

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-20

Approved: 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 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(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