

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-12

Approved March 22, 2022

Re: Madalyn Rose Ciampi

QUESTION PRESENTED:

The Petitioner, a member of the Providence Human Relations Commission, a municipal appointed position, requests an advisory opinion regarding whether and to what extent the Code of Ethics prohibits her from participating in that agency's launch and operation of a Scholars Program, given that in her private capacity the Petitioner is employed as the Executive Director of Providence Promise, one of three private nonprofit organizations with which the Providence Human Relations Commission intends to partner in the launch and operation of the Scholars Program.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Providence Human Relations Commission, a municipal appointed position, is prohibited by the Code of Ethics from participating in certain matters more fully described below relative to that agency's launch and operation of a Scholars Program, given that in her private capacity the Petitioner is employed as the Executive Director of Providence Promise, one of three private nonprofit organizations with which the Providence Human Relations Commission intends to partner in the launch and operation of the Scholars Program. Further, the Petitioner should recuse from participating in certain other matters described more fully below relative to the Scholars Program because the potential for financial impact upon Providence Promise as a result of the Petitioner's official activity as a member of the Human Relations Commission cannot be fully ascertained at this time, and the Petitioner's participation under such circumstances would carry with it an appearance of impropriety.

The Petitioner is a member of the Providence Human Relations Commission ("HRC"). Her appointment to that position by the Mayor of Providence in February 2022 was confirmed by the Providence City Council. The Petitioner states that the HRC was impaneled in 1963 and has a storied history of prioritizing historically marginalized communities, uplifting the diverse cultural communities in Providence, and driving the City of Providence toward greater equity. She describes the 13-member HRC as a diverse group of dedicated community members who work in partnership to put forth a unique offering of critical programming, public education, and advocacy.

In her private capacity, the Petitioner serves as the Executive Director of Providence Promise, a private, nonprofit organization that promotes high educational aspirations and more equitable opportunities for Providence public and charter school students by advocating for college savings

accounts and family engagement, increasing financial literacy, and reducing the financial burden of higher education. The Petitioner states that in her role as Executive Director she oversees a team of two full-time and three part-time staff members, and up to three interns per semester. She identifies among her responsibilities as Executive Director the following: fundraising and grant writing; coordinating partnerships with community organizations, schools, and offices of the City of Providence and State of Rhode Island; developing and overseeing the implementation of the strategic plan; and managing family and student data. The Petitioner adds that her position is overseen by a board of 16 members.

The Petitioner represents that the HRC is in the early stages of developing a Scholars Program wherein each year two high school students (“scholars”) would be selected by the HRC to receive \$2,000 each to be used toward the pursuit of a college education. She further represents that the HRC intends to partner with three local non-profit organizations in order to offer the scholars additional opportunities. The Petitioner states that one of the nonprofit organizations with which the HRC intends to partner is her employer, Providence Promise. She explains that Providence Promise would contribute financially to the scholarship awards, work with each of the scholars selected each year to open a college savings account, and provide supplemental learning opportunities for the scholars and their families through Providence Promise’s Family Engagement Program. The Petitioner states that, like all other Providence Promise students, the scholars would have opportunities to earn funds for their college savings accounts by accomplishing certain goals such as completing their Free Application for Federal Student Aid (FAFSA) forms, participating in programming, and improving their grades and attendance at school. The Petitioner further states that the services of Providence Promise are provided at no cost to all participating students and their families and explains that, because enrollment at Providence Promise is unlimited, Providence Promise would not be adding extra spots for the students selected by the HRC to participate in the Scholars Program.¹

The Petitioner represents that all programmatic decisions concerning the Scholars Program would be made by the HRC. She informs that Providence Promise’s Bilingual Family & Youth Engagement Specialist would be the point person in the partnership between Providence Promise and the HRC during the launch and operation of the Scholars Program and adds that the work of this person would focus primarily on engaging all Providence Promise enrollees in program and mentorship opportunities. The Petitioner anticipates that the role of Providence Promise during the launch and operation of the Scholars Program would be to work collaboratively with the other two private organizations with which the HRC intends to partner in order to ensure that the HRC is provided with the materials and information necessary to promote the Scholars Program and recruit students. The Petitioner states that the HRC would measure in some way the services provided by Providence Promise to each scholar and that the ongoing participation of Providence Promise in the Scholars Program would be subject to the discretion of the HRC. The Petitioner represents that Providence Promise would play no role in helping students apply for the Scholars Program, that potential scholars would not be subject to criteria established by Providence

¹ The Petitioner represents that the other two nonprofit organizations with which the HRC intends to partner in the Scholars Program are Mentor RI and College Visions. She explains that Mentor RI would provide a mentor to each of the scholarship recipients and that College Visions would provide assistance with college enrollment.

