



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AMENDED AGENDA

7th Meeting

DATE: Tuesday, June 7, 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 May 17, 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.) Nancy A. Beye, a member of the Jamestown Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits her from volunteering in her capacity as a Town Council member to provide information and ideas to BETA Group, Inc., a private corporation that has been retained by the Rhode Island Department of Environmental Management in connection with the

development of a master plan for Beavertail State Park, given that in her private capacity the Petitioner is a member of the Board of Directors for the Beavertail Lighthouse Museum Association, a private non-profit organization that manages the lighthouse museum located in Beavertail State Park. [Staff Attorney Radiches]

- b.) Paul D. Ragosta, Esq., who is employed part-time as Legal Counsel to the Rhode Island Office of the Auditor General, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving part-time as an Associate Justice on the City of Providence Housing Court, a municipal appointed position. [Staff Attorney Papa]
 - c.) Andy Andujar, Assistant Coordinator at the Rhode Island Department of Labor and Training, Workers' Compensation Division, requests an advisory opinion regarding whether the Code of Ethics prohibits him from forming a private entity, in his private capacity and on his own time, together with other investors, for the purpose of applying for and obtaining one or multiple cannabis retail sales permits in the State of Rhode Island. [Staff Attorney Papa]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on May 17, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Carlos Tobon, Complaint No. 2022-3, 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 June 7, 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 June 3, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 7, 2022

Re: Nancy A. Beye

QUESTION PRESENTED:

The Petitioner, a member of the Jamestown Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from volunteering in her capacity as a Town Council member to provide information and ideas to BETA Group, Inc., a private corporation that has been retained by the Rhode Island Department of Environmental Management in connection with the development of a master plan for Beavertail State Park, given that in her private capacity the Petitioner is a member of the Board of Directors for the Beavertail Lighthouse Museum Association, a private non-profit organization that manages the lighthouse museum located in Beavertail State Park.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Jamestown Town Council, a municipal elected position, is not prohibited by the Code of Ethics from volunteering in her capacity as a Town Council member to provide information and ideas to BETA Group, Inc., a private corporation that has been retained by the Rhode Island Department of Environmental Management in connection with the development of a master plan for Beavertail State Park, notwithstanding that in her private capacity the Petitioner is a member of the Board of Directors for the Beavertail Lighthouse Museum Association, a private non-profit organization that manages the lighthouse museum located in Beavertail State Park.

The Petitioner has been a member of the Jamestown Town Council ("Town Council") since 2018 and currently serves as its President. She states that, in her private capacity, she is a member of the Board of Directors for the Beavertail Lighthouse Museum Association ("BLMA"), a private organization that is responsible for the maintenance and day-to-day operations of the Beavertail Lighthouse Museum ("museum") located in Beavertail State Park ("park") in the Town of Jamestown. The Petitioner further states that BLMA board members receive no stipend or compensation of any kind for their service on the board. She explains that entry into the museum is free to all members of the public¹, adding that everyone who works at the museum does so in a volunteer capacity.

¹ The Petitioner represents that the museum does accept donations, and that a membership fee of \$25 entitles a member to a 10% discount toward purchases made in the museum gift shop.

The Petitioner represents that, every five years, the Rhode Island Department of Environmental Management (“RIDEM”) develops a Beavertail Park Master Plan (“master plan”). She adds that the RIDEM has retained BETA Group, Inc. (“BETA”) in connection with the development of the latest master plan. According to its website, BETA offers “a broad range of planning, engineering, environmental, and landscape architectural services” throughout New England.² The Petitioner further represents that a representative from BETA recently approached the Jamestown Town Administrator and the Jamestown Town Clerk in an effort to seek volunteers from Jamestown to contribute information and ideas to BETA for the master plan. The Petitioner explains that volunteers would include Jamestown residents, several Jamestown department heads, and a member of the Town Council (collectively, “volunteers”). The Petitioner states that BETA has been retained by the RIDEM to assist with the development of the master plan, and that the volunteers will serve as a collective source of information and ideas for BETA during the process. The Petitioner does not know when or how many times the volunteers will meet with BETA, or whether any representatives from the RIDEM will be present when the volunteers do meet with BETA.

The Petitioner states that the topics of the master plan will include the potential addition of a visitor center at the park, which would not financially impact the BLMA or the museum. She further states that the master plan could contain ideas for landscaping in the area of the park in which the museum is located, which could include the creation of several parking spaces for museum volunteers who currently park on the grass.³ The Petitioner represents that she is unaware of any topics in the master plan that would directly financially impact the BLMA or the museum. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether she may, in her capacity as a Town Council member, contribute information and ideas to BETA as a volunteer during BETA’s partnership with the RIDEM relative to the development of the master plan for the park.⁴

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 will have an interest that is in substantial conflict with the proper discharge of her public duties if she has reason to believe or expect that a direct monetary gain or loss will accrue, by reason of her official activity, to the public official herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using her public office or confidential information received through her holding public office to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or any business by which she is employed or which she represents.

