



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

11th Meeting

DATE: Tuesday, October 18, 2022

TIME: 10:00 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 September 20, 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.) Financial Disclosure; and
 - e.) Ethics Administration/Office Update.
4. Advisory Opinions.
 - a.) Kristen Danusis, the Director of School and District Improvement at the Rhode Island Department of Education, who also serves as a member of the Coventry School Building Committee, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in the School Building Committee's process relative to its submission of a proposal to the Department of Education seeking funding for capital improvement projects for school buildings located in the Town of Coventry. [Staff Attorney Popova Papa]

- b.) The Honorable Mark E. Liberati, a Jamestown Probate Judge, who in his private capacity is a practicing attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing a private client before the Jamestown Town Council, given that the Town Council is the appointing authority for the Probate Judge position. [Staff Attorney Popova Papa]
 - c.) Katie Alijewicz, the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to her current private employment as a Senior Consultant with the Public Consulting Group. [Staff Attorney Radiches]
 - d.) Charles A. Collins, Jr., a member of the Scituate Budget Committee, who is also a member of the Scituate Housing Authority, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from continuing to serve in either position if he accepts an offer of private employment from First Student, Inc., the busing company with which the Scituate School Committee/Scituate School Department currently contracts for services. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on September 20, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Dan Patterson, Complaint No. 2022-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Stephen P. Mattscheck, Complaint No. 2022-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on October 18, 2022.
7. Report on actions taken in Executive Session.
8. New Business proposed for future Commission agendas and general comments from the Commission.
9. 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 October 13, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 18, 2022

Re: Kristen Danusis

QUESTION PRESENTED:

The Petitioner, the Director of School and District Improvement at the Rhode Island Department of Education, a state employee position, who also serves as a member of the Coventry School Building Committee, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in the School Building Committee's process relative to its submission of a proposal to the Department of Education seeking funding for capital improvement projects for school buildings located in the Town of Coventry.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Director of School and District Improvement at the Rhode Island Department of Education, a state employee position, who also serves as a member of the Coventry School Building Committee, a municipal appointed position, is not prohibited by the Code of Ethics from participating in the School Building Committee's process relative to its submission of a proposal to the Department of Education seeking funding for capital improvement projects for school buildings located in the Town of Coventry.

The Petitioner is the Director of the Office of School and District Improvement at the Rhode Island Department of Education ("RIDE"). She represents that her duties and those of her department are to oversee all schools in Rhode Island that are identified by RIDE as needing comprehensive support and improvement, to provide those schools with strategic planning and programing support, and to review their academic goals and the proposed ways to achieve those goals.

The Petitioner represents that she was recently appointed by the Coventry Town Council ("Town Council") to the Coventry School Building Committee ("School Building Committee"). She explains that she serves on the School Building Committee in her capacity as a resident of the Town of Coventry ("Coventry" or "Town") and not as an employee of RIDE, and that all School Building Committee meetings are conducted outside of her normal working hours at RIDE. The Petitioner states that the Town is in the process of submitting a proposal to RIDE seeking funding for school capital improvement projects ("proposal") and that her role on the School Building Committee is to assist in the process. She represents that the proposal is created by the School Building Committee and presented to the Coventry School Committee for approval,

which in turn presents the proposal to the Town Council for final review and approval. The approved proposal is then submitted to RIDE by the School Building Committee.

The Petitioner explains that the portfolio of schools that she oversees as an employee of RIDE includes the neediest schools in the state and that Coventry schools are not in that category. She states that facilities funding requests, such as the one being proposed by the School Building Committee, are not reviewed by her RIDE department but, rather, by RIDE's School Building Authority department, of which she is not part and over which she has no supervisory authority. The Petitioner notes that, as an employee of RIDE, she does review some requests for facilities funding, but only those relative to COVID Pandemic relief funding for facilities upgrades. She reiterates, however, that the Coventry School District is not one of the districts within her purview.

The Petitioner states that, in order to avoid even the appearance of impropriety, should School Building Committee members have to appear before RIDE or meet with RIDE employees relative to the proposal, she would refrain from appearing before RIDE or attending meetings with RIDE employees. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in the School Building Committee's process relative to the submission of its proposal to RIDE.

