



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

6th Meeting

DATE: Tuesday, May 17, 2022

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on April 26, 2022.
3. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) 2021 Financial Disclosure;
 - e.) Ethics Administration/Office and Education Updates; and
 - f.) Legislative Update.
4. Advisory Opinions.
 - a.) The Honorable Anastasia Williams, a legislator serving as a member of the Rhode Island House of Representatives, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in General Assembly discussions and decision-making that will financially impact the Black and Latino Caucus Community Partnerships, a private organization incorporated by the

Petitioner and for which the Petitioner was, until recently, the registered agent.
[Staff Attorney Radiches]

- b.) Lisa Bryer, AICP, the Town Planner for the Town of Jamestown, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from performing her Town Planner duties related to the leasing of space and the construction of a facility in Jamestown by the Conanicut Island Sailing Foundation, a local non-profit organization, given that her spouse is a member of that organization's Board of Directors and her son is one of the organization's seasonal employees. [Staff Attorney Radiches]

5. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on April 26, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) Notification of initiation of Preliminary Investigation No. 2022-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) Motion to return to Open Session.

6. Motion to seal minutes of Executive Session held on May 17, 2022.

7. Report on actions taken in Executive Session.

8. New Business proposed for future Commission agendas and general comments from the Commission.

9. 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 May 12, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 26, 2022

Re: The Honorable Anastasia Williams

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state-elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in General Assembly discussions and decision-making that will financially impact the Black and Latino Caucus Community Partnerships, a private organization incorporated by the Petitioner and for which the Petitioner was, until recently, the registered agent.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state-elected position, is not prohibited by the Code of Ethics from participating in General Assembly discussions and decision-making that will financially impact the Black and Latino Caucus Community Partnerships, a private organization incorporated by the Petitioner and for which the Petitioner was, until recently, the registered agent. However, in consideration of the appearance of impropriety that would accompany such participation, it is further the opinion of the Ethics Commission that the Petitioner should recuse from such participation.

The Petitioner has served as an elected member of the Rhode Island House of Representatives continuously since 1993, representing District 9 in Providence. She is one of ten state representatives who, on March 25, 2022, introduced Joint Resolution 2022-H 8051 ("Joint Resolution") which proposes making an appropriation in the amount of \$685,000 to the Black and Latino Caucus Community Partnerships ("BLCCP" or "organization")¹ for the establishment by that private organization of a radio station to be operated by volunteers and feature Rhythm & Blues, Jazz, and Latin music, as well as several community-based talk shows.

Pursuant to records on the Rhode Island Department of State's website, the BLCCP was formerly known as the Black and Latino Caucus, which is the name in which the organization was personally incorporated by the Petitioner in July of 2010. The name was changed from the Black and Latino Caucus to the Black and Latino Caucus Community Partnerships on March 24, 2022.

¹ The name "Black and Latino Caucus Community Partnerships" appears in the title of the Joint Resolution. The name "Black and Latino Community partnership" appears in the body of the Joint Resolution. For purposes of this advisory opinion, the organization shall be referred to as the "Black and Latino Caucus Community Partnerships," "BLCCP," or "organization."

On each of the Annual Reports filed by the organization with the Rhode Island Department of State ("Department of State") for the years 2011, 2012, 2013, 2014, and 2015, the Petitioner was identified as its President and Director. The Petitioner states that, since her departure from the organization as its President and Director in 2016, her involvement with the organization has been indirect and limited. Specifically, the Petitioner states that on a total of three to four occasions since 2016, members of the organization have sought her guidance regarding whom the organization should contact in various circumstances for assistance in accomplishing its mission.

On July 5, 2011, in her capacity as President of the organization, the Petitioner filed a Statement of Change of Registered Agent form with the Department of State, designating herself as the organization's new registered agent,² a position for which the Petitioner represents that she received no stipend or compensation of any kind.³ The Petitioner remained the registered agent until March 31, 2022, at which time Juana Negron, the current President of the BLCCP, filed a Statement of Change of Registered Agent form with the Department of State replacing the Petitioner and designating herself as the new registered agent for the organization.⁴ The Petitioner describes her continued identification as the organization's registered agent after 2016 as an oversight on her part.

It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in General Assembly discussions and decision-making that will directly financially impact the BLCCP.⁵ The Petitioner states that such participation would include, but not necessarily be limited to, her appearance before the House Finance Committee in her capacity as the lead sponsor of the Joint Resolution prior to the Finance Committee's vote on whether to approve the Joint Resolution, and thereafter in her capacity as a State Representative before whom the Joint Resolution could be presented for discussion and voting.