² <https://www.beta-inc.com> (last accessed May 27, 2022).

³ The Petitioner states that visitors to the museum park their cars in one of four public parking lots located in the park.

⁴ The Petitioner states that BETA has yet to schedule a meeting for its volunteers from Jamestown, but that the Town Council will meet on June 16, 2022, at which time a vote is expected to be taken as to which Town Council member will join the group of volunteers. The Petitioner, who intends to recuse from participation in a vote to make her the Town Council member to volunteer, represents that she will only agree to volunteer subject to the issuance of an advisory opinion by the Ethics Commission opining that doing so would not violate the Code of Ethics.

A public official must also recuse from participation when her business associate or employer appears or presents evidence or arguments before her state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1."). Lastly, section 36-14-5(e) ("section 5(e)") prohibits a public official or employee from representing herself, representing another person, or acting as an expert witness before a state or municipal agency of which she is a member or by which she is employed. Section 5(e)(1) - (3); see also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Section 5(e)'s prohibitions continue while the official remains in office and for a period of one year thereafter. Section 5(e)(4). 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).

Here, the Code of Ethics does not prohibit the Petitioner from volunteering in her capacity as a Town Council member to contribute information and ideas to BETA during BETA's partnership with the RIDEM relative to the master plan for the park, given the scope of topics included in the master plan and the limited role of the volunteers. However, the Code of Ethics does regulate the manner and extent of the Petitioner's performance of her duties. Although the nature of the service sought of the volunteers by BETA appears to be strictly advisory in nature, the Petitioner's service as a volunteer would be an extension of her duties as a duly elected member of the Town Council. Therefore, any restrictions that the Code of Ethics may place upon her ability to carry out her duties as a Town Council member would extend to the performance of her duties as a volunteer for BETA.

For example, in Advisory Opinion 2021-32, the Ethics Commission opined that a legislator serving as a member of the Rhode Island House of Representatives was not prohibited by the Code of Ethics from accepting appointment to the Permanent Legislative Commission on Child Care in Rhode Island ("Child Care Commission"), in her capacity as a State Representative, notwithstanding that the petitioner owned and/or managed a number of child care centers in Rhode Island. In that advisory opinion, the Ethics Commission advised the Petitioner that, if appointed, she would be generally required to recuse from taking any official action, including discussions and voting on any matter, that would likely result in a direct financial benefit or detriment to her, any person within her family, her business associate, or her employer, unless the specific circumstances justified the application of the class exception as set forth in section 36-14-7(b).⁵ The Ethics Commission further opined that the petitioner would be required to recuse herself from

⁵ Section 36-14-7(b) states that a public official will not have an interest which is in substantial conflict with her official duties if any benefit or detriment accrues to her, any person within her family, her business associate, or any business by which she is employed or which she represents "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group." When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

participation in discussions and voting on any matters for which her business associate or employer, or her business associate or employer's authorized representative, appeared or presented evidence or arguments before the General Assembly or the Child Care Commission unless one of the exceptions to Regulation 1.2.1(B) applied.⁶ That petitioner was also prohibited under section 36-14-5(e) from representing herself or any other person before the General Assembly or the Child Care Commission.

Additionally, in Advisory Opinion 2004-6, another State Representative sought the advice of the Ethics Commission regarding whether her spouse's employment by Memorial Hospital of Pawtucket prohibited or limited her service as a member of the General Assembly's Permanent Joint Committee on Health Care Oversight ("Oversight Committee"), the duties of which were to monitor, study, report and make recommendations on all areas of health care provision, insurance, liability, licensing, cost and delivery of services, and the adequacy, efficacy and efficiency of statutes, rules, regulations, guidelines, practices, and programs related to health care, long term care, or health insurance coverage in Rhode Island. There, the Ethics Commission opined that there was no indication that the petitioner or her spouse stood to be financially impacted solely by reason of her membership on the Oversight Committee and, therefore, the petitioner's membership thereon was not prohibited by the Code of Ethics. However, the petitioner was advised that she would be required to recuse from participation in matters in which it was reasonably foreseeable that her spouse would derive a direct financial gain or suffer a direct financial loss by reason of her official activity. The petitioner was further advised to be diligent in identifying such matters and to either recuse from participation or seek further guidance from the Ethics Commission.

