

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-17

Approved: 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.

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 substantia 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

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.

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.

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.

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

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

The Ethics Commission further opined that the petitioner would be required to recuse herself from 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

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.

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.

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 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 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)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

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

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

Related Advisory Opinions:

A.O. 2021-32

A.O. 2018-30

A.O. 2012-28

A.O. 2004-6

Keywords:

Business Associate

Class Exception

Recusal