics from having access to, and utilizing, nonpublic payroll data in furtherance of his project.

The Petitioner states that he volunteered to perform this project based on his civic duty to the Town and because he believes that the database he has designed will benefit the School District in long-term financial planning and budget forecasting. He represents that he did not request, nor does he receive, any compensation for his work beyond his stipend as a School Committee member. Finally, the Petitioner represents that he does not expect to publish, sell, or otherwise derive a financial benefit from his work or his forecasting model. The Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from having access to, and utilizing, confidential and/or nonpublic School District employee payroll data to develop long-term forecasts for the School District's finances and enrollment.

As an initial matter, the Ethics Commission takes no position as to whether the data and information sought by the Petitioner is confidential, protected from disclosure, or is considered a "public record" pursuant to the Rhode Island Access to Public Records Act.<sup>3</sup> Rather, for the purposes of this advisory opinion, we accept the Petitioner's representation that the data contains "confidential" information. Furthermore, this opinion solely addresses the question of whether the

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<sup>2</sup> The Petitioner represents that the Superintendent initially granted him access to the unredacted payroll data on the grounds that said data is "essentially public." The Petitioner then consulted with legal counsel for the School District who informed him that while municipal salaries are public records, other information contained in the salary records of municipal employees, such as home addresses, check numbers, and check dates, is not accessible to the public.

<sup>3</sup> Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.*

Petitioner's access and use of the confidential data is prohibited by the Code of Ethics, and does not seek to address whether such access or use is permitted or prohibited by any other applicable Rhode Island or Town statutes, regulations, charter provisions, ordinances, bylaws, or policies.

The Code of Ethics provides that no public official or employee shall have an interest or engage in any business, employment, transaction, or professional activity which 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 substantial conflict of interest exists if a public official or employee has reason to believe or expect that he, any person within his family, a business associate or an 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 also prohibits a public official or employee from engaging in any employment that would impair his independence of judgment as to his public duties. Section 36-14-5(b). Further, a public official or employee is prohibited from disclosing, for pecuniary gain, confidential information acquired by him in the course of his official duties. Section 36-14-5(c). Finally, a public official or employee is prohibited from using his public position or confidential information received through his position 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 Ethics Commission has issued a number of advisory opinions in which it has given approval for a public official or employee to accept outside or secondary employment provided that, among other things, the public official or employee would not use any confidential information acquired through his public employment to benefit himself, his private employer, or a business associate. See, e.g., A.O. 2014-11 (opining that a securities examiner in the Division of Securities Regulation at the Department of Business Regulation was not prohibited by the Code of Ethics from engaging in private employment as a real estate salesperson, provided that he did so on his own time, outside of his public office, without the use of state resources and equipment, and that he did not use any confidential information acquired through his public employment to benefit himself or his clients); A.O. 2011-20 (opining that a senior planner at the Rhode Island Department of Administration, Division of Planning was not prohibited by the Code of Ethics from working in his private capacity as a real estate salesperson, provided that all such work was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment); and A.O. 2006-17 (opining that an East Providence Police Lieutenant could apply for a private investigator's license and operate a business in the City of East Providence provided that, among other things, he had no involvement with matters subject to the East Providence Police Department's official jurisdiction, that he did not accept any cases or perform any work within the City of East Providence for as long as he was employed by the East Providence Police Department, and that he did not disclose any confidential information he obtained in the course of his employment with the Police Department).

Here, the Petitioner represents that, to the extent that the Town provides the confidential payroll data for which he is requesting access, he will only use said data to complete the project he has undertaken to assist the Town and its School District in its long-term financial planning and budget forecasting and that said data will not be used in his collegiate instructions or to pursue other private employment or financial gain. The Petitioner expressly represents that he does not receive any compensation or remuneration for his work beyond his stipend as a School Committee member

and that he does not intend to publish his work or sell the forecasting model that he is creating for the Town. The Petitioner's representations made herein do not appear to create a substantial conflict for him to have access to, and utilize, Town and School District employees' payroll data to develop long-term forecasts strictly for use by the School District in its finances and enrollment. The Petitioner is prohibited, however, from disclosing or otherwise utilizing confidential information that he receives as a result of his position as a School Committee member to obtain a private advantage or financial gain for himself, a private employer, or a business associate consistent with section 36-14-5(a)-(d). The Petitioner is further advised that if his intended use of the payroll data or the forecasting model for the Town and its School District should change, he should seek further guidance from the Ethics Commission before pursuing any personal financial objective.

**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(c)  
§ 36-14-5(d)  
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2014-11  
A.O. 2011-20  
A.O. 2006-17

Keywords:

Confidential Information  
Private employment



# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 15, 2022

Re: Alayne White

### QUESTION PRESENTED:

The Petitioner, a member of the Bristol Zoning Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her, in her private capacity, from participation in various activities relative to a proposed mill redevelopment in the Town of Bristol.

### RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Bristol Zoning Board, a municipal appointed position, is not prohibited by the Code of Ethics, in her private capacity, from participation in the various activities as described below relative to a proposed mill redevelopment in the Town of Bristol.