In the instant matter, based on the Petitioner's representation that the volunteers will function strictly in an advisory capacity to BETA by offering information and ideas about the master plan

⁶ Regulation 1.2.1(B) states that:

A person subject to this Code of Ethics is not required to recuse himself or herself pursuant to this or any other provision of the Code when:

1. The person's business associate, employer, household member or any person within his or her family is before the person's state or municipal agency, solely in an official capacity as a duly authorized member or employee of another state or municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the business associate, employer, household member or person within his or her family is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.
2. The person's business associate, employer, household member or any person within his or her family is before the person's state or municipal agency during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the business associate, employer, household member or person within his or her family is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

which BETA may, in turn, incorporate into its recommendations to the RIDEM which is tasked with finalizing the master plan, the Petitioner is not prohibited from participating. However, the Petitioner is advised that she will generally be required to recuse from taking any official action, including discussions and voting on any matter, that would likely result in a direct financial benefit or detriment to her, any person within her family, her business associate, or her employer. Specifically, the BLMA and the other individuals with whom the Petitioner serves on the BLMA Board of Directors are her business associates under the Code of Ethics. 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. 2018-30 (opining that a member of the Coventry Town Council was prohibited by the Code of Ethics from participating in the Town Council's discussions and decision-making relative to the reappointment of the Coventry Municipal Court Judge, given that both were members of the Board of Directors of Gabriel's Trumpet Christian Book Store, Inc., and the existence of a financial component was sufficient to qualify the fellow Board members as business associates).

The Petitioner will likewise be required to recuse herself from participation in discussions and voting on matters for which the BLMA, a fellow BLMA board member, or an authorized representative of either, appears or presents evidence or arguments before the Town Council, or the group of volunteers of which the Petitioner will be a part in connection with the development of the master plan, however unlikely those circumstances may be, unless one of the exceptions to Regulation 1.2.1(B) applies. Finally, the Petitioner will be prohibited under section 36-14-5(e) from representing herself or the BLMA before the Town Council or BETA. All recusals shall be consistent with the provisions of section 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts as represented above. The Petitioner is encouraged to seek additional advice from the Ethics Commission as more specific questions regarding potential conflicts of interest arise.

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)
- § 36-14-5(e)
- § 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

520-RICR-00-00-1.1.4 Representing Oneself of Others, Defined (36-14-5016)

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

Related Advisory Opinions:

A.O. 2021-32

A.O. 2018-30

A.O. 2012-28

A.O. 2004-6

Keywords:

Business Associate

Class Exception

Recusal

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 7, 2022

Re: Paul D. Ragosta, Esq.

QUESTION PRESENTED:

The Petitioner, who is employed part-time as Legal Counsel to the Rhode Island Office of the Auditor General, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving part-time as an Associate Justice on the City of Providence Housing Court, a municipal appointed position.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, who is employed part-time as Legal Counsel to the Rhode Island Office of the Auditor General, a state employee position, is not prohibited by the Code of Ethics from simultaneously serving part-time as an Associate Justice on the City of Providence Housing Court, a municipal appointed position.

The Petitioner is employed part-time as Legal Counsel to the Rhode Island Office of the Auditor General (“Auditor General”). The Auditor General is appointed by the General Assembly’s Joint Committee on Legislative Services to perform a variety of auditing functions and to provide objective and timely information to the General Assembly on the operations of state government.¹ Relative to the instant matter, the Petitioner states that the Auditor General also has certain oversight functions with respect to municipalities. In particular, the Petitioner explains that the Auditor General reviews any municipality’s request to exceed the statutory cap on the local property tax levy, evaluates and approves municipal deficit reduction plans and financial corrective action plans, approves the selection of outside auditors to conduct municipal audits, and may conduct special studies or analyses of municipal finances. The Petitioner states that as Legal Counsel he provides general legal guidance to the Auditor General relative to the performance of the Auditor General’s statutory duties.

The Petitioner represents that he was recently appointed by the Mayor of Providence to serve as an Associate Justice on the Providence Housing Court (“Housing Court”), subject to approval by the City of Providence (“City” or “Providence”) City Council. The Petitioner states that the appointment is a paid, part-time position for a term of three years. The Petitioner further states that the Housing Court is a separate and independent branch of City government, governed by Article 8 of the City Code of Ordinances. He explains that the Housing Court is charged with adjudicating alleged violations of housing ordinances within the jurisdiction of the City. The

¹ See <http://www.oag.ri.gov/about.html> (last accessed May 25, 2022).

