



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

8th Meeting

DATE: Tuesday, June 28, 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 June 7, 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.) Ernest Almonte, former Chief of Staff to the Lieutenant Governor of the State of Rhode Island and former Interim Chief Financial Officer for the Rhode Island Department of Health, requests an advisory opinion seeking guidance on the application of the revolving door provisions of the Code of Ethics relative to his ability to represent the Rhode Island League of Cities and Towns, a private non-profit organization for which he is the Executive Director, before the Rhode

Island General Assembly, the Governor's Office, and the various State Departments. [Staff Attorney Papa]

- b.) Diane Harrison, a member of the Jamestown Planning Commission, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in Planning Commission discussions and voting relative to a proposed plan to develop affordable housing units in the Town of Jamestown, given that authorized representatives of the Conanicut Island Land Trust, a private organization for which the Petitioner previously performed paid work but currently provides volunteer services, are expected to provide comment on the proposed plan during public hearings of the Planning Commission. [Staff Attorney Radiches]

5. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on June 7, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Frank Picozzi, Complaint No. 2022-4, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) Annual discussion and review re: Legal Counsel's contract, pursuant to R.I. Gen. Laws § 42-46-5(a)(1).
- d.) Motion to return to Open Session.

6. Motion to seal minutes of Executive Session held on June 28, 2022.

7. Report on actions taken in Executive Session.

8. Annual discussion and potential vote re: Legal Counsel's contract.

9. New Business proposed for future Commission agendas and general comments from the Commission.

10. 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 23, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 28, 2022

Re: Ernest Almonte

QUESTION PRESENTED:

The Petitioner, former Chief of Staff to the Lieutenant Governor of the State of Rhode Island and former Interim Chief Financial Officer for the Rhode Island Department of Health, both state employee positions, requests an advisory opinion seeking guidance on the application of the revolving door provisions of the Code of Ethics relative to his ability to represent the Rhode Island League of Cities and Towns, a private non-profit organization for which he is the Executive Director, before the Rhode Island General Assembly, the Governor's Office, and the various State Departments.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, former Chief of Staff to the Lieutenant Governor of the State of Rhode Island and former Interim Chief Financial Officer for the Rhode Island Department of Health, both state employee positions, is prohibited by the Code of Ethics from representing himself or the Rhode Island League of Cities and Towns, a private non-profit organization for which he is the Executive Director, before the Office of the Lieutenant Governor and the Rhode Island Department of Health for one year following the severance of his public employment from each of those agencies, respectively. However, the Petitioner is not prohibited from representing himself or the Rhode Island League of Cities and Towns before the Rhode Island General Assembly, the Governor's Office, and the various other State Departments under the control or appointing authority of the Governor.

The Petitioner served as Chief of Staff to the Rhode Island Lieutenant Governor from April 14, 2021, to January 31, 2022. His duties included oversight of staff, management of events and meetings, and responsibilities in the areas of housing and constituent services. The Petitioner represents that in February of 2022 he was hired by the Director of the Rhode Island Department of Health ("RIDOH") to the position of Interim Chief Financial Officer ("Interim CFO") for the RIDOH, a position that the Petitioner held until June 3, 2022. The Petitioner explains that as Interim CFO he was responsible for advising the RIDOH's Finance Department about various matters and for ensuring a smooth transition following the hire of the permanent CFO.

The Petitioner represents that after completing his position as Interim CFO for the RIDOH, he began new employment in the private sector as the Executive Director of the Rhode Island League of Cities and Towns ("the League"). The League is a nonprofit organization that represents Rhode Island municipal government interests before the state's legislative and executive branches of

government, and also provides technical assistance, information sharing, and training to assist municipal officials in fulfilling their responsibilities. The Petitioner states that, as Executive Director, he will be presenting seminars intended to assist municipal officials in fulfilling their responsibilities; reviewing current or proposed legislation for its current or potential impact on Rhode Island municipalities respectively; and advocating for the interests of the League's member cities and towns before the legislature and various divisions, boards, and officials of the executive branch of Rhode Island government.

