

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No.2022-23

Approval: August 16, 2022

**Re: Jo Anne Santos**

### **QUESTION PRESENTED:**

The Petitioner, the Tax Collector for the Town of Charlestown, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from simultaneously serving as the part-time Tax Collector for the Charlestown Fire District, a quasi-public municipal appointed position.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Tax Collector for the Town of Charlestown, a municipal appointed position, is not prohibited by the Code of Ethics from simultaneously serving as the part-time Tax Collector for the Charlestown Fire District, a quasi-public municipal appointed position.

The Petitioner is the Tax Collector for the Town of Charlestown (“Charlestown Tax Collector”), having served in that position since her appointment by the Charlestown Town Council in 1996. She states that her normal working hours are Monday through Friday, 8:30 a.m. to 4:30 p.m. The Petitioner represents that her duties include, among others, the following: preparation and collection of town taxes; supervision of town Tax Sales; familiarity with the General Laws of Rhode Island pertaining to tax collection; depositing funds; collecting delinquent taxes; blocking motor vehicle registrations due to delinquencies; providing tax information to banks, title companies, and individuals; and verifying that all taxes are paid prior to issuing a business license or renewal.

The Petitioner states that the Town of Charlestown (“Charlestown” or “Town”) has four different fire districts,<sup>1</sup> one of which is the Charlestown Fire District (“Fire District”).<sup>2</sup> She represents that the Fire District is governed by a five-member Board of Engineers elected by the Fire District taxpayers. The Petitioner states that the Fire District has its own Tax Collector (“Fire District Tax Collector”), appointed by the Board of Engineers. The Petitioner further states that the current

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<sup>1</sup> The Petitioner informs that the four Fire Districts are Charlestown Fire District, Dunne’s Corners Fire District, Shady Harbor Fire District, and Central Beach Fire District.

<sup>2</sup> “The Charlestown Fire District was formed through legislation in 1974. The [Fire] District was given the authority to provide for fire protection and other emergencies in the portion of Charlestown not covered by the Dunns Corners Fire District.” <https://www.charlestownfd.org/about> (last accessed July 27, 2022).

Fire District Tax Collector is retiring soon and the Fire District has inquired of the Petitioner whether she would be interested in serving as the interim Fire District Tax Collector, with the possibility of appointment to that position permanently. She represents that the Fire District Tax Collector position is part-time, and has historically required eight to ten work hours per week, on Wednesday and Saturday evenings.<sup>3</sup> The Petitioner explains that the Fire District Tax Collector is assisted by an office manager, who is physically present in the Fire District's office during normal working hours. The Petitioner states that, if appointed, she will perform her duties as Fire District Tax Collector outside of her normal working hours as Charlestown Tax Collector, during the evening or on weekends. She further states that the duties of the Fire District Tax Collector are similar to those of the Charlestown Tax Collector, but on a smaller scale,<sup>4</sup> and pertain only to taxes collected by the Fire District and not by the Town. Lastly, the Petitioner states that the Fire District operates separate and apart from the Town and that the Town does not subsidize the Fire District. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from simultaneously serving as the Charlestown Tax Collector and as the Fire District Tax Collector.

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 substantial conflict with the proper discharge of her 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, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). A business is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted." Section 36-14-2(2). 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). The Ethics Commission has consistently concluded that the Code of Ethics does not consider public entities "businesses" or the relationship between a public official and a public body, such as a state, municipal, or quasi-municipal agency, to be that of "business associates." See, e.g., A.O. 2014-23 (opining that neither the Rhode Island Board of Education Council on Elementary and Secondary Education ("CESE") nor Trinity Academy for the Performing Arts ("TAPA") was considered a "business" under the Code of Ethics and, therefore, the petitioner's memberships on CESE and TAPA did not constitute business associations with those bodies).

Further, a public official is prohibited 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

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<sup>3</sup> The Charlestown Fire District describes the tax collector's office as "administered by a part time tax collector and assistant," and "[b]ecause of the part time staffing calls to the office are directed to an answering machine." <https://www.charlestownfd.org/tax-collector> (last accessed July 27, 2022). Members of the public are also encouraged to schedule an appointment to meet the Tax Collector ahead of time, given that the Fire District Tax Collector is in the office very limited number of hours. See id.

<sup>4</sup> The Fire District is one of four fire districts servicing the Town and, as such, has jurisdiction over only a portion of the properties in the Town.

36-14-5(d). Finally, a public official may not accept other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of her official duties. Section 36-14-5(b).

In prior advisory opinions, the Ethics Commission has consistently concluded that the Code of Ethics does not create an absolute bar against a person's simultaneous service in two different governmental entities, even if they are within the same municipality. Rather, the Ethics Commission has opined that such 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 petitioner carrying out his duties in the public interest.

In Advisory Opinion 2000-54, for example, the Ethics Commission opined that a petitioner could simultaneously serve as the Tax Assessor for the Town of Charlestown and as the Tax Collector/Assessor for Dunn's Corners Fire District, which serviced part of the Town of Charlestown. There, the only overlap recognized between the duties for those positions was that the taxes collected by the Tax Assessor/Collector for Dunn's Corners Fire District were based on property evaluations set by the Charlestown Town Assessor. The Ethics Commission noted that while there might be overlap in the petitioner's public roles, a substantial conflict of interest was not apparent by the petitioner holding the two positions. Also, in Advisory Opinion 2002-53, the Ethics Commission opined that a clerk for the Coventry Tax Collector could simultaneously serve part-time as the Tax Collector for Hopkins Hill Fire District, one of the seven fire districts in Coventry, given that, while there could be an overlap in the duties, a substantial conflict did not exist. That petitioner was required to recuse from participation and voting on matters financially impacting her spouse who was the Fire District's Fire Chief. See also A.O. 2017-15 (opining that the Interim Town Manager for the Town of New Shoreham who was also the Chairperson of the New Shoreham Library Board of Trustees was not prohibited by the Code of Ethics from simultaneously serving in both positions).

Here, the Petitioner's duties as Tax Collector for the Town and as part-time Tax Collector for the Fire District, although similar in nature and pertaining to taxation of the same properties, are separate and distinct. Further, the Petitioner represents that the Fire District operates separate and apart from the Town and that the Town does not subsidize the Fire District. The Petitioner also states that she will perform her part-time duties as the Fire District Tax Collector outside of her normal working hours as the Charlestown Tax Collector. Thus, based on the facts as represented by the Petitioner, there is no indication that serving in both capacities would create a substantial conflict with respect to carrying out her duties in the public interest in either role. Nor is there any indication that her simultaneous service in both positions would impair the Petitioner's independence of judgment as to her public responsibilities in either position, or require her to disclose confidential information acquired by her in the course of her official duties in either role.

Accordingly, based on the facts as represented by the Petitioner, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from simultaneously serving as the Tax Collector for the Town and as the part-time Tax Collector for the Fire District on an interim or permanent basis, provided that she performs her Fire District duties on her own time and without the use of Town equipment or resources, and *vice versa*. The Petitioner is cautioned, however,

that if any particular matter should arise in either of these positions that would financially impact the Petitioner, any person within her family, her business associate or her employer, then the Petitioner must either recuse from participation and/or from taking official action on such matter pursuant to section 34-14-6, or seek further guidance from the Ethics Commission.

**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(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 34-14-6

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2017-15

A.O. 2015-14

A.O. 2014-23

A.O. 2002-53

A.O. 2000-54

Keywords:

Dual Public Roles