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). 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 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). A business associate is defined as "a person joined together with another person to achieve

² Pursuant to the Rhode Island Department of State website, "[a] registered agent is an individual or entity that receives official and legal documents on behalf of a business. The agent must be a Rhode Island resident or an entity qualified to do business in this state. A registered agent must have a Rhode Island street address (Registered Office) and must be available at the given address during normal business hours to accept service of process." <https://www.sos.ri.gov/divisions/business-services/ri-business/maintain-a-registered-agent>. (last visited April 15, 2022).

³ The Petitioner replaced Maria Lopes as the registered agent.

⁴ The Statement of Change of Registered Agent form filed by Ms. Negron was received by the Department of State at 11:03 am on March 31, 2022.

⁵ The Petitioner's written request seeking this advisory opinion was received by the Ethics Commission on March 30, 2022.

a common financial objective.” Section 36-14-2(3). The Code of Ethics further prohibits a public official 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).

In prior advisory opinions, the Ethics Commission has consistently concluded that public officials are business associates of entities for which they serve either as officers or members of the Board of Directors, or in some other leadership position that permits them to affect the financial objectives of those entities, and required such public officials to recuse from participating in matters that would financially impact their business associates. See, e.g., A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC); A.O. 2000-74 (opining that a majority of members of the Westerly Housing Authority Commissioners, who were also members of the Westerly Housing Association Board of Directors, were prohibited from participating in the Housing Authority’s consideration of the Housing Association’s funding request because, as members of the Board of Directors of the Housing Association, those Commissioners had a business association with it).

However, the Ethics Commission has permitted public officials to participate in matters involving or impacting a former business associate, assuming that no other conflicts were present. In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts between them, or whether there exists an anticipated future relationship between the parties. For example, in Advisory Opinion 2019-60, the Ethics Commission opined that the building official for the Town of New Shoreham, who in his private capacity owned and operated a house watch service, was not required to recuse from matters that involved or financially impacted his former business associates, provided that any agreements for services between the petitioner and his former clients had been severed, and that all services by the petitioner had ceased, prior to the petitioner taking any action in his public capacity in matters involving such former clients. Also, there could be no outstanding fees or refunds owed between the parties, and no understanding or expectation that the business association between the petitioner and any former client would resume once the petitioner had completed his work as the building official for that individual. See also A.O. 2013-21 (opining that a member of the State Labor Relations Board, a private attorney, was not required to recuse from matters involving his former law client provided that the representation had concluded, all outstanding legal fees were paid in full, and there was no reasonable likelihood of reestablishing an attorney-client relationship in the foreseeable future).

Public officials are advised by the Rhode Island Constitution to hold themselves to ethical principles that go beyond the legal requirements of the Code of Ethics by “adher[ing] to the highest standards of ethical conduct, respect[ing] the public trust and . . . avoid[ing] the appearance of impropriety[.]” R.I. Const. art. III, sec. 7. For this reason, the Ethics Commission has previously opined that a public official who was not required to recuse from participating in a matter that would financially impact a former business associate should, nonetheless, recuse. In Advisory

Opinion 2021-22, the Ethics Commission cited the constitutional language above when opining that, although the Chair of the Rhode Island Contractors Registration and Licensing Board ("CRLB") was not prohibited by the Code of Ethics from participating in a matter then pending before the CRLB because the appellant and the petitioner were former business associates, given the appearance of impropriety that would accompany his participation, the petitioner should recuse from so participating. In that matter, the appellant had hired the petitioner to perform work on the very property that was the subject of the appeal. The business relationship between the appellant and the petitioner had ended two years prior and the appellant had paid the petitioner in full for the roofing services that the petitioner had provided. The petitioner also represented that he did not anticipate any occasion for which he might engage in a future business relationship with the appellant. All of that notwithstanding, because the petitioner had performed work for the appellant on the very property that was the subject of the appeal before the CRLB, the Ethics Commission opined that, in consideration of the appearance of impropriety that would result from his participation, the petitioner should not participate in the matter.

Additionally, in Advisory Opinion 2020-3, the Ethics Commission also cited the state's constitutionally expressed goal of avoiding the appearance of impropriety when opining that a petitioner was, among other things, required to recuse from her official duties as the Tiverton Town Sergeant ("Town Sergeant") in matters before the Tiverton Town Council ("Town Council") that involved or financially impacted the Tiverton Days Committee ("Days Committee"), a group of volunteers who organized family friendly events and activities for Tiverton residents for which the petitioner served as the co-chair and of which the petitioner was a business associate. That opinion was issued notwithstanding that the sole purpose of the Town Sergeant's presence at Town Council meetings was to remove unruly citizens at the instruction of the Town Council President, and where the exercise of the petitioner's official duties would not have financially impacted her business associate.