Cognizant of the Code of Ethics and desirous of acting in conformance therewith, the Petitioner seeks guidance from the Ethics Commission regarding the application of the revolving door provisions relative to his ability to represent the League before the Rhode Island General Assembly, the Governor's Office, and the various State Departments during the one-year period after leaving his positions as Chief of Staff to the Lieutenant Governor and Interim CFO for the RIDOH respectively. The Petitioner states that the Offices of the Lieutenant Governor and the Governor are separate and independent from each other, and that each has its own distinct duties and responsibilities. The Petitioner further states that, as Chief of Staff to the Lieutenant Governor and Interim CFO for the RIDOH, he was never an employee of the Office of the Governor, but rather he was an employee of the Lieutenant Governor and the RIDOH respectively.

Under the Code of Ethics, a public official may not represent himself or any other person, or act as an expert witness, before any state or municipal agency of which he is a member or by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1)-(3) ("section 5(e)"). A person is defined as individual or a business entity. Section 36-14-2(7). Further, Commission Regulation 520-RICR-00-00-1.5.5 State Executive/Administrative Revolving Door (36-14-5015) ("Regulation 1.5.5") prohibits a person holding a position in the Governor's Office or the DOA from representing himself or any other person before any other state agency with which he has substantial involvement by reason of his official duties. Regulation 1.5.5(A). The Code of Ethics also prohibits a director or head of a state department, including directors and heads of divisions within the DOA who are appointed by the Governor and/or the Director of the DOA from representing himself or any other person before the Governor's Office or the DOA. Regulation 1.5.5(B). The "revolving door" restrictions within the Code of Ethics were enacted so as to minimize any undue influence a former public official may have in a matter before his former agency or, in the case of an executive branch department head, before the DOA or the Governor's Office.

The above prohibitions apply to the entire agency, including all of its offices, sections, programs, or divisions and last while the public official is serving and for a period of one year thereafter. Section 36-14-5(e)(4); Regulation 1.5.5 (A)(3) & (B)(3). See A.O. 2019-72 (opining that the Director of Administration for the State of Rhode Island was prohibited by the Code of Ethics from representing himself or his private employer before the Office of the Governor, the Department of Administration and its divisions, all agencies within the Executive Branch of Government with which he had "substantial involvement" as defined by the Code of Ethics, and all state or municipal boards and/or commissions on which he personally served or had appointed a designee to serve in his place, until the expiration of one year after leaving his public position); A.O. 2017-4 (opining that a former Deputy Budget Officer in the Office of Management and Budget, a division of the Department of Administration ("DOA") was prohibited by the Code of Ethics from representing his new private employer, the Rhode Island League of Cities and Towns,

before the Office of the Governor, the DOA and its divisions, including the Office of Management and Budget, as well as any other state agencies with which he had substantial involvement as part of his prior public duties, until the expiration of one year after leaving his public position); A.O. 2016-14 (opining that a retiring engineer with the Department of Administration was not prohibited from engaging in private employment as a structural engineer provided that he did not represent his private clients before the Department of Administration or its divisions for one year after leaving state service).

Additionally, sections 36-14-5(c) and (d) prohibit the use and/or disclosure of confidential information acquired by an official or employee during the course of, or by reason of, his official employment, particularly for the purpose of obtaining financial gain.

Here, the Petitioner was the Chief of Staff to the Lieutenant Governor, an office that is separate and apart from that of the Governor, and later hired as the Interim CFO for the RIDOH by the Director of the RIDOH. Additionally, the Petitioner states that he was not an employee of the Governor during the aforementioned periods of his employment with the Lieutenant Governor and the RIDOH. Therefore, given that the Petitioner was not part of the Governor's Office, was not a person holding a position in the DOA, and was not a director or head of a state department, the provisions of Regulation 1.5.5 are inapplicable under these circumstances.