The Petitioner serves as a second alternate member on the Bristol Zoning Board ("Zoning Board"), having been appointed to that position by the Bristol Town Council ("Town Council") in July of 2019. She states that currently before the Bristol Planning Board ("Planning Board") is a request for a zoning change filed by a developer who has proposed a plan for a large-scale redevelopment of the Bristol Yarn Mill ("redevelopment"), also known as Robin Rug, which would include, among other things, a large number of residential apartment units, commercial space, and parking. The Petitioner further states that the Planning Board's recommendation will be considered by the Town Council, which is ultimately responsible for the decision to approve or deny the zoning change.

The Petitioner represents that she resides in a home abutting the redevelopment project. Specifically, she explains that the redevelopment includes a very large parking lot that is directly to the north of her home's backyard. The Petitioner states that in her private capacity she operates a small business out of her home providing facial treatments, which requires a certain level of quietness in order for her clients to enjoy their treatments. She explains that she and her neighbors are concerned about the impact that any increase in vehicular traffic resulting from the redevelopment would have on the use and enjoyment of their properties. The Petitioner states that she and her neighbors are specifically concerned about the increased use of the parking lot and the anticipated noise and activity associated therewith. Therefore, they would like to make their concerns and requests relative to the abutting parking lot known by jointly sending letters to the Planning Board and the Town Council. They would also like to communicate with and invite the developer, and possibly the Planning Board, to a site visit of their backyards to view the parking lot from that standpoint. They are hoping that a site visit would help the developer, and/or the

Planning Board, to make an informed decision about the parking lot's orientation, design, lighting, landscaping, and the like. The Petitioner states that she would also like to submit a letter to the editor of a local newspaper, in her private capacity, to voice her views relative to the redevelopment.

The Petitioner represents that she has spoken with the Bristol solicitor who does not believe that the redevelopment will go before the Zoning Board; however, the Petitioner is prepared to recuse from any Zoning Board discussions and decision-making relative to that matter. Finally, the Petitioner states that the Zoning Board does not have any appointing authority over the members of the Planning Board who, like the members of the Zoning Board, are appointed by the Town Council. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in the following activities in her private capacity: co-signing letters to the Planning Board and the Town Council expressing her and her neighbors' concerns and requests; inviting the Planning Board and/or the developer for a site visit of the Petitioner and her neighbors' homes; communicating, either individually or in conjunction with her neighbors, with the developer or a representative thereof; and sending letters to the editor of the local newspaper.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her 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 her official duties if it is reasonably foreseeable that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of the public official's activity, to the public official, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). Further, the Code of Ethics prohibits a public official from representing herself or authorizing another person to appear on her behalf before a state or municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Section 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). Finally, section 36-14-5(d) prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or any business by which she is employed or represents.

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. 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 property that abuts their own, absent reliable evidence that their official action would not impact their own financial interests, either positively or negatively. Here, given that the Petitioner is an abutter of the redevelopment and, thus, presumed to be financially impacted by it, she properly anticipates the need to recuse in her public capacity from any Zoning Board discussions and decision-making relative to the redevelopment pursuant to sections 36-14-5(a) and 36-14-7(a). Notice of recusal shall be filed with the Ethics Commission consistent with section 36-14-6.

Further, section 5(e)(1) and Regulation 1.1.4 prohibit the Petitioner from representing herself or authorizing another person to appear on her behalf before a municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Here, the Petitioner is neither a member of nor employed by the Planning Board or the Town Council; nor is she the appointing authority for either. Additionally, the Petitioner is not asking to appear before her own board (the Zoning Board). She represents that currently there is no matter relative to the redevelopment pending before the Zoning Board, that no such matter is likely to come before the Zoning Board, and that if such matter does come before it, she is prepared to recuse from Zoning Board discussions and decision-making. Therefore, section 5(e)(1) and Regulation 1.1.4 do not apply in the instant matter. See A.O. 2020-52 (opining that a member of the Westerly Planning Board was not prohibited from representing himself before the Westerly Zoning Board in connection with the remodel and expansion of his primary residence given that he was neither a member of the Zoning Board nor did he have appointing authority over it).

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 not prohibited by the Code of Ethics from co-signing letters in her private capacity relative to the redevelopment to be sent to the Planning Board and the Town Council. Further, the Petitioner is not prohibited by the Code of Ethics from inviting the Planning Board for a site visit to view the parking lot from the neighbors' perspective, nor is she likewise prohibited from communicating with and inviting the developer or a representative thereof to do the same. Finally, the Petitioner is not prohibited by the Code of Ethics from writing letters in her private capacity as a Bristol resident and business owner to the editor of the local newspaper regarding the redevelopment. See, e.g., A.O. 2008-1 (opining that a member of Johnston Board of Canvassers was not prohibited in his private capacity as a citizen from participating in political fundraising, soliciting political party memberships, making political contributions, or writing letters to the editor and editorials concerning political issues).

The Petitioner is advised that all of the above-cited activities must be conducted strictly in her private capacity as a resident and/or business owner of Bristol and without the use of her public position or resources, or confidential information obtained as part of her public position. Public resources may include, but are not limited to, use of the Petitioner's Zoning Board email address, stationary, and office supplies.

**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)
- § 36-14-5(e)
- § 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2020-52

A.O. 2012-4

A.O. 2008-1

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

Keywords:

Recusal

Representing Oneself or Others

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TO: Rhode Island Ethics Commission  
FROM: Jason Gramitt, Executive Director  
DATE: January 26, 2022  
RE: Ethics Commission Approval of *University of Rhode Island's Policy on Public-Private Partnership in Research and Development*

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The University of Rhode Island is before the Ethics Commission to seek the Commission's approval of its *Policy on Public-Private Partnership in Research and Development* ("Policy," attached). The Commission's approval of the Policy is required prior to implementation pursuant to R.I. Gen. Laws § 16-59-26. The history and purpose of section 16-59-26 is recounted below to help inform the Commission of its role in approving the Policy.

