NOTICE OF OPEN MEETING

AGENDA

3rd Meeting

DATE: Tuesday, March 8, 2022

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Daniel J. McKee’s issuance of Executive Order 22-20, 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/81383538764
  and using Webinar ID: 813 8353 8764

- Or using iPhone one-tap US:
  o +13126266799,, 81383538764# or
  +1646588656,,81383538764#

- Or by Telephone, Dial (for higher quality, dial a number based on your current location) US:
  o +1 312 626 6799 or
  o +1 646 558 8656 or
  o +1 301 715 8592 or
  o +1 346 248 7799 or
  o +1 669 900 9128 or
  o +1 253 215 8782 or
  o 833 548 0276 (Toll Free) or
  o 833 548 0282 (Toll Free) or
  o 877 853 5247 (Toll Free) or
  o 888 788 0099 (Toll Free)
• International numbers available:
https://us02web.zoom.us/u/kSg8EE9Oh
Webinar ID: 813 8353 8764

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 February 15, 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.) The Honorable James A. Smith, a legislator serving in the Rhode Island Senate, requests an advisory opinion regarding whether he may participate in the Senate’s discussions and decision-making relative to an article in the State’s operating budget proposal for Fiscal Year 2023 submitted by the Governor to the Rhode Island General Assembly that recommends the phase-out of state income taxation on military service pensions, given that the Petitioner is a retired naval officer receiving a military service pension. [Staff Attorney Papa]

   b.) Timothy J. McCormick, a member of the Scituate Town Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics’ prohibition against representing himself before the Scituate Building and Zoning Official, over which the Town Council has appointing authority, given that the Petitioner is currently building a new home in Scituate in which he intends to reside with his family, and that certain aspects of that project fall within the purview of the Building & Zoning Official. [Staff Attorney Radiches]

6. Adjudication:
   a.) In re: Aimee M. Gardiner, Complaint No. NF2021-2.

7. Education Update. [Education Coordinator Radiches]
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 February 15, 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](https://ethics.ri.gov)) later in the day.


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-RiS-5555.**

*Posted on March 3, 2022*
Draft Advisory Opinion

Hearing Date: March 8, 2022

Re: The Honorable James A. Seveney

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether he may participate in the Senate’s discussions and decision-making relative to an article in the State’s operating budget proposal for Fiscal Year 2023 submitted by the Governor to the Rhode Island General Assembly that recommends the phase-out of state income taxation on military service pensions, given that the Petitioner is a retired naval officer receiving a military service pension.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island Senate, a state elected position, may participate in the Senate’s discussions and decision-making relative to an article in the State’s operating budget proposal for Fiscal Year 2023 submitted by the Governor to the Rhode Island General Assembly that recommends the phase-out of state income taxation on military service pensions, notwithstanding that the Petitioner is a retired naval officer receiving a military service pension, given that the circumstances herein justify the application of the class exception as set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner is a member of the Rhode Island Senate, having been elected to that position in 2016. He states that the Governor has submitted the State’s operating budget proposal for Fiscal Year 2023 ("proposed budget") to the Rhode Island General Assembly for consideration. The Petitioner explains that the proposed budget is to be reviewed and voted upon individually by both the Senate and the House of Representatives. He explains that, in the Senate, the proposed budget will be initially reviewed by the Senate Finance Committee, of which the Petitioner is a member, and it will then ultimately be presented for consideration and vote by the full Senate. The Petitioner states that one of the articles in the proposed budget amends state law to allow for the phase-out of the military service pension from inclusion in taxable income ("budget article"). The budget article provides that for tax year 2023 military service retirees may subtract from their taxable income up to 20% of their military service pension benefits. Each subsequent tax year that percentage would be increased by 20% until it reaches 100% in tax year 2027, at which time the state tax on military service pensions would be eliminated completely.

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1 The Governor’s budget recommendations traditionally are incorporated in one consolidated Appropriations Act, which also includes articles containing any statutory changes which would be required to implement the Governor’s budget. http://www.omb.r.i.gov/documents/Prior%20Year%20Budgets/Operating%20Budget%202023/ExecutiveSummary0Complete%20FY%202023%20Executive%20Summary.pdf (last accessed on February 24, 2022).
The Petitioner represents that he is a retired naval officer with 21.5 years active-duty service between August of 1976 and January of 1998. He states that he has been receiving a Navy pension since February of 1998 and, if the budget article is approved, he will qualify for the new state income tax exemption relative to military service pensions. The Petitioner represents that he is one of 4,861 retirees currently receiving military service pensions in Rhode Island who will be impacted by the proposed phased out of state income taxes on military service pensions. The Petitioner states that all military service retirees will be impacted the same by the proposed budget article. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits his participation in the Senate’s discussions and decision-making relative to the proposed budget article.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that he, or any person within his family, or his business associate, or any business by which he is employed, or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

However, section 36-14-7(b) of the Code of Ethics, sometimes referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with his official duties if any benefit or detriment accrues to him, any person within his family, his business associate, or any business by which he is employed or which he represents “as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.”

When determining whether a particular fact pattern supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

The Ethics Commission has previously applied the class exception under similar circumstances in Advisory Opinion 2018-36, wherein a state senator was allowed to participate in the Senate’s discussions and voting relative to legislation that would provide for a stipend paid to all retired teachers or their beneficiaries during years where no cost of living adjustments were applied to teachers’ retirement benefits, notwithstanding that the petitioner was a public school teacher who was vested in the Employees’ Retirement System of Rhode Island. The circumstances were such that the size of the class was estimated to be in the tens-of-thousands and that the petitioner, upon his retirement, would have been eligible for the stipend to the same extent as every other similarly situated member of the class. See also A.O. 2008-16 (opining that the Director of Administration for the City of Providence, who had a vested interest in the municipal employees’ pension plan administered by the state, could serve on a special House Commission to study the state retirement
system, given that the petitioner would be financially impacted to the same extent as any other similarly situated participants in the state and municipal employees’ pension plan); A.O. 2003-57 (opining that a state senator, who was a public school teacher in Rhode Island and a member of the state retirement system, could participate in and vote on legislation that proposed a freeze/ceiling in the cost of living adjustment for the state pension plan because his personal interests would be affected to the same extent as the approximately 30,000 other state employees and teachers who were also members of the plan).

In the instant matter, the class of persons affected by the proposed budget article includes all Rhode Island retirees receiving a military service pension, the total number of which is currently 4,861. The state taxation on the military service pension benefits for all members of the class, including the Petitioner, will be reduced by 20% each year from 2023 until 2027, at which time the state tax will be completely eliminated. The Petitioner will be impacted by the proposed budget article to the same extent as every other similarly situated member of the class. It is therefore the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception set forth in section 36-14-7(b) of the Code of Ethics and that the Petitioner may participate in Senate discussions and decision-making relative to the proposed budget article. However, in the event that the Senate’s discussions veer into amending the proposed article in ways that impact the Petitioner individually, or as a member of a much smaller class or subclass of retirees, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. Upon such recusal, a statement of conflict of interest must be filed with the Ethics Commission consistent with section 36-14-6.

This Draft Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:
§ 36-14-5(a)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)
§ 36-14-7(b)

Related Advisory Opinions:
A.O. 2018-36
A.O. 2008-16
A.O. 2003-57

Keywords:
Class Exception
RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 8, 2022

Re: Timothy J. McCormick

QUESTION PRESENTED:

The Petitioner, a member of the Scituate Town Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics’ prohibition against representing himself before the Scituate Building and Zoning Official, over which the Town Council has appointing authority, given that the Petitioner is currently building a new home in Scituate in which he intends to reside with his family, and that certain aspects of that project fall within the purview of the Building & Zoning Official.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Scituate Town Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics’ prohibition against representing himself before the Scituate Building and Zoning Official, over which the Town Council has the appointing authority, given that the Petitioner is currently building a new home in Scituate in which he intends to reside with his family, and that certain aspects of that project fall within the purview of the Building & Zoning Official.

The Petitioner is a member of the Scituate Town Council (“Town Council”) and has served continuously in that capacity since November of 2018. He represents that he and his spouse are in the process of building a new home in Scituate on land that they purchased in 2021 and that it is their intent to reside in that new home once construction has been completed. The Petitioner adds that construction is expected to begin in March of this year and could be completed as soon as October.

The Petitioner states that the issuance of permits and performance of inspections relative to the construction of his new home are both within the purview of the Scituate Building and Zoning Official (“Building Official”) and that the Building Official will be tasked with matters which include inspecting the foundation, plumbing, and structural work of the home and ultimately determining whether to issue a certificate of occupancy. The Petitioner states that the Building Official is a direct hire of the Town Council and that the current Building Official is under contract with the town until December of 2023. The Petitioner identifies among the duties of the Building Official responsibility for inspecting the work of new constructions in Scituate. The Petitioner seeks a hardship exception that would allow the builder with whom he has contracted for the
construction of his new home to apply for necessary permits, arrange for required inspections, and generally communicate with the Building Official regarding the construction.

The Petitioner states that, unrelated to the construction of the Petitioner’s new home, the job performance of the Building Official was addressed by the Town Council during two recent executive sessions. The Petitioner further states that he recused from participation on both occasions, given that he and his spouse have a house under construction and because he wanted to avoid even the appearance of impropriety that might accompany his participation. He explains that the Town Council is expected to meet again to discuss the job performance of the Building Official. The Petitioner inquires of the Ethics Commission whether, if he is granted the hardship exception requested herein, he will be precluded from participating in future Town Council discussions and decision-making relative to the job performance of the Building Official.

The Code of Ethics prohibits a public official from representing himself, or authorizing another person to appear on his behalf, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) (“section 5(e)”); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). Pursuant to Regulation 1.1.4(A)(1)(a) and (b), a person will represent himself before a state or municipal agency if he or pursuant to his authorization and/or direction, another person “participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his favor.” Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5 (e)(1) & (4). Upon receipt of a hardship exception, the public official must also follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. Section 5(e)(1)(i-iii).

The Petitioner’s proposed conduct falls squarely within the Code of Ethics’ prohibition against representing oneself before an agency for which he is the appointing authority. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the Building Official, whether personally or through an authorized representative.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the official’s principal residence or principal place of business; whether the official’s interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences. For example, in Advisory Opinion 2020-34, a hardship exception was granted to a member of the Bristol Town Council allowing him to represent himself, either personally or through a representative, before the Bristol Historic District Commission (“HDC”), over which
the Town Council had appointing authority, in order to seek review and approval of proposed renovations to his primary residence which he had purchased two years prior to his election to the Town Council. However, in order to avoid even the appearance of impropriety, the petitioner was required to recuse from the Bristol Town Council’s appointment or reappointment of any persons to the HDC until after the election cycle for the petitioner’s Town Council seat following the complete resolution of the HDC’s review and approval of his renovation plans, including any appeals. Additionally, the petitioner was required, prior to his appearance before the HDC relative to his application, to inform the HDC members of the receipt of the advisory opinion issued to him and that, consistent therewith, he would recuse from their reappointments in the manner set forth therein. See also A.O. 2019-64 (granting a hardship exception to the President of the North Smithfield Town Council and permitting him to appear before the North Smithfield Zoning Board of Review to seek a dimensional variance for his personal residence, provided that he recused from the Town Council’s appointment or reappointment of any person to the Zoning Board until after the election cycle for his Town Council seat and following the complete resolution of his application before the Zoning Board, including appeals, and that prior to the Zoning Board’s consideration of his variance application, he informed the Zoning Board members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments); A.O. 2017-33 (granting a hardship exception to a member of the Bristol Town Council and permitting him to appear before the Bristol Zoning Board of Review to seek a dimensional variance for the installation of a fence on his personal property, provided that he recused from the Town Council’s appointment or reappointment of any person to the Zoning Board until after the election cycle for his Town Council seat and following the complete resolution of his application before the Zoning Board).

Here, the Petitioner is building a home in which he and his family intend to reside. The subject property was not acquired prior to the start of the Petitioner’s public service; however, the relief sought involves the Petitioner’s anticipated future personal residence and not a new commercial venture. Further, the construction of a new home does involve a significant economic impact. In consideration of the Petitioner’s representations, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to section 5(e)’s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the Building Official in matters relative to the construction of his new personal residence. However, in order to avoid even the appearance of impropriety, the Petitioner must recuse from the Town Council’s discussions and decision-making as relates to the Building Official’s job performance, retention, or reappointment until after the election cycle for the Petitioner’s Town Council seat following the completion of the construction of the Petitioner’s new residence and all inspections and/or awarding of certificates related thereto, including any appeals. Notice of recusal shall be filed consistent with the provisions of section 36-14-6. Additionally, the Petitioner shall, prior to his appearance before the Building Official relative to the construction of his new home, inform the Building Official of his receipt of the instant advisory opinion and that, consistent therewith, he will recuse from the Town Council’s discussions and decision-making regarding the Building Official’s job performance as set forth above.

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(e)
§ 36-14-6
520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:
A.O. 2020-34
A.O. 2019-64
A.O. 2017-33

Keywords:
Hardship Exception
RHODE ISLAND
ETHICS COMMISSION

EDUCATION REPORT
March 8, 2022

Respectfully submitted,

Lynne M. Radiches
Staff Attorney/Education Coordinator
## IN-PERSON ETHICS TRAININGS

**July 2021 – February 2022**

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## Online Training - Municipalities

### Cumulative Statistics

Report Generated February 28, 2022

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**TOTALS**: 182 119
The following is a list of municipal boards, commissions, agencies, and departments from which members/employees have requested online ethics training as of February 28, 2022:

**Barrington**
Board of Canvassers
Business and Community Association
Charter Review Commission
Clerk’s Office
Committee on Appropriations
Conservation Commission
Department of Public Works
Economic Development Commission
Fire Department
Harbor Commission
Human Resources
Planning Board
Planning/Building/Resiliency Department
Police Department
Public Library
Recreation and Senior Services
School Committee
Senior Services Advisory Board
Tax Collector and Assessor’s Office
Technical Review Committee
Town Council
Town Manager’s Office

**Burrillville**
Town Council
Town Manager’s Office

**Coventry**
Charter Review Commission
Clerk’s Office
Land Trust
Library Board of Trustees
Pawtuxet River Authority
Town Manager’s Office

**Cranston**
Director of Personnel

**East Greenwich**
Cove Management Advisory Commission
School Committee

**East Providence**
Building Maintenance
Police Department
Pound Keeper
Foster
Clerk’s Office
Tax Collector
Town Council

Glocester
Clerk’s Office
Planning Board
Senior Center
Zoning Board

Hopkinton
Chariho Regional School Committee
Clerk’s Office
IT Department

Jamestown
Planning Commission

Lincoln
Police Department

Little Compton
Canvassing Board
Housing Trust
Pension Committee
Planning Board
Police Department
School Committee
Zoning Board

Middletown
Human Resources

Narragansett
Board of Canvassers
Coastal Access Improvement Committee
Department of Public Works
Diversity Committee
Economic Development Committee
Finance Advisory Committee
Harbor Commission
Historical Cemetery Committee
Recreation Advisory Board
Senior Advisory Committee
Tax Assessor’s Office
Town Council
Tree Warden
New Shoreham
Clerk’s Office
Finance Director
Harbormaster
Land Use
Tourism Council

Newport
City Manager’s Office
Department of Utilities
Mayor’s Office

Pawtucket
Administration Office
Business Development Corporation
Clerk’s Office
Department of Recreation
Finance Department
Human Resources
Municipal Office
Probate
Redevelopment Agency
Registrar’s Office
Tax Assessor’s Office
Treasurer’s Office

Richmond
Conservation Commission
Charter Review Commission
Finance Board
Recreation Committee

Smithfield
Economic Development Commission
Housing Authority
Land Trust
Town Manager’s Office

South Kingstown
Board of Canvassers

Tiverton
Town Council

Warren
Clerk’s Office

Warwick
City Council
West Warwick
Personnel Office

Westerly
Finance Director’s Office
Grant Administration/Project Management
Human Resources
Information Technology
Tax Assessor’s Office
Town Manager’s Office
Municipal Court
Veterans Memorial Committee

Woonsocket
City Council
<table>
<thead>
<tr>
<th>DEPARTMENT NAME</th>
<th>NUMBER OF EMPLOYEES WHO COMPLETED ONLINE TRAINING</th>
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<tbody>
<tr>
<td>Administration</td>
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<tr>
<td>Behavioral Healthcare, Developmental Disabilities &amp; Hospitals (BHDDH)</td>
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<td>Business Regulation</td>
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<td>Corrections</td>
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<td>Department of Children, Youth, and Their Families (DCYF)</td>
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<td><strong>TOTAL</strong></td>
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