However, section 5(e) of the Code of Ethics prohibits the Petitioner from representing himself or others, including the League, before the Office of the Lieutenant Governor and the RIDOH including all of their offices, sections, programs, or divisions, until the expiration of one year following his departure from each of his respective state positions. Activities that would constitute representation are generally interactions involving the presentation of information or arguments before either of the state agencies by which the Petitioner was employed for the purpose of influencing the judgment of either of those agencies in favor of the Petitioner, the League or its members, and/or others. See Commission Regulation 520-RICR-00-00-1.1.4(A) Representing Oneself or Others, Defined (36-14-5016). On the other hand, contacts involving purely personal or ministerial matters that do not involve a public agency's discretion or decision-making are not prohibited. The Petitioner is cautioned that prohibited interactions could occur at a restaurant, on the phone, in an email or in any social or political gathering. It is the content of a discussion, rather than its venue, that is most relevant in applying the Code of Ethics' revolving door/post-employment restrictions.

Notwithstanding the above prohibitions, the Code of Ethics does not prohibit the Petitioner from lobbying or representing himself or others before other state agencies including, but not limited to, the General Assembly, the Office of the Governor, and other state agencies under the control or appointing authority of the Governor. However, consistent with sections 36-14-5(c) and (d) of the Code of Ethics, the Petitioner may not use and/or disclose confidential information acquired by the Petitioner during the course of, or by reason of, his official employment, particularly for the purpose of obtaining financial gain. Until the expiration of one year following the termination of his public employment respectively in each of his positions, the Petitioner is encouraged to continue consulting with the Ethics Commission, as needed, as to the Code of Ethics' potential application to his interactions with state agencies.

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(7)

§ 36-14-5(c)

§ 36-14-5(d)

§ 36-14-5(e)

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

520-RICR-00-00-1.5.5 State Executive/Administrative Revolving Door (36-14-5015)

Related Advisory Opinions:

A.O. 2019-72

A.O. 2017-4

A.O. 2016-14

Keywords:

Post-Employment

Revolving Door

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 28, 2022

Re: Diane Harrison

QUESTION PRESENTED:

The Petitioner, a member of the Jamestown Planning Commission, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in Planning Commission discussions and voting relative to a proposed plan to develop affordable housing units in the Town of Jamestown, given that authorized representatives of the Conanicut Island Land Trust, a private organization for which the Petitioner previously performed paid work but currently provides volunteer services, are expected to provide comment on the proposed plan during public hearings of the Planning Commission.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Jamestown Planning Commission, a municipal appointed position, is not prohibited by the Code of Ethics from participating in Planning Commission discussions and voting relative to a proposed plan to develop affordable housing units in the Town of Jamestown, notwithstanding that authorized representatives of the Conanicut Island Land Trust, a private organization for which the Petitioner has previously performed paid work but currently provides volunteer services, are expected to provide comment on the proposed plan during public hearings of the Planning Commission.

The Petitioner is a member of the Town of Jamestown ("Town" or "Jamestown") Planning Commission ("Planning Commission"), having been appointed to serve in that capacity by the Jamestown Town Council in February 2022. The Petitioner states that the Planning Commission is composed of seven members who vote on a variety of Town planning issues, including affordable housing, public facilities planning, environmental conservation, and community and economic development.

The Petitioner represents that there is currently pending before the Planning Commission a proposal by Church Community Housing Corporation ("CCHC"), a nonprofit developer based in Newport, for the development of affordable housing units on Carr Lane in Jamestown on property that is currently owned by the Town and has an intended use for conservation and/or affordable housing ("subject property" or "Carr Lane"). The Petitioner further represents that the subject property is located in a watershed area, which means that the land feeds into the reservoir and is therefore considered environmentally fragile. The Petitioner explains that watershed areas in Jamestown allow for one home to be located per five acres of land. She further explains that the

subject property currently contains one single-family home located on 6.3 acres. The Petitioner states that the CCHC has proposed preserving five acres of the subject property, and selling the existing home at market value in order to fund the construction of two additional single-family homes on the subject property, resulting in the location of three single-family homes on 1.3 acres, at least two of which would be designated as affordable housing. She adds that the CCHC would be required to seek approval for numerous variances in order to achieve this.

