

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No 2022-11

Approved March 22, 2022

Re: The Honorable Dawn Euer

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from continuing to co-sponsor legislation that would repeal a current law that allows deferred deposit transaction loans, and/or from participating in Senate discussions and decision-making relative to such legislation, given that in her private capacity the Petitioner is employed as general counsel for a nonprofit entity that provides financial lending services.

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, is not prohibited by the Code of Ethics from continuing to co-sponsor legislation that would repeal a current law that allows deferred deposit transaction loans, and/or from participating in Senate discussions and decision-making relative to such legislation, notwithstanding that in her private capacity the Petitioner is employed as general counsel for a nonprofit entity that provides financial lending services.

The Petitioner is a member of the Rhode Island Senate, a position that she has held since 2017. In her private capacity, the Petitioner is an attorney who recently began employment as in-house general counsel for The Capital Good Fund¹ (“Good Fund”), which she describes as a nonprofit, United States Treasury-certified Community Development and Financial Institution whose mission is to create pathways out of poverty and advance a green economy. The Petitioner explains that the Good Fund offers personalized financial and credit coaching and inclusive financial lending services to lower-income families, including a variety of loan products with low to no interest rates.

The Petitioner represents that prior to joining the Senate she actively supported predatory lending reform and that every year since joining the Senate she has supported and/or co-sponsored predatory lending reform legislation. The Petitioner states that prior to commencing her new position with the Good Fund she, and several other senators, co-sponsored legislation to address predatory lending reform (“proposed legislation”). The Petitioner represents that the proposed

¹ The Petitioner represents that her first day of employment was February 28, 2022.

legislation was introduced in the Senate on February 8, 2022,² and if approved will repeal the current law allowing deferred deposit transaction loans which are commonly known as “payday loans,” “payday advances,” or “deferred presentment loans.” The Petitioner describes these loans as short term, high interest loans whereby a consumer provides the lender a check or authorization to debit the consumer’s account for repayment on a later, designated date. The Petitioner represents that all licensed lenders can offer deferred deposit transaction loans; however, her employer, the Good Fund, does not offer them. The Petitioner states that the direct financial impact of the proposed legislation would be upon the consumer lenders who only offer such loans and upon the consumers of this type of loan product. She notes that as a financial institution issuing consumer loans in Rhode Island, the Good Fund could potentially derive an indirect benefit from the proposed legislation in the form of increased business. However, she notes that every consumer lending institution in the state would derive the same benefit of potential business increase. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may continue to co-sponsor the proposed legislation and participate in Senate discussions and decision-making relative to it.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if the public official has reason to believe or expect that she or any family member or business associate, or any business by which she is employed, will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is “reasonably foreseeable,” that is, when the probability is greater than “conceivably,” but the conflict of interest need not be certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, a public official may not use her public office for pecuniary gain, other than as provided by law, for herself, her family member, her employer, her business associate, or any business that she represents. Section 36-14-5(d).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether, in this particular case, the Petitioner’s employer will be directly financially impacted by the official action that is under consideration. If a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in sponsoring, discussing and voting on the subject legislation.

In Advisory Opinion No. 2021-25, for example, the Ethics Commission opined that a member of the Rhode Island Senate could participate in Senate discussions and voting relative to proposed legislation that would have allowed Twin River Casino Hotel to extend its debt leverage ratio limits during the extension of its lottery contract with the State of Rhode Island, notwithstanding that the petitioner was privately employed by a commercial lending institution which at that time serviced Twin River Casino Hotel, because the financial impact of the legislation upon the petitioner’s employer was both hypothetical and indirect. There, the direct financial impact of the

² The Petitioner represents that the proposed legislation was referred to the Senate Commerce Committee, of which she is not a member, and that she does not plan on attending the committee hearing(s) to introduce or present the proposed legislation.

petitioner's participation in the discussions and voting on the proposed legislation was upon Twin River, allowing it to extend its debt leverage ratio limits, not on the petitioner's private employer. Similarly, in Advisory Opinion 2019-25, the Ethics Commission opined that a member of the Cranston City Council could participate in City Council discussions and voting relative to a proposed ordinance that would ban the use of plastic bags by Cranston business establishments, notwithstanding that the petitioner owned and operated a restaurant in Cranston, given the petitioner's representations that a ban on plastic bags would have no impact on his operations because the petitioner's restaurant did not use carryout bags. See also A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the General Assembly's discussions and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned and/or managed a number of child care centers in Rhode Island and voluntarily reimbursed the applicants she hired for the cost of obtaining a criminal-records check because, notwithstanding the petitioner's choice to voluntarily reimburse applicants for such fees, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment).

Here, the Petitioner's employer does not offer deferred deposit transaction loans; therefore, it is not reasonably foreseeable that the Petitioner's participation in discussions and voting relative to the proposed legislation that, if passed, would repeal current law allowing such loans would directly financially impact her employer. The direct financial impact would instead be upon the consumer lenders who offer deferred deposit transaction loans and the borrowers. Any potential financial impact upon the Petitioner's private employer in the form of an increased lending opportunities through other types of consumer loans would be indirect and speculative and would impact not only the Petitioner's employer, but every other consumer lending institution in Rhode Island. Accordingly, based upon the Petitioner's representations, a review of the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may continue to co-sponsor the proposed legislation and participate in Senate discussions and voting relative to it.

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)

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2021-25

A.O. 2021-17

A.O. 2019-25

Keywords:

Financial Interest