

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-18

Approved: 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 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:

§ 36-14-5(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