The Petitioner states that she learned by reading an article in the local newspaper that the Conanicut Island Land Trust ("Land Trust") is opposed to the proposed development of affordable housing on the subject property. The Land Trust is a private nonprofit organization that promotes the preservation of natural resources in Jamestown.¹ The Petitioner further states that, while she is not now, nor has she ever been, a member of the Land Trust, she has assisted the Land Trust with the creation of an annual appeal mailer since 2016. She explains that the appeal mailers are intended to raise money for the Land Trust and that they are mailed each year to approximately two thousand people, including current Land Trust members being asked to renew their membership and to a number of Jamestown residents in an effort to solicit donations. The Petitioner states that, from 2016 through 2019, she billed the Land Trust at a discounted rate for her graphic design of the appeal mailers; whereas, from 2020 through the present, she has donated her graphic design services to the Land Trust. The Petitioner represents that she intends to continue to volunteer her services to assist the Land Trust with that organization's annual fundraising efforts..

The Petitioner anticipates that an authorized representative of the Land Trust will appear before the Planning Commission in the near future to offer public comment on the proposed development of affordable housing on Carr Lane. She explains that the Land Trust is not an abutter to the subject property; nor did the Land Trust receive any notices from the Town regarding any hearings associated with the proposed project. The Petitioner adds that the Land Trust is involved only in its capacity as an organization concerned with the impact of the proposed project on the Town's watershed, which is consistent with the Land Trust's mission. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in Planning Commission discussions and voting relative to the proposed plan to develop affordable housing units on Carr Lane.

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 her 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 has reason to believe or expect that she, any person within her family, 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). Additionally, the Code of Ethics prohibits a public official from using her public office or confidential information received through her public office to obtain financial gain for herself, 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). Under the Code of Ethics, a public official must also recuse from participation in any matter where

¹ <https://conanicutlandtrust.org> (last visited on June 8, 2022).

her business associate or employer, or a person authorized by her business associate or employer, appears or presents evidence or arguments before her municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) & (3) Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1").

The Ethics Commission has consistently required public officials to recuse themselves from consideration of matters under circumstances where the public official had an ongoing business relationship with an individual or entity that was appearing before his or her public body. See, e.g., A.O. 2016-45 (opining that a member of the Tiverton Planning Board ("Planning Board") was prohibited from participating in Planning Board discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects, often referred work and clients to each other, and would continue to refer work and clients to each other); A.O. 2005-64 (opining that a member of the Burrillville Redevelopment Agency ("Agency") could not participate in discussions or votes on matters coming before the Agency regarding a nonprofit developer's request for approval of a project, given that the petitioner was a partner in an accounting firm that provided accounting services to that developer on a continuing basis).

In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, and/or whether there exists an anticipated future relationship between the parties. See, e.g., AO 2010-16 (opining that a member of the East Greenwich Planning Board ("EGPB") who in his private capacity was the publisher of a local news and information website, was required to recuse when a business associate appeared before the EGPB, specifically, if the business associate then-currently advertised on the petitioner's website, had outstanding accounts, or when there was an anticipated future relationship between the parties).

However, in prior advisory opinions issued, the Ethics Commission has determined that public officials who made annual contributions and volunteered their services to private organizations, but who were neither officers nor members of the Board of Directors for those organizations, and who did not hold any type of leadership position that would have allowed them to affect the financial objectives of those organizations, were not business associates of those organizations. For example, in Advisory Opinion 2014-29, the Ethics Commission opined that a member of the North Smithfield Planning Board ("NSPB"), who was also a general, non-voting member of the North Smithfield Land Trust ("NSLT"), a private nonprofit entity, was not required by the Code of Ethics to recuse from participating in NSPB matters relating to the NSLT, notwithstanding that the petitioner made annual contributions and participated in a variety of volunteer activities for the NSLT, including property clean-up, trail clearing, fundraising, education, and attending NSLT meetings. The Ethics Commission determined that the petitioner's status as a volunteer, member, and contributor to the NSLT did not constitute a business associate relationship as that term is defined in the Code of Ethics, because the petitioner did not hold a leadership position that would have allowed him to affect the financial objectives of the NSLT. See also A.O. 2008-35 (opining that a Tiverton Zoning Board ("TZB") member's general membership and annual contributions to the Tiverton Land Trust ("TLT"), a private nonprofit organization, did not constitute a business associate relationship with the TLT and, thus, she was not required to recuse from TZB matters

