

# RHODE ISLAND ETHICS COMMISSION

---

---

## Advisory Opinion No. 2022-19

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

Related Advisory Opinions:

A.O. 2019-65  
A.O. 2019-27  
A.O. 2016-37  
General Commission Advisory No. 2009-4

Keywords:

Secondary Employment