

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-15

Approved: May 17, 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.

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. 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

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.”

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 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,

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.

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.

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

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.

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