Petitioner states that the Auditor General does not audit the City. He further states that neither the Auditor General nor the Petitioner in his capacity as Legal Counsel to the Auditor General would have any occasion to appear before the Providence Housing Court. The Petitioner represents that he has discussed his appointment to the Housing Court with the Auditor General and that, if appointed, the Petitioner will recuse himself from any matters relative to the City that may come before him as Legal Counsel to the Auditor General. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from simultaneously serving part-time as Legal Counsel to the Auditor General and part-time as an Associate Justice in the Housing Court.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of his official duties if it is reasonably foreseeable that a “direct monetary gain” or a “direct monetary loss” will accrue, by virtue of the public official’s activity, to the public official, his family member, his business associate, or a business by which he is employed. Section 36-14-7(a). Further, a public official is prohibited from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). Finally, a public official may not accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. Section 36-14-5(b).

The Ethics Commission has on numerous occasions considered these provisions of the Code of Ethics in similar situations involving public officials wishing to simultaneously serve in dual or multiple public roles and has consistently found that the Code of Ethics does not generally bar public officials from simultaneous service with, or employment by, multiple public entities. Rather, the Ethics Commission has opined that a determination must be made on a case-by-case basis regarding whether a substantial conflict of interest exists, in either public role, with respect to a public official carrying out his duties in the public interest.

In 2008 for example, this Petitioner sought advice from the Ethics Commission under similar circumstances, asking whether the Code of Ethics prohibited him from accepting an appointment to the Providence Bureau of Licenses, given his part-time employment as Legal Counsel to the Auditor General. The Ethics Commission issued Advisory Opinion 2008-49 opining that he was not so prohibited. The Ethics Commission further advised the Petitioner that, although he was not required to recuse from each and every matter that concerned the City when carrying out his duties with the Auditor General, he must be vigilant in identifying matters that could financially impact him by reason of his position with the Bureau of Licenses. See also A.O. 2021-41 (opining that the School Building Authority Finance Officer for the Rhode Island Department of Education, a state employee position, was not prohibited by the Code of Ethics from accepting an appointment to fill a vacancy on the Lincoln School Committee, a municipal appointed position, and from then serving simultaneously in both positions, given that there was no indication that such simultaneous service would impair his independence of judgment as to his public responsibilities in either position or require him to disclose confidential information acquired by him in the course of his

official duties in either role); A.O. 2018-20 (opining that a petitioner employed by the Rhode Island Office of Housing and Community Development as a Housing Commission Coordinator, a state employee position, could serve as a member of the Pawtucket Housing Authority's Board of Commissioners, a municipal appointed position).

Although the above advisory opinions generally hold that the Code of Ethics does not create an absolute bar to simultaneous service on two public entities, a person serving in such dual roles may, nevertheless, be presented with particular matters while serving in either role that will require his recusal. This may occur when a public official's actions at one entity would directly impact his employment or duties at the other, or where his association with one entity would impair his independence of judgment as to his duties with the other.

Here, based on the facts as represented by the Petitioner, the two public agencies on which he seeks to simultaneously serve have separate and distinct spheres of responsibilities. Additionally, there is no indication that serving part-time as both Legal Counsel to the Auditor General and as an Associate Justice on in the Providence Housing Court would either impair the Petitioner's independence of judgment as to his public responsibilities in either position or require him to disclose confidential information acquired by him in the course of and by reason of his official duties in either role. Nor is there any indication that the Petitioner's simultaneous service, in and of itself, creates a substantial conflict with respect to the exercise of his public duties in either role. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from simultaneously serving part-time as Legal Counsel to the Auditor General and an Associate Justice on the Providence Housing Court.

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:

§ 36-14-5(a)
§ 36-14-5(b)
§ 36-14-5(d)
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-41
A.O. 2008-49
A.O. 2018-20

Keywords:

Dual Public Roles

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 7, 2022

Re: Andy Andujar

QUESTION PRESENTED:

The Petitioner, Assistant Coordinator at the Rhode Island Department of Labor and Training, Workers' Compensation Division, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from forming a private entity, in his private capacity and on his own time, together with other investors, for the purpose of applying for and obtaining one or multiple cannabis retail sales permits in the State of Rhode Island.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, Assistant Coordinator at the Rhode Island Department of Labor and Training, Workers' Compensation Division, a state employee position, is not prohibited by the Code of Ethics from forming a private entity, in his private capacity and on his own time, together with other investors, for the purpose of applying for and obtaining one or multiple cannabis retail sales permits in the State of Rhode Island.