Under the Code of Ethics, a public official or employee 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 or employee will have an interest that is in substantial conflict with her official duties if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of her official 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).

Further, the Code of Ethics prohibits a public official or employee from representing herself or any other person, or authorizing another person to appear on her behalf, before a state or municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Section 36-14-5(e)(1) & (2) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). A person represents herself or another person before an agency when she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency. Section 36-14-2(12) & (13); Regulation 1.1.4.

Additionally, a public official or employee 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 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 and by reason of her official duties. Section 36-14-5(b).

Here, the Petitioner represents that facilities funding applications, such as the School Building Committee's proposal, are reviewed by the School Building Authority and not by her department at RIDE. Therefore, the prohibitions of sections 36-14-5(a) and 36-14-7(a) of the Code of Ethics are inapplicable under the circumstances, given that the Petitioner would not be taking any action in her official capacity as a state employee relating to the proposal.

Moreover, 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 or municipal agency, to be that of "business associates." See, e.g., A.O. 2018-40 (opining that a member of the Rhode Island Scenic Roadways Board ("SRB"), who also served as the Executive Director of the East Providence Waterfront Special Development District Commission ("Waterfront Commission"), was not prohibited from participating in the SRB's discussions and voting to approve aesthetic development along Veterans Memorial Parkway, notwithstanding that the Waterfront Commission was responsible for approving structural developments in areas that abut Veterans Memorial Parkway, because neither the SRB nor the Waterfront Commission were considered to be "businesses" or "business associates" of the petitioner); 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); A.O. 2007-13 (opining that the Director of the Quonset Development Corporation ("QDC"), who was also a member of the North Kingstown Town Council, could participate in QDC's decisions and vote on a development proposal within North Kingstown pending before the QDC because, while the Code of Ethics would prohibit the petitioner from making decisions as a member of the QDC that would financially impact any business associate or any business by which he was employed or which he represented, the Town was not considered under the Code of Ethics to be a "business" or a "business associate" of the petitioner). Therefore, here, because neither RIDE, a state agency, nor the School Building Committee, a municipal entity, are considered businesses under the Code of Ethics, the Petitioner's relationship with either of those public entities is not one of business associates. Accordingly, any financial impact associated with the Petitioner's participation in the proposal process, whether upon the School Building Committee or RIDE is not a financial impact upon the Petitioner's business associate.

Similarly, the prohibitions of section 5(e)(1) & (2) and Regulation 1.1.4 are inapplicable under the circumstances as represented by the Petitioner. The submission by the School Building Committee, with the Petitioner's participation,¹ of the proposal to RIDE, is not the Petitioner's representation of herself to RIDE, given that she is representing the School Building Committee and not herself. Nor is the submission of the proposal to RIDE considered a representation by the Petitioner of another "person," because section 36-14-2(7) of the Code of Ethics defines "a

¹ The Petitioner's participation may also include the Petitioner signing, as a member of the School Building Committee, an application to RIDE relative to the proposal.

person” as “an individual or a business entity” and, as described above, the Ethics Commission does not consider public entities to be businesses. Nevertheless, the Ethics Commission acknowledges and commends the Petitioner for her willingness to avoid even the appearance of impropriety by not appearing personally before RIDE to represent the School Building Committee relative to the proposal and to likewise refrain from participating in any potential meetings between RIDE and the School Building Committee on this issue.

Finally, the Petitioner’s public duties in her state and municipal positions appear to be separate and distinct. There is no indication that serving in either one of her public capacities would impair the Petitioner’s independence of judgment as to her responsibilities in her other public role. Accordingly, based on the Petitioner’s representations, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating as a member of the School Building Committee in the proposal process, notwithstanding her employment with RIDE.