In the instant matter, the Petitioner was replaced as the registered agent for the BLCCP on March 31, 2022. She represents that she received no stipend or compensation in her role as registered agent. The Petitioner's description of her continued identification as the registered agent after 2016 as an oversight on her part supports that there is no expectation of a future relationship between the Petitioner and the organization. Whether the Petitioner was a business associate of the BLCCP prior to March 31, 2022, is neither before the Ethics Commission today nor germane to this advisory opinion.⁶ Based on the facts as represented, the Petitioner is not a business associate of the BLCCP now. For that reason, and barring any other conflict of interest, the Code of Ethics does not prevent the Petitioner from participating in General Assembly discussions and decision-making going forward that will directly financially impact the BLCCP.

However, the Petitioner's proposed legislative efforts to direct \$685,000 to an organization that she personally incorporated, for which she served in the capacity of President and Director for several years, and which until weeks ago listed the Petitioner as its registered agent with the

⁶ Advisory opinions from the Ethics Commission address prospective conduct only. The opinion of the Ethics Commission expressed herein does not extend to any activity in which the Petitioner engaged prior to the date that this advisory opinion is issued including, but not limited to, the Petitioner's sponsorship and introduction of the Joint Resolution.

Department of State, creates a situation in which a reasonable person could perceive a conflict of interest. While an appearance of impropriety is not sufficient to constitute a violation of the Code of Ethics, given the Rhode Island Constitution's clear directive that public officials should avoid creating such an appearance, it is the opinion of the Ethics Commission that, under the facts presented, the Petitioner should recuse from participating in General Assembly discussions and decision-making that will directly financially impact the BLCCP. All recusals must conform with the provisions of 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:

§ 36-14-2(3)
§ 36-14-5(a)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)

Constitutional Authority:

R.I. Const., art III, sec. 7

Related Advisory Opinions:

A.O. 2021-22
A.O. 2020-3
A.O. 2019-60
A.O. 2013-21
A.O. 2012-28
A.O. 2000-74

Keywords:

Appearance of Impropriety
Business Associate

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: May 17, 2022

Re: Lisa Bryer, AICP

QUESTION PRESENTED:

The Petitioner, the Town Planner for the Town of Jamestown, a municipal employee position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from performing her Town Planner duties related to the leasing of space and the construction of a facility in Jamestown by the Conanicut Island Sailing Foundation, a local non-profit organization, given that her spouse is a member of that organization's Board of Directors and her son is one of the organization's seasonal employees.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Town Planner for the Town of Jamestown, a municipal employee position, is not prohibited by the Code of Ethics from performing her Town Planner duties related to the leasing of space and the construction of a facility in Jamestown by the Conanicut Island Sailing Foundation, a local non-profit organization, notwithstanding that her spouse is a member of that organization's Board of Directors and her son is one of the organization's seasonal employees. However, in the event that the Petitioner's spouse or son appears before the Town Council or the Planning Commission on behalf of the organization, either personally or through the submission of a written request, the Petitioner must recuse herself from participation in the matter.

The Petitioner has been employed by the Town of Jamestown ("Town") as its Town Planner for more than 24 years. She states that, for approximately the last 20 years, she has been involved in the master planning for Fort Getty Town Park ("the park"), which is owned by the Town. She explains that, for approximately the last eight years, the Conanicut Island Sailing Foundation ("CISF"), a local non-profit organization, has utilized space at the park to offer and operate sailing and marine education camp programs during the summer months. The Petitioner adds that the CISF runs the camp programs from a tent and a portable trailer that have been set up in the park. She represents that the arrangements between the CISF and the Town for the camp programs were memorialized in a memorandum of agreement between the CISF and the Town and that said arrangements were handled on behalf of the Town by the Town Administrator and the Town Recreation Director.

The Petitioner states that her spouse is a member of the CISF's Board of Directors, a position for which he receives no stipend or other compensation. The Petitioner further states that her son is a

seasonal employee of the CISF, where he works as a summer camp sailing instructor. She adds that her son is compensated with an hourly wage for his work and that he expects to hold this position for the next two summers until he completes his college education.

The Petitioner represents that the Town is considering entering into a lease agreement ("lease") with the CISF that would allow the CISF to construct a permanent facility within the park to replace the tent and portable trailer from which the CISF has been running the camp programs. She further represents that the CISF would bear the cost for the construction of the facility, but that the facility would be the property of the Town. The Petitioner explains that the Town would then lease the facility to the CISF for a period of 20 years, at either no cost or at a cost of \$1 per year, with an option to extend the lease for an additional ten years.