Promise, and that the decision to award or terminate a scholarship would be within the sole discretion of the HRC.

The Petitioner states that all budget matters relating to the Scholars Program would be subject to the discretion of the HRC's Executive Director. The Petitioner further states that Providence Promise would not receive any compensation from the HRC or receive any direct financial benefit from anyone else for participating in the Scholars Program; however, the HRC would promote Providence Promise as one of the three partner organizations offering its services for the two scholars selected each year by the HRC. The Petitioner represents that the HRC and Providence Promise have aligned visions and missions to assist underserved members of the community and that both the HRC and Providence Promise view education as a critical piece of the equity agenda. The Petitioner explains that, to the extent that at some point during the establishment and implementation of the Scholars Program the interests of Providence Promise and the HRC were to diverge, the HRC and its Executive Director would decide how to proceed.

It is in the context of the aforementioned representations that the Petitioner seeks guidance from the Ethics Commission regarding whether and to what extent the Code of Ethics prohibits her from participating in the HRC's launch and operation of the Scholars Program.

Relevant Provisions of the Code of Ethics

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 in the public interest. R.I. Gen. Laws § 36-14-5(a) ("section 5(a)"). A substantial conflict of interest exists if a public official has reason to believe or expect that she, any person within her family, her business associate, or her employer will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a) ("section 7(a)"). The Code of Ethics further prohibits a public official from willfully and knowingly disclosing for pecuniary gain, to any other person, confidential information acquired by the public official in the course of and by reason of her official duties or using any such information for the purpose of pecuniary gain. Section 36-14-5(c). A public official also may not use 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 prohibits a public official from representing herself or any other person before a municipal agency of which she is a member or by which she is employed. Section 36-14-5(e)(1)&(2) ("section 5(e)"). A person represents herself or another person before an agency when she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in her favor or in favor of another person. Section 36-14-2(12)&(13); Commission Regulation 520-RICR-00-00-1.1.4(A)(1)&(2) Representing Oneself or Others, Defined (36-14-5016). Under the Code of Ethics, a public official must also recuse from participation in a matter when her employer, or a person authorized by her employer, appears or presents evidence or arguments before her municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2)&(3) Additional Circumstances Warranting Recusal (36-

14-5002) (“Regulation 1.2.1”). Notices of recusal shall be filed consistent with the provisions of section 36-14-6.

Conflicts of Interest

In order to determine whether sections 5(a) and 7(a) of the Code of Ethics are implicated in the instant matter, the Ethics Commission must ascertain whether Providence Promise, the Petitioner’s private employer, will be directly financially impacted by the Petitioner’s official action as a member of the HRC. Strictly speaking, if a direct financial impact, be it positive or negative, is not reasonably foreseeable, then a petitioner is not required by sections 5(a) and 7(a) to recuse from participation in discussions and voting on a particular issue. See A.O. 2021-25 (opining that a legislator serving as a member of the Rhode Island Senate could participate in Senate discussions and voting relative to proposed legislation that would allow Twin River Casino Hotel to extend its debt leverage ratio limits during the extension of its lottery contract with the State of Rhode Island because, notwithstanding that the petitioner was privately employed by a commercial lending institution which then currently serviced Twin River Casino Hotel, the financial impact of the legislation upon the petitioner’s employer was both hypothetical and indirect).