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(2)
§ 36-14-2(3)
§ 36-14-2(7)
§ 36-14-2(12)
§ 36-14-2(13)
§ 36-14-5(a)
§ 36-14-5(b)
§ 36-14-5(d)
§ 36-14-5(e)
§ 36-14-7(a)
520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2018-40
A.O. 2014-23
A.O. 2007-13

Keywords:

Business Associate
Dual Public Roles

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 18, 2022

Re: The Honorable Mark E. Liberati

QUESTION PRESENTED:

The Petitioner, a Jamestown Probate Judge, a municipal appointed position, who in his private capacity is a practicing attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing a private client before the Jamestown Town Council, given that the Town Council is the appointing authority for the Probate Judge position.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Jamestown Probate Judge, a municipal appointed position, who in his private capacity is a practicing attorney, is not prohibited by the Code of Ethics from representing a private client before the Jamestown Town Council, notwithstanding that the Town Council is the appointing authority for the Probate Judge position.

The Petitioner is a Probate Judge in the Town of Jamestown, a position to which he was appointed by the Jamestown Town Council ("Town Council") on January 1, 2019. He is currently serving his second consecutive two-year term. The Petitioner states that one of his private clients has asked him for legal representation before the Town Council on a liquor license renewal application. The Petitioner explains that this representation would be unrelated to any matter in which he is involved as Probate Judge and not under the jurisdiction of the Probate Court. The Petitioner represents that his duties as Probate Judge are limited to adjudicating various probate matters outside of the Town Council's jurisdiction, such as decedents' estates, guardianships, and name changes. He states that neither the Probate Court, nor he in his capacity as Probate Judge, has any fiscal or jurisdictional authority over the Town Council. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from representing his client before the Town Council on the liquor license renewal application.

The Code of Ethics prohibits a public official from representing himself or others before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) & (2) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). A person represents himself or another person before an agency when he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency. Section 36-14-2(12) & (13); Regulation 1.1.4. Additionally, Commission Regulation 520-RICR-00-00-1.4.1 Acting as an Attorney for Other than State or Municipality (36-14-5008) ("Regulation 1.4.1") prohibits, among other things, a

municipal appointed or elected official having fiscal or jurisdictional control over a municipal agency from acting as a compensated attorney before that agency in a matter in which the municipality has an interest or is a party.

Furthermore, 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. Section 36-14-5(a) ("section 5(a)"). A substantial conflict of interest exists if a public official 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). The Code of Ethics also prohibits a public official 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) ("section 5(d)"). Finally, the Code of Ethics provides that a public official shall 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) ("section 5(b)").

The Ethics Commission has consistently opined that the Code of Ethics does not prohibit various municipal judges, including probate court judges, from representing clients before other municipal bodies where the municipal judges do not have jurisdiction over such matters in their judicial roles. For example, in Advisory Opinion 96-1, the Ethics Commission opined that a Newport Probate Judge could represent clients before the Newport City Council in matters unrelated to those in which the petitioner was involved as a Probate Judge. The Ethics Commission further opined that the mere fact that a public official appears before his or her appointing authority does not constitute a violation of the Code of Ethics absent additional evidence implicating the specific prohibitions set forth in section 36-14-5. Additionally, the Ethics Commission found that there was no evidence to suggest that the petitioner: 1) would have an unfair advantage before the City Council or other municipal agencies; 2) exercised any sort of fiscal or jurisdictional control over the City Council or another municipal entity; or 3) would use his public position for improper private gain.

Similarly, in Advisory Opinion 2021-49, the Ethics Commission opined that an Associate Judge of the Cranston Municipal Court, who in his private capacity was a practicing attorney, was not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the Cranston City Council, or from representing clients charged with criminal offenses by the Cranston Police Department, provided that the representation was not related to a matter in which the petitioner was involved as an Associate Judge of the Cranston Municipal Court or over which the Cranston Municipal Court had jurisdiction. See also A.O. 2003-71 (opining that a Tiverton Municipal Court Judge could represent private clients before the Tiverton Town Council, the Tiverton Zoning Board of Review, and other municipal bodies, including individuals charged with criminal offenses by the Tiverton Police Department, provided that the representation was not related to a matter in which the petitioner was involved in his capacity as Municipal Court Judge or over which the Tiverton Municipal Court had jurisdiction). Contra A.O. 98-42 (finding, among other things, that an Alternate Woonsocket Municipal Court Judge could not represent individuals charged with

criminal violations by the Woonsocket Police Department while also conducting bail hearings involving members of the Woonsocket Department).

