

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-16

Approved: 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 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(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