

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-6

Approved: 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.¹ 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

¹ 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.² 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.³ 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").

² 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.

³ 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and

are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(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