During the 2002 legislative session, legislation was introduced in the General Assembly at the request of the Rhode Island Board of Governors for Higher Education (RIBGHE) that would exempt state employees at the University of Rhode Island (URI), Rhode Island College (RIC) and the Community College of Rhode Island (CCRI) from the conflict of interest provisions of the Code of Ethics relative to certain private interests that such employees may have relative to their work, research, intellectual property, or inventions created while employed at the institution. The purpose behind the legislation was to allow university professors and researchers to possess an ownership interest in the inventions and intellectual property created through their employment, or perhaps to allow the employee to partner with private enterprise in the marketing or utilization of the invention.

An exemption was required because the Code of Ethics prohibits state employees from using their public positions to obtain a financial benefit for themselves, their employers, or their business associates. An exemption was supported by the institutions and the RIBGHE as being necessary to allow our state schools to compete with private institutions in attracting and retaining top quality researchers and staff, and it was viewed as beneficial to Rhode Island generally by helping to foster entrepreneurship and business opportunities that would utilize and market locally owned inventions and intellectual property.

Although the 2002 legislation was well-intentioned, it was drafted without input from the Ethics Commission and sought to create a blanket exemption with no Ethics Commission oversight and very few guidelines. The Commission, along with other entities such as Common Cause Rhode Island, testified in opposition to the legislation as drafted but supported its underlying rationale. The Commission directed me to cooperate with the legislature and the RIBGHE to help draft a compromise bill.

To begin the process, I drafted proposed legislation for the 2003 legislative session that allowed for exemptions to the Code by state researchers, but it required the RIBGHE to first implement a formal Policy to reduce and manage the conflicts and to ensure conformity with the purposes expressed in the Code of Ethics and in art. 3, § 7 of the Rhode Island Constitution. The draft legislation also required the RIBGHE to consult with the Ethics Commission in formulating the Policy and to obtain the Commission's ultimate approval of the Policy. The legislation further provided that any exemptions granted would be subject to Ethics Commission review, and it allowed for the Commission to require the RIBGHE to hold a public meeting to reconsider any individual exception.

Common Cause added its own input to the draft legislation and, with minor editing, a final version was completed by the RIBGHE legal counsel and staff. With unanimous support from the Ethics Commission, Common Cause and the RIBGHE through public testimony in committee, the legislation passed both chambers of the General Assembly and was signed into law by the Governor in 2003. A copy of the current version of the legislation, R.I. Gen. Laws § 16-59-26, is attached hereto.

After the legislation passed, I worked with the RIBGHE's General Counsel in drafting the Policy. After the RIBGHE completed its final draft of the "Rhode Island Board of Governors for Higher Education Public Private Partnership Policy," it came before the Ethics Commission at a public meeting for review and approval, which was unanimously granted.

In 2013, the RIBGHE's oversight of URI, RIC and CCRI passed to the Rhode Island Council on Postsecondary Education (RICOPE), and section 16-59-26 was amended to substitute RICOPE for RIBGHE. More recently, in 2019, the General Assembly passed legislation creating the URI Board of Trustees ("URI Board") and transferring URI's governance from RICOPE to the URI Board. Section 16-59-26 was also amended to substitute the URI Board for RICOPE relative to exceptions sought at URI.

Through 2020 and 2021, counsel to the URI Board consulted with me in drafting a new Policy consistent with section 16-59-26. In November 2021, the Policy was approved by the URI Board. The Policy is now before the Ethics Commission for review and approval, which is the final step required prior to implementation.

After reviewing the Policy, I find that it is substantially similar to, and consistent with, the policy previously adopted by the RIBGHE and approved by the Ethics Commission. For this agenda item, representatives of the URI Board will be available to provide further information and to answer your questions regarding the proposed Policy. Following discussion, the Commission will vote on the question of whether to approve or reject the Policy.

# **Title 16**

## **Education**

### **Chapter 59**

#### **Council on Postsecondary Education [See Title 16 Chapter 97 — The Rhode Island Board of Education Act]**

**R.I. Gen. Laws § 16-59-26**

**§ 16-59-26. The public and private partnership in education.**

(a) **Purpose.** The state of Rhode Island recognizes that research is a primary mission of an institution of higher education. While carrying out its research mission, the state further recognizes that inventions of value to the public will be made by persons working in its public institutions of higher education. The marketing of these inventions will contribute to job creation and to the overall economic well-being of the state of Rhode Island and the nation. It is accordingly the policy of the state to encourage such inventors and inventions and to take appropriate steps to aid the inventor and ensure that the public receives the benefit. In facilitating this policy, the state recognizes the need for cooperation between governmental agencies, private industries, and the inventors themselves.