The Petitioner states that she has no decision-making authority regarding whether and when the lease between the Town and the CISF occurs, but that she will likely be asked by the Town Council for her input before the Town Council makes its decision about the lease. The Petitioner explains that she expects to review a draft lease, prepared by the CISF with the assistance of its legal counsel, before it is presented to the Town Administrator, who is the Petitioner's supervisor. She further explains that the Town Administrator will then review the draft lease before presenting it to the Town Solicitor for review and that, from there, the draft lease will go to the Town Council for consideration and approval. The Petitioner represents that, if the lease is approved by the Town Council, the Petitioner will then, as part of her public duties, work with the CISF on the site and building planning, both of which must be authorized by the Town Council and the Planning Commission. She adds that, among her duties as Town Planner, she is tasked with advising the Town Council and the Planning Commission on such matters. The Petitioner states that she does not expect her spouse or her son to appear before the Town Council or the Planning Commission in their respective capacities as a CISF Board Member and as a CISF employee, or in any other capacity, regarding the lease or the construction of the facility. The Petitioner states that the CISF is expected to continue to use the tent and the trailer to run the camp programs this summer and during the summer of 2023.

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 has an interest that is in substantial conflict with the proper discharge of her duties or employment in the public interest if she has reason to believe or expect that she, or any person within her family, or 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). A public official also may not use her public office or confidential information received through her public office to obtain financial gain, other than that provided by law, for herself or any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). A "business associate" is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A "person" is defined as "an individual or a business entity." Section 36-14-2(7).

In addition to the above-cited provisions, the Code of Ethics further provides that a public official 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 or suffer a direct monetary loss, or obtain an employment advantage. Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”). Additionally, Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”) states that a public official must also recuse from participation in her official capacity when any person within her family appears or presents evidence or arguments before her municipal agency.

The Ethics Commission has concluded that a public official is not required to recuse from matters that cause a financial impact solely upon a family member’s business associate or employer without a corresponding financial impact upon the family member. See, e.g., A.O. 2019-55 (opining that the Mayor of the City of Pawtucket was not prohibited from taking official action regarding the approval or disapproval of the Pawtucket Soup Kitchen’s application for Community Development Block Grant funds, notwithstanding his spouse’s service on its Board of Directors, where his spouse was not compensated for her service, had not signed the application, and would not appear before him regarding said application); A.O. 2019-46 (opining that a Jamestown Zoning Board of Review member was not prohibited from participating in the Board’s discussions and decision-making relative to a matter involving the Jamestown Historical Society, on which Board of Trustees his spouse served, where there was no indication that the petitioner’s official actions would have any direct financial impact upon his spouse); A.O. 2008-69 (opining that a member of the Woonsocket Zoning Board of Review was permitted to participate in discussions and voting on a petition for a variance brought by CVS, notwithstanding that the petitioner’s sister was employed as an accounting analyst with CVS, since his sister would not be financially impacted by the Zoning Board of Review’s decision regarding the petition).

Here, the Petitioner’s spouse is a business associate of the CISF because he is a member of its Board of Directors. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“DEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and was, thus, required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s interests); A.O. 2009-10 (opining that a member of the Middletown Town Council was required to recuse from matters concerning the Middletown Historical Society, given that she was the Treasurer of the Historical Society, and thus its business associate).

Because the Petitioner’s spouse is not compensated for his service as a member of the CISF’s Board of Directors, the Petitioner has no reason to believe or expect that her spouse will personally be financially impacted, directly or otherwise, by reason of any official action that she may take as the Town Planner with respect to the Town’s lease agreement with the CISF or the subsequent construction of the facility from which the CISF intends to run its summer camp programs in the future. Nor does it appear from the facts as represented that the Petitioner’s son would personally be financially impacted, directly or otherwise, by reason of any official action on her part as Town Planner in these matters, given his status as a CISF seasonal employee who receives an hourly wage, and whose employment is not dependent upon the lease agreement, given that he plans to work as a sailing instructor for the next two summers, during which time the CISF is expected to

continue to run its camp programs from a tent and trailer in the park. Accordingly, based on the Petitioner's representations, the application of the relevant portions of the Code of Ethics, and a review of prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not generally prohibited from performing her official duties as Town Planner relative to the anticipated lease between the Town and the CISF, or with the subsequent construction of the facility by the CISF.

However, Regulation 1.2.1(A)(1) requires the Petitioner to recuse from providing advice to the Town Council and Planning Commission in the apparently unlikely event that her spouse or her son appears or presents evidence or arguments before either of those agencies. This would include, though not be limited to, an appearance by the Petitioner's spouse or son to advocate on behalf of the CISF's efforts or to provide updates as to CISF activities. In the absence of a personal appearance, said recusal requirement would endure were the Petitioner's spouse or son to submit a written request to the Town Council or Planning Commission on behalf of the CISF. All recusals must be made consistent with the provisions of section 36-14-6. While the Petitioner must recuse herself from advising the Town Council or the Planning Commission in either agency's consideration of her spouse's or her son's testimony or request on behalf of the CISF, no such requirement attaches to matters presented or requested by other CISF Board members or employees.

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:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2019-55

A.O. 2019-46

A.O. 2014-14

A.O. 2009-10

A.O. 2008-69

Keywords:

Business Associate



Family Member
Nepotism
Recusal

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