involving the TLT); A.O. 2002-4 (opining that a Burrillville Budget Board member could participate in the town's budgetary process relating to the Jesse M. Smith Memorial Library given that, as an unpaid volunteer, the petitioner was not a business associate of the library).

Here, the Petitioner states that she has assisted the Land Trust with the creation of an annual appeal mailer since 2016, has been doing so on a voluntary basis and without compensation since 2020, and that she intends to continue to volunteer her services to assist the Land Trust with that organization's annual fundraising efforts in the future. Consistent with the advisory opinions cited above, these representations by the Petitioner do not evidence that the Petitioner and the Land Trust are business associates under the Code of Ethics. Therefore, Regulation 1.2.1(A)(2) does not require the Petitioner to recuse herself from participating in matters before the Planning Commission when an authorized representative of the Land Trust appears to present evidence or arguments before the Planning Commission.

Even if the Petitioner were to be considered a business associate of the Land Trust, Regulation 1.2.1(B)(2) contains an exception whereby a person subject to the Code of Ethics is not required to recuse herself when her business associate or employer, or a person authorized by her business associate or employer to appear on behalf of her business associate or employer, is before her 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 or employer is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion. This exception focuses on unique situations, not otherwise contemplated by Regulation 1.2.1(A), where a public official's business associate or employer appears or presents evidence before the public official's agency on a matter in which the person appearing has no financial interest and is not otherwise a party or participant.

In Advisory Opinion 2021-6, the Ethics Commission opined that a member of the North Smithfield Planning Board was not prohibited by the Code of Ethics from participating in planning board discussions and voting relative to a particular solar project application, notwithstanding that representatives of the North Smithfield Heritage Association ("NSHA"), a private nonprofit organization for which the petitioner served as a member of the Board of Directors and its President had offered, and were likely to again offer, public comment on the application during public hearings of the planning board, provided that the requirements of Regulation 1.2.1(B)(2) were satisfied. See also A.O. 2015-34 (opining that a member of the Westerly Planning Board was not prohibited by the Code of Ethics from participating in the planning board's consideration of a major land development application, notwithstanding that the petitioner was a member of the Board of Directors of Greater North End Community Development, Inc. ("North End"), and that her fellow board members, or other representatives of that organization, were likely to provide comment during the public hearing for that application, under circumstances where the petitioner's business associates were not parties or participants in the application; did not own property within 200 feet of the perimeter of the subject property; and did not have any financial interest in the outcome of the application).

Here, the Petitioner represents that the Land Trust is not a party or participant in the proposed development of affordable housing on Carr Lane; is not an abutter to the subject property; and is

involved only in its capacity as an organization concerned with the impact of the proposed project on the Town's watershed. Further, the appearance by the Land Trust or its authorized representative is anticipated during a period of public comment in which all members of the public will have an equal opportunity to comment. In summary, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not required to recuse herself if the Conanicut Island Land Trust, or its authorized representative, appears before the Jamestown Planning Commission, because the Petitioner and the Land Trust are not business associates. Further, even if they were business associates, the appearance before the Planning Board by the Land Trust or its authorized representative would be during a period of public comment consistent with the provisions of Regulation 1.2.1(B)(2).

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)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2021-6

A.O. 2016-45

A.O. 2015-34

A.O. 2014-29

A.O. 2010-16

A.O. 2008-35

A.O. 2005-64

A.O. 2002-4

Keywords:

Business Associate

Public Comment