(b) **Definitions.** The following words and phrases used in this section have the following meaning:

(1) "Conflict of interest policies and procedures relating to research and development" refers to policies and procedures adopted by the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees, in consultation with the Rhode Island ethics commission, and approved by the Rhode Island ethics commission;

(2) "Relationship" includes any interest, service, employment, gift, or other benefit or relationship;

(3) "Research or development" means basic or applied research or development, including:

(i) The development or marketing of university-owned technology;

(ii) The acquisition of services of an official or employee, by an entity for research and development purposes;

(iii) Participation in state economic development programs; or

(iv) The development or marketing of any technology on the premises of a public institution of higher education by an official or employee of the institution.

**(c) Policy.**

(1) The council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees shall develop conflict of interest policies and procedures based on the purposes expressed in R.I. Const., Art. III, Sec. VII, § 36-14-1, and in this section.

(2) The council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees, shall consult with the Rhode Island ethics commission in developing these policies and procedures and shall submit them to the Rhode Island ethics commission for approval in order to insure conformity with the purposes expressed in R.I. Const., Art. III, Sec. VII, § 36-14-1, and in this section.

**(d) Policy standards.** The policies and procedures adopted by the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees under subsection (c) of this section shall:

(1) Require disclosure of any interest in, or employment by, or other relationship with an entity for which an exemption under this section is claimed, on a form filed with the ethics commission and the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees and maintained as a public record at the commission offices, the office of higher education, and at the interested public institution of higher education;

(2) Require review of all disclosures by a designated official or officials, who



shall determine what further information must be disclosed and what restrictions shall be imposed by the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees to manage, reduce, or eliminate any actual or potential conflict of interest;

(3) Include guidelines to ensure that interests and employment for which an exemption under this section is claimed do not improperly give an advantage to entities in which the interests or employment are maintained, lead to misuse of institution students or employees for the benefit of entities in which the interests or employment are maintained, or otherwise interfere with the duties and responsibilities of the exempt official or employee;

(4) Require approval by the president of the public institution of higher education of any interest or employment for which an exemption is claimed under this section; and

(5) Require approval by the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees.

**(e) Relationship permitted.** An official or employee at a public institution of higher education may have a relationship, that would otherwise be prohibited by the Rhode Island code of ethics in government, with an entity engaged in research or development, or with an entity having a direct interest in the outcome of research or development, only if the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees has adopted policies and procedures in accordance with this section, and the official or employee has complied with the policies and procedures. If the provisions of this section are not met, the official or employee is not exempt from any relevant provisions of the Rhode Island code of ethics in government.

**(f) Annual reporting.** The council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees shall report annually to the governor, the president of the senate and the speaker of the house of representatives, and the ethics commission the number of approvals granted under this section and how the conflict of interest policies and procedures adopted pursuant to this section have been implemented in the preceding year.

**(g) Person not eligible.** An official or employee who is a president, or vice-president at a public institution of higher education in Rhode Island may not receive an exemption under this section.

(h) **Ethics commission review.** The council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees, shall promptly notify the ethics commission in writing of any exemption that is granted under this section. If the ethics commission disagrees with an exemption that is granted pursuant to this section and the conflict of interest policies and procedures relating to research and development adopted by the council on postsecondary education, within thirty (30) calendar days after the receipt of the notice described in this section, the ethics commission shall notify the council on postsecondary education reason for its concern. Upon receipt of such notice from the ethics commission, the council on postsecondary education, or as it pertains to the university of Rhode Island, the board of trustees shall cause the matter to be re-examined at an open and public meeting pursuant to § 42-46-1 et seq.

History of Section.

P.L. 2003, ch. 154, § 1; P.L. 2003, ch. 158, § 1; P.L. 2019, ch. 88, art. 9, § 6.

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# Policy on Public-Private Partnership in Research and Development

[DRAFT 20210915]

<b>Policy Title</b>	<b>Policy on Public-Private Partnership in Research and Development</b>
<b>Policy #</b>	05.0XX.1
<b>Policy Owner</b>	University of Rhode Island Board of Trustees
<b>Contact Information</b>	Questions about this policy should be directed to University of Rhode Island Associate Vice President for Research Administration at (401) 874-2636
<b>Approved By</b>	University of Rhode Island Board of Trustees
<b>Effective Date</b>	To be added by the VPAF Office
<b>Next Review Date</b>	No later than [To be added by the VPAF Office]
<b>Who Needs to Know About this Policy</b>	All Employees of the University and all members of the University of Rhode Island Board of Trustees
<b>Definitions</b>	<p><b>Business.</b> A sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or, any other entity recognized in law through which business for profit or not for profit is conducted.</p> <p><b>Business Associate.</b> A person joined together with another person to achieve a common financial objective.</p> <p><b>Conflict of Interest.</b> A relationship, employment, or interest that is prohibited, limited, or otherwise regulated by the Rhode Island Code of Ethics and/or the terms of this policy.</p> <p><b>Designated Responsible Official.</b> For the purposes of this policy, the Designated Responsible Official will be the Vice President for Research and Development at the University of Rhode Island.</p> <p><b>Employee.</b> Any faculty member, staff member, institution official, or student who is employed by the University of Rhode Island Board of Trustees.</p> <p><b>Family Member</b> (referred to in the Rhode Island Code of Ethics as "any person in his or her family"). The term Family Member means a spouse and any dependent children of any University Employee or member of the University of Rhode Island Board of Trustees, as well as a person who is related to that Employee or Trustee, whether by blood, adoption, or marriage, as any of the following: father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law,</p>