Here, although the Petitioner was appointed to his position as Probate Court Judge by the Town Council, he is not a member or an employee of the Town Council, does not have appointing authority over its members, and does not have any fiscal or jurisdictional control over it. Therefore, the prohibitions set forth in section 5(e) and Regulation 1.4.1 are inapplicable here. Furthermore, the Petitioner's duties as Probate Judge are limited to adjudicating certain probate matters outside of the Town Council's jurisdiction, such as decedents' estates, guardianships, and name changes. Finally, the Petitioner's representation of his client before the Town Council would be on a matter unrelated to any matter in which the Petitioner is involved as Probate Judge or over which the Probate Court has jurisdiction. Thus, the prohibitions found in sections 5(a), 5(b), and 5(d) are also inapplicable. Accordingly, based on the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may represent his client before the Town Council relative to the client's liquor license renewal application.

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(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(e)

§ 36-14-5(d)

§ 36-14-7(a)

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

520-RICR-00-00-1.4.1 Acting as an Attorney for Other than State or Municipality (36-14-5008)

Related Advisory Opinions:

A.O. 2021-49

A.O. 2003-71

A.O. 98-42

A.O. 96-1

Keywords:

Acting as Agent

Private Employment

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 18, 2022

Re: Katie Alijewicz

QUESTION PRESENTED:

The Petitioner, the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services, a state employee position, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to her current private employment as a Senior Consultant with the Public Consulting Group.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services, a state employee position, is prohibited by the Code of Ethics from representing herself or others, including her private employer, or from acting as an expert witness, before the Executive Office of Health and Human Services, or any of its departments, offices, sections, programs or divisions, until the expiration of one year following the date of her severance from state employment. The Petitioner is further prohibited from using or disclosing any confidential information she obtained while working as the Deputy Director of the Medicaid Program to financially benefit herself or her private employer.

The Petitioner is the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services ("EOHHS"), having been employed in that capacity from February 2018 through August 23, 2022. She states that the general function of the EOHHS is to oversee and strategize the public services provided by each of its departments. Those departments include the Department of Children, Youth and Families ("DCYF"); the Department of Health ("DOH"); the Department of Human Services ("DHS"); and the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals ("BHDDH") (collectively, "departments"). The Petitioner further states that the general function of the Medicaid Program is to administer insurance to eligible Rhode Island residents through the coordination of efforts between the EOHHS and its departments. She identifies among her former duties as Deputy Director the oversight of the development of the EOHHS budget and those of its departments, and the implementation of legislation affecting the EOHHS and each of its departments.

The Petitioner states that she began her current employment as a Senior Consultant with the Public Consulting Group ("PCG") on September 6, 2022. She describes the PCG as a private company that works with public sector clients ("state agencies") throughout the United States under contracts

relating to the various missions of those state agencies. The Petitioner, who works in the Aging and Disability Unit of the PCG, describes among her duties the following: drafting responses to Requests for Proposals and, after the PCG is awarded a contract, supporting the solicited work as a project manager and/or subject matter expert on Medicaid policies and processes. She states that project manager duties include providing status updates to state agencies and evaluating options for overcoming obstacles, and that subject matter expert duties include addressing the financial aspects of a particular project undertaken by a state agency. The Petitioner represents that most of the PCG's Rhode Island contracts are with the EOHHS or its departments, but that she is not currently assigned to any Rhode Island contracts. The Petitioner informs that she is not in a position to use confidential information obtained in the course of and by reason of her former employment in her current job, nor would she.

The Petitioner explains that a representative from the PCG has asked her to seek the instant advisory opinion from the Ethics Commission for purposes of determining whether and to what extent the Petitioner might be prohibited from performing on Rhode Island contracts as part of her employment duties at the PCG. It is in the context of these facts that the Petitioner seeks advice from the Ethics Commission regarding the application of the revolving door provisions of the Code of Ethics to her employment with the PCG.

The Code of Ethics prohibits a public employee from representing herself or any other person before any state agency by which