The Petitioner represents that he has been employed as Assistant Coordinator in the Workers' Compensation Division at the Rhode Island Department of Labor and Training ("RIDLT") for the past four years and that his normal working hours are Monday through Friday from 8:30 a.m. to 4:00 p.m. The Petitioner states that most employers in Rhode Island are required to carry workers' compensation insurance coverage. He explains that large-scale employers such as General Dynamics Electric Boat, Macy's, IGT, Hasbro, the Rhode Island Public Transit Authority, and FedEx, to name a few, usually have their own workers' compensation insurance programs, whereas smaller-scale employers purchase workers' compensation insurance coverage through a third-party insurer, such as The Beacon Mutual Insurance Company. The Petitioner represents that his duties relate to the large-scale employers and include, but are not limited to, monitoring whether such employers maintain enough funds and securities in their workers' compensation programs to pay employees' claims and whether such employers continue to comply with the State of Rhode Island's requirement for maintaining their own workers' compensation insurance programs.

The Petitioner represents that, in his private capacity, he and other investors would like to form a private entity for the purpose of applying for and obtaining one or multiple cannabis retail sales permits in the State of Rhode Island that he expects to become available sometime in July or August following Governor McKee's recent signing into law of the Rhode Island Cannabis Act, which legalizes and regulates recreational adult-use cannabis in the state. The Petitioner states that such licenses will be regulated by the Rhode Island Department of Business Regulation and not by the RIDLT. The Petitioner expects that in-store sales of recreational adult-use cannabis

could begin as early as December of this year. The Petitioner represents that the entity which he and the other investors expect to establish would not be of the size or type that would normally fall within his purview at the RIDLT. Given this set of facts, the Petitioners seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him, in his private capacity and on his own time, from working with other investors to form a private entity for the purpose of applying for or obtaining one or multiple cannabis retail sales permits in Rhode Island.

No person subject to the Code of Ethics shall engage in any business, employment, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official or employee has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Further, no person subject to the Code of Ethics shall accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. Section 36-14-5(b). Finally, no person subject to the Code of Ethics shall use his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or positions subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties. The Ethics Commission examines several factors when considering potential conflicts of interest regarding secondary employment. These factors include, but are not limited to, the nexus between the official's public duties and private employment; whether the employee completes such work outside of his or her normal working hours and without the use of public resources; whether the employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.

For example, in Advisory Opinion 2019-65, the Ethics Commission opined that the Director of Capitol Television was not prohibited by the Code of Ethics from hosting a television special aimed at de-stigmatizing mental illness and addiction in Rhode Island, provided that all of the work was performed in her private capacity and on her own time without the use of public resources or confidential information obtained as part of her state employment as the Director of Capitol Television. The Ethics Commission further opined that there was no evidence that the petitioner's private employment as the host of the television special would either impair her independence of judgment or create an interest in substantial conflict with her public duties. See also A.O. 2019-27 (opining that a Motor Vehicle Operator Examiner for the Division of Motor Vehicles ("DMV") was not prohibited by the Code of Ethics from accepting employment as a Course Administrator for the Driver Retraining Program at the Community College of Rhode Island, provided that all work was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment at the DMV); A.O.

2016-37 (opining that a certified appraiser with the City of Providence Tax Assessor's Office was not prohibited by the Code of Ethics from working in his private capacity as a real estate salesperson, provided that all work was performed on his own time, without the use of public resources or confidential information obtained as part of his public employment, that he did not use his public position to promote his private employment, and that he did not list his public position as part of the advertisement of his work as a real estate salesperson).

In the present matter, based upon the Petitioner's representations, it does not appear that his private undertaking would either impair his independence of judgement or create an interest in substantial conflict with his public duties at the RIDLT. Accordingly, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner, in his private capacity, from forming a private entity together with other investors for the purpose of applying for and obtaining one or multiple cannabis retail sales permits in Rhode Island, provided that he does not use public resources or confidential information obtained as part of his employment with the RIDLT to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Further, the Petitioner must complete such work outside of his normal working hours and without the use of public resources. Additionally, the Petitioner shall not use his public position to promote his private work and shall not solicit clients for his private undertaking during the hours of his public employment nor from any person who has a financial interest in his public duties. Finally, the Petitioner is encouraged to seek further guidance from the Ethics Commission if there are any changes to the formation of the private entity such that it would fall within the purview of the Petitioner's public duties at the RIDLT, or if there are any changes in the Petitioner's employment at the RIDLT that could present a conflict of interest under the Code of Ethics.

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:

§ 36-14-5(a)

§ 36-14-7(a)

§ 36-14-5(b)

§ 36-14-5(d)

Related Advisory Opinions:

A.O. 2019-65

A.O. 2019-27

A.O. 2016-37

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