	<p>daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.</p> <p>For the purposes of any discussion related to nepotism relative to the Rhode Island Code of Ethics, the term Family Member shall additionally include step-grandfather, grandfather-in-law, step-grandmother, grandmother-in-law, step-grandson, grandson-in-law, step-granddaughter, granddaughter-in-law, uncle, step-uncle, uncle-in-law, aunt, step-aunt, aunt-in-law, niece, step-niece, niece-in-law, nephew, step-nephew, nephew-in-law, first cousin, step-first cousin, and first-cousin-in-law.</p> <p><b>Ownership Interest.</b> An interest in stock, assets, net profits, or losses of a Business or entity. The value of an Ownership Interest is determined at its highest fair market value in the calendar year.</p> <p><b>Relationship.</b> Any interest, service, employment, gift, other benefit or Relationship.</p> <p><b>Research or Development (also, Research and Development).</b> Basic or applied Research or Development, including but not limited to:</p> <ul style="list-style-type: none"> <li>• The development or marketing of university-owned technology;</li> <li>• The acquisition of services of an official or Employee, by an entity for Research and Development purposes;</li> <li>• Participation in state economic development programs; or</li> <li>• The development or marketing of any technology on the premises of a public institution of higher education by an official or Employee of the institution.</li> </ul> <p><b>Substantial Ownership Interest.</b> An Ownership Interest which is equal to or greater than a 10% equity interest or a \$5,000.00 or greater cash value interest in a Business.</p>
<p><b>Statutes, Regulations, and Policies Governing or Necessitating This Policy</b></p>	<p>RIGL §36-14 (Code of Ethics)</p> <p>Additional Regulations from the Rhode Island Ethics Commission <u>520-RICR-00-00-1</u></p> <p>RIGL §16-59-26 <u>The Public and Private Partnership in Education</u></p> <p>University of Rhode Island Policy on Ethics and Conflict of Interest</p> <p>University of Rhode Island Policy on Conflict of Interest in Research</p>
<p><b>Reason for Policy/Purpose</b></p>	<p>To provide guidance and standards for the University to grant exemptions—subject to certain conditions and limitations that adequately protect the interests of the University, its students, and Employees, as well as the interests of the State of Rhode Island, its citizens, and the public—that will allow the University and/or its Employees to engage in activities or transactions in which the Employee has a Conflict of Interest and that would otherwise be prohibited by the Rhode Island Ethics Code.</p>

**Forms Related to this  
Policy**

University of Rhode Island Significant Financial Interest Disclosure Form

*Note: This list is not inclusive of any forms related to the University of Rhode Island Policy on Conflict of Interest in Research*

## Policy Statement

The mission of the University of Rhode Island (also University), acting through or under the auspices of its governing board, the University of Rhode Island Board of Trustees (also Board of Trustees), is to serve as the State's public learner-centered research university offering undergraduate, graduate, and professional students the distinctive educational opportunities of a major research university and, through its education, research, and outreach activities, to improve the overall educational attainment of Rhode Islanders and thereby enrich the intellectual, economic, social, and cultural life of the state, its residents, and its communities.

In 2003, the Legislature, with the support of the Governor, the Rhode Island Ethics Commission, the Rhode Island Board of Governors for Higher Education, and industry representatives, enacted into law the Public-Private Partnership Act (RIGL §16-59-26), which recognizes research as an inextricable part of the mission of the University of Rhode Island and the other public institutions of higher education in Rhode Island and acknowledges that such research by Employees of these institutions often leads to inventions of value to the public. The purpose of this Act is to allow the University of Rhode Island, Rhode Island College, and the Community College of Rhode Island to enter into public-private partnerships in education that involve faculty and staff members from those institutions and to encourage the marketing of inventions developed by faculty and staff for the benefit of both the inventor and the public, while ensuring that Rhode Island's public Employees adhere to the highest standards of ethical conduct as embodied in Rhode Island law, including Rhode Island Code of Ethics (RIGL §36-14-1, et. seq.) and the Regulations (520-RICR-00-00-1) adopted by the Rhode Island Ethics Commission.

In late 2019, the General Assembly created for the first time (through the enactment of Public Law 2019, Chapter 88, Article 9, Section 3) the University of Rhode Island Board of Trustees and vested in that Board of Trustees, with respect to the University of Rhode Island, those same general powers and duties previously held by the Rhode Island Council on Postsecondary Education, the successor to the above-referenced Rhode Island Board of Governors for Higher Education. In the same 2019 Public Law, the General Assembly specifically amended the Public-Private Partnership Act (PPPA) to vest in the University of Rhode Island Board of Trustees, with respect to the University of Rhode Island, the same PPPA-related powers and duties previously vested in the Rhode Island Council on Postsecondary Education with respect to all three institutions. Accordingly, the University of Rhode Island Board of Trustees is now authorized and directed, pursuant to the Public-Private Partnership Act, to promulgate its own Public-Private Partnership policy that will govern so-called public-private partnerships at the University of Rhode Island.

The General Assembly, through the enactment of the Public-Private Partnership Act, and the University of Rhode Island Board of Trustees, through the promulgation of this policy, demonstrate their recognition that in the normal conduct of Research and Development, and in other activities engaged in by the Board of Trustees' Employees, actual or potential conflicts of interest may arise. These conflicts will typically arise when the University or one of its Employees proposes to engage in an activity or transaction with a Business or entity in which the Employee (or a Business Associate or Family member of the Employee) has a financial interest, or employment or other Relationship, and the activity or transaction may provide an improper advantage to that Business or entity or may be harmful to the interests of the University, the State, or the public. The policies set forth herein (and attendant procedures) and adopted by the University of Rhode Island Board of Trustees are mandated by RIGL §16- 59-26

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and are designed to ensure that the purposes expressed in Article III, Section 7 of the Rhode Island Constitution, the Rhode Island Code of Ethics, and the Public-Private Partnership Act are adhered to by the Employees of the University. The University of Rhode Island Board of Trustees is committed to fostering Research and Development that is consistent with the mission of the University, while at the same time ensuring that the financial and other interests of University Employees do not compromise their primary commitment to the University's students and to the public.

The Public-Private Partnership Act authorizes the University of Rhode Island Board of Trustees to develop policies and procedures that (once approved by the Ethics Commission) will permit the University (acting through its designated officials and with the approval of its President) to grant exemptions—subject to certain conditions and limitations that adequately protect the interests of the University, its students, and Employees, as well as the interests of the State of Rhode Island, its citizens, and the public—that will allow the University and/or its Employees to engage in activities or transactions in which the Employee has a Conflict of Interest and which would otherwise be prohibited by the Rhode Island Code of Ethics. This policy, as approved by the University of Rhode Island Board of Trustees and the Rhode Island Ethics Commission, establishes the standards, procedures, and conditions for the granting of such exemptions. Any modifications to this policy will require approval of the University of Rhode Island Board of Trustees and the Ethics Commission.

### **Applicability**

These policies and attendant procedures are promulgated in accordance with requirements of the Public-Private Partnership Act and apply to all Employees, including graduate student Employees, who are involved in basic or applied Research and Development at the University of Rhode Island, including but not limited to (i) the development or marketing of University-owned technology; (ii) the acquisition of services of an official or Employee, by an entity for Research and Development purposes; (iii) participation in state economic development programs; or (iv) the development or marketing of any technology on the premises of The University of Rhode Island by an official, Employee, or student of the University. See RIGL §16- 59-26(b)(3)(i) –(iv); RIGL §36-14-1 et seq.

### **Rhode Island Code of Ethics in Government and Regulations of the Rhode Island Ethics Commission**

All persons employed by the University of Rhode Island, whether in the classified or nonclassified service, are subject to the provisions of the Rhode Island Code of Ethics in Government and the regulations adopted by the Rhode Island Ethics Commission. Both the Code of Ethics and the regulations can be found at <http://www.ethics.ri.gov>, the website of the Rhode Island Ethics Commission. Pursuant to the requirements of the Code of Ethics, no Employee of the University may have any interest, financial or otherwise, whether direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, that is in substantial conflict with their employment duties (RIGL §36-14-5). Some examples of activities that would be in conflict with the employment duties of an Employee and are therefore in violation of the Rhode Island Code of Ethics include:

1. Disclosure of confidential information acquired by an Employee in the course of and by reason of their official duties or employment or use of any such information for the purpose of pecuniary gain (RIGL §36-14-5(b)(c)).
2. Using one's employment by the University to obtain financial gain, other than that provided by law, for themselves or any person within their Family, any Business Associate of the Employee, or any Business or entity by which the person is employed or which the person represents (RIGL §36-14-5(d));

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3. Acceptance of a position or other employment that will impair the Employee's independent judgment;
4. Acceptance of an honorarium, fee, or other compensation for any activity that directly relates to the Employee's duties and responsibilities unless the Employee, when engaging in and preparing for the activity, uses their own time and does not make improper use of State materials or resources;
5. Soliciting political contributions from a subordinate over whom the Employee exercises supervisory responsibilities;
6. Having, or a member of the Employee's Family or their Business Associate having, a Substantial Ownership Interest in a Business or entity that is contracting with a state or municipal agency, unless the contract is awarded through an open and public bid process;
7. Engaging in a financial transaction, including participating in private employment or consulting, and giving or receiving loans or monetary contributions, with a subordinate or person or Business for which, in the Employee's official duties and responsibilities, they exercise supervisory responsibilities, unless:
  - a. The financial transaction is in the normal course of a regular commercial business,
  - b. The subordinate or person or Business or entity initiates the financial transaction; or
  - c. The financial transaction involves a fundraising activity officially sponsored by the University, the University Foundation, or any government agency.

These are just a few examples of conflicts that are prohibited by the Rhode Island Code of Ethics and/or the Regulations of the Rhode Island Ethics Commission. University Employees are referred to the University's policy on "Ethics and Conflict of Interest," the website of the Rhode Island Ethics Commission, and Rhode Island General Laws, Title 36, Chapter 14 for more detailed information.

The University of Rhode Island requires all its Employees to comply with the requirements of the Rhode Island Code of Ethics and the Regulations of the Rhode Island Ethics Commission. Failure to comply with the requirements of the Rhode Island Code of Ethics or the Regulations of the Rhode Island Ethics Commission will result in appropriate disciplinary action, up to and including termination.