The Petitioner’s belief or expectation that her official activity as a member of the HRC would have a direct financial impact upon Providence Promise is a necessary element in order for a substantial conflict of interest to exist. The Petitioner states that Providence Promise would not receive any compensation from the HRC or receive any direct financial benefit from anyone else for participating in the Scholars Program.² However, because the Petitioner’s request for an advisory opinion is general in nature and relates to a Scholars Program in the early stages of development, where Providence Promise is currently one of three of the HRC’s intended partners for the Scholars Program, it would be premature to completely disregard the potential for financial impact upon Providence Promise as a result of the Petitioner’s official activity as a member of the HRC. Nevertheless, the analysis under sections 5(a) and 7(a) of the Code of Ethics does not take place in a vacuum and is not completely dispositive of the Petitioner’s inquiry.

Representation Before Own Agency and Additional Circumstances Warranting Recusal

The Code of Ethics prohibits a public official from representing herself or her employer before a municipal agency of which she is a member and requires that public official to recuse from participation in any matter where her employer, or a person authorized by her employer, appears or presents evidence or arguments before her municipal agency on behalf of her employer. In Advisory Opinion 2019-14, the Ethics Commission determined, among other things, that a petitioner who was both a member of the Scituate Home Rule Charter Commission and the Scituate School Committee was prohibited by the Code of Ethics from appearing before the School Committee on behalf of the Scituate Prevention Partnership, a private organization of which she was a member. That petitioner was required to recuse from participating in any matter for which a member or representative of the Scituate Prevention Partnership appeared on its behalf.

² The Petitioner’s statement that the HRC would promote Providence Promise as one of three partner organizations offering its services for the two scholars selected each year by the HRC opens the door to a potential indirect financial impact (by way of increased monetary donations or grant awards to Providence Promise, for example).

Here, the Petitioner is prohibited from representing Providence Promise before the HRC, which would include the submission of documents to the HRC by Providence Promise under the Petitioner's signature. Additionally, the Petitioner would also be required to recuse from participation in any matter in which Providence Promise or its authorized representative appears or presents evidence or arguments before the HRC on behalf of Providence Promise. This would include, but not be limited to, any appearance by Providence Promise's Bilingual Family & Youth Engagement Specialist before the HRC and any assessment by the HRC of the performance of Providence Promise for purposes of determining the continued participation by Providence Promise in the Scholars Program.

Summary and Conclusion

The Petitioner's proposed dual roles in the Scholars Program as both a municipal appointee on the HRC and as the Executive Director of Providence Promise would require her to carefully contemplate every action that she would take in either capacity with regard to the Scholars Program in order to ensure compliance with the Code of Ethics, which could potentially decelerate the progress of the Scholars Program. Also, the Petitioner would likely be required to recuse more often than not from HRC discussions and decision-making relative to the Scholars Program. The Petitioner's representation that the HRC and its Executive Director would decide how to proceed in the event that the interests of the HRC and Providence Promise diverge at any time during the establishment and implementation of the Scholars Program places the Petitioner in an even more precarious position with regard to her dual memberships in those agencies.

Accordingly, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing herself or Providence Promise before the HRC. The Petitioner is further prohibited by the Code of Ethics from participating in any matter during which Providence Promise or its representative appears or presents evidence before the HRC on behalf of Providence Promise as more fully described herein. Notices of recusal shall be filed consistent with the provisions of section 36-14-6. Additionally, in order to avoid the blurring of lines between her public and private positions relative to the Scholars Program, and any appearance of impropriety that could result therefrom, the Petitioner should recuse from participating in all matters related to Providence Promise, even those for which there would be no direct financial impact upon Providence Promise. This would include, but not be limited to, any decision by the HRC regarding how to proceed in the event that the interests of the HRC and Providence Promise diverge at any time during the establishment and implementation of the Scholars Program. The Ethics Commission reiterates its position that it would be premature at this time to completely disregard the potential for financial impact upon Providence Promise as a result of the Petitioner's official activity as a member of the HRC and encourages the Petitioner to recuse from participation in all matters involving the Scholars Program, given the HRC's intention to partner with her private employer under circumstances where the details for the implementation and operation of the Scholars Program have yet to be finalized.

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:

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(c)

§ 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)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2021-25

A.O. 2014-14

Keywords:

Business Associate

Conflict of Interest

Recusal