### **Public-Private Partnership Act**

The Public-Private Partnership Act recognizes that one of the primary missions of the University of Rhode Island is Research and Development, and that the marketing of inventions by University Employees resulting from such research will contribute to job creation and the economic well-being of the state and the nation. The Public-Private Partnership Act allows an Employee of the University to have a Relationship, financial or otherwise, with a company that has an interest in the Research and Development being performed by the Employee, even though the Relationship would otherwise be prohibited by the Rhode Island Code of Ethics, as long as the Employee has obtained the approval and has been granted an exemption by the University of Rhode Island Board of Trustees in accordance with the requirements of this policy and its attendant procedures. Examples requiring approval and an exemption include, but are not limited to situations in which the Employee has an Ownership Interest in a company that is licensing the Employee's technology from the University or situations in which the Employee has an Ownership Interest in a company that is involved in work on a research grant with the University. Such Relationships are allowed, in accordance with the procedures attendant to this policy, only with:

1. Prior disclosure by the Employee;
2. Review and recommendation by the University's Conflict of Interest Management Committee;
3. Approval by the Vice President for Research and Economic Development, the President, the Board of Trustees, and
4. Notice to the Rhode Island Ethics Commission.

The Public-Private Partnership Act authorizes the University of Rhode Island Board of Trustees to approve Relationships between Employees and private entities in which there is an actual or perceived Conflict of Interest between the Employee's interests and the interests of the institution by whom they are employed. The Public-Private Partnership Act therefore also obligates the University of Rhode Island Board of Trustees to impose such restrictions as are necessary to manage, reduce, or eliminate any actual or potential Conflict of Interest. Under the terms of the Act, the presidents and vice-presidents of the University are not eligible for an exemption.

### Exemptions and Required Disclosures

All Employees who wish to obtain a permissible exemption, under the Public-Private Partnership Act and this policy, from a prohibition in the State Ethics Code, for a Research and Development related activity that would otherwise be prohibited under the Code of Ethics, shall be required to comply with the required disclosures and attendant procedures set forth below.

1. The Employee shall disclose any financial interest, outside employment Relationship, or other Relationship, as further specified herein, that could have an impact on, or could be impacted by, the Research and Development related activity for which an exemption is sought.
2. In connection with the Employee's exemption request, the Employee shall timely disclose, the following activities and/or financial interests of the Employee, and the Employee's Family Members and Business Associates that could have an impact on, or could be impacted by, the Employee's proposed Research and Development related activity for which an exemption is sought:
  - a. Outside activities in which there is use of institutional facilities, equipment, services, or other physical resources. Such uses must include a plan for reimbursement to the University or a waiver of reimbursement endorsed by the President or their designee, and the reason therefore;
  - b. Management, employment, consulting, contractual activities, Ownership Interest in, or a Family member's or Business Associate's ownership in a Business or entity that supports or is related to, directly or indirectly, the Employee's research activities in any way or which conducts business or Research and Development activities in the same discipline or field in which the Employee does research at University;
  - c. Outside activities and financial interests required to be reported under federal contract and grant regulations;
  - d. A Relationship of any kind, financial or otherwise, with an entity engaged in Research and Development, being performed by the Employee;
  - e. A Relationship of any kind, financial or otherwise, with an entity having a direct interest in the outcome of Research and Development, being performed by the Employee;
  - f. Management, employment, consulting, and contractual activities with, or Ownership Interests in, a Business or entity that does business with the University of Rhode Island or competes with the University;
  - g. Any employment, contractual or other Relationship, or financial interests of the Employee that may create a continuing or recurring conflict between the Employee's interests and the performance of the Employee's public responsibilities and obligations, including time commitments. This disclosure includes any outside activity in which the Employee is required to waive rights to intellectual property.
3. Disclosures shall be on forms adopted by the University and shall be filed with the Associate Vice President for Research Administration.



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4. The request for an exemption and all disclosed Relationships shall be reviewed by the University's Conflict of Interest Management Committee. The Conflict of Interest Management Committee shall have at least five (5) members and shall include at least one (1) public member, and one (1) faculty member from an institution of higher education outside the system of public higher education in Rhode Island. No more than seventy-five percent (75%) of its members shall be from the University of Rhode Island.
5. The Conflict of Interest Management Committee shall review each request for exemption/disclosure and provide a recommendation along with a proposed management plan (if necessary), to the University's Designated Responsible Official. The management plan shall specify what management and/or oversight plan the Conflict of Interest Management Committee recommends should be imposed to manage, reduce, or eliminate any actual or potential Conflict of Interest and thereby protect the interests of the University, its Employees and students, and the public.
6. The Designated Responsible Official shall review the application and the Conflict of Interest Management Committee recommendation and shall approve or deny the requested exemption. If the exemption request is approved by the Designated Responsible Official, that official shall also approve an appropriate management and oversight plan and shall forward the matter to the President for their final review and decision.
7. The Conflict of Interest Management Committee or the Designated Responsible Official may, at their discretion, require additional information from the applicant, such as proposed licensing agreements, research agreements, grants, employment or other compensation agreements, or faculty start-up business plans in providing recommendations to the President or designee regarding exemption requests.
8. The President shall act upon each request for exemption forwarded by the Designated Responsible Official. If the President disapproves of the request for exemption, then the applicant shall be so informed, and the file shall be closed. If the President approves the request for exemption, then the University of Rhode Island Board of Trustees shall review the request. If the request for exemption is approved by the Board of Trustees, the Designated Responsible Official shall promptly notify the Rhode Island Ethics Commission in writing of any exemption that is granted under RIGL §16-59-26.
9. In the event of written disagreement with an exemption by the Rhode Island Ethics Commission, received by the University within thirty (30) calendar days, the University President shall reexamine the matter in consultation with the Designated Responsible Official, and shall (a) disapprove the exemption request, (b) require a revised exemption request and/or revised management plan for resubmission to the Rhode Island Ethics Commission, or (c) the Board of Trustees shall place the matter on its agenda for reexamination at its next regularly scheduled public meeting and approval shall be stayed pending such reexamination.
10. Notification of research sponsors of any conflicts of interest may also be required.
11. Sanctions for noncompliance may include denial of the right to engage in the activity in question while employed by the University of Rhode Island and/or disciplinary action, up to and including termination.

### Prohibited Activities

The following activities are prohibited and exemptions under the Public-Private Partnership Act will not be granted in these situations:

1. Outside activities and/or Relationships in which the faculty or staff member diverts to external Businesses or Entities or other institutions, opportunities for research support that could have been obtained by the University of Rhode Island.
2. Participation in University research that is funded by a grant or contract from a Business or entity in which the Employee or a member of their Family or their Business Associate, separately or in the aggregate, has

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a controlling Ownership Interest, provided, however, this prohibition shall not prohibit any such arrangement which is permitted under Federal awards (e.g., Small Business Innovation Research (SBIR)).

3. Assignment of students by the conflicted Employee to University research projects sponsored by a Business or entity in which the Employee or a member of their Family or their Business Associate, separately or in the aggregate, has a Substantial Ownership Interest.
4. Outside activities in which an institution's student or Employee is directly or indirectly supervised by the individual seeking the exemption if the individual in any way supervises or evaluates the student or Employee as part of their institutional duties.
5. Direct supervision of any student or Employee in one's capacity as a University Employee and in one's capacity as an official, Employee or agent of the private company, Business or entity.

### Reporting

The University of Rhode Island shall report annually to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Rhode Island Ethics Commission the number of exemptions granted under RIGL §16-59-26 and how the Conflict of Interest policies and attendant procedures adopted by the University have been implemented in the preceding year.

The University of Rhode Island shall maintain at its offices as public record all disclosure forms required by these regulations, as well as all documents relating to exemptions approved by the University in accordance herewith.

### Exceptions

None other than those noted above.

### Policy Review and Revisions

(Versions earlier than the first policy number may be paper only)

Policy #	Effective Date	Reason for Change	Changes to Policy
No policy #. Title: "R.I. Board of Governors for Higher Education Public Private Partnership Policy"	2005	n/a	n/a
X5.00X.01	This policy	Updates to reflect Board of Trustees control	Language clarification; updates to reflect Board of Trustees control; alignment with Ethics and Col and Col in Research policies.

## **FINANCIAL DISCLOSURE OF REAL ESTATE**

The requirement and parameters of disclosing real estate on the Financial Disclosure Statement is set forth by both state statute and Ethics Commission regulation (I and II below, respectively). The wording of the question relating to real estate on the Financial Disclosure Statement, and of the additional instructions relating to real estate on the accompanying Instruction Sheet (III and IV below, respectively), is written by the Commission and/or staff and may be amended from year to year to provide additional clarity as to the scope of the required disclosure.

**I. Statutory Real Estate Disclosure Requirement: R.I. Gen. Laws § 36-14-17(b)(3)**

(b) The account of financial activity \* \* \* shall consist of \* \* \* (3) A listing of all real property in which a financial interest was held; however, this section shall not apply to real property used exclusively as his or her principal residence;

**II. Regulatory Real Estate Disclosure Requirement: 520-RICR-00-00-4.6 Real Estate Interest**

A financial interest in real estate shall include direct as well as indirect ownership through a trust or other entity, mortgages, options to buy, sell, or lease for a long term, and other interests in real estate, held individually or collectively by persons under R.I. Gen. Laws § 36-14-17(a).

**III. Text of Real Estate Question on Financial Disclosure Statement**

List any real estate, wherever located, other than real estate that is used exclusively (see instructions) as your principal residence, in which you, your spouse or dependent child had a financial interest during any part of calendar year 2021. If no street address exists, use legal description.

**IV. Text of Additional Instructions for Real Estate Question**

List all real estate **other than real estate that is used EXCLUSIVELY as your principal residence** [emphasis in original], including real estate located outside of Rhode Island or the United States, in which you, your spouse or your dependent child had a financial interest. If your principal residence is also used for rental purposes, including room, apartment, unit or guest house rental, or as a multi-family residence, it must be disclosed. Do not list the value of the real estate. You must list each property for which you receive a separate tax assessment, including lots adjacent to your principal residence. A financial interest in real estate includes direct and indirect ownership through a trust or other entity, mortgages, options to buy, sell, or lease for a long term, tax liens, and other interests that are held individually or with other persons, including deeded interests in timeshares. For example, a 1/6th interest in undeveloped land in Florida, held in trust, is a financial interest that must be disclosed. However, you need not list real estate that is held by a corporation in which you have a financial interest unless that corporation's principal business is real estate. For example, if you are a shareholder in a business corporation that operates gas stations, you need not disclose the address of the gas stations owned by the corporation. However, if you are a shareholder in a corporation that primarily owns, operates, buys or sells real estate, then you would be required to disclose the real estate owned by the corporation. Attach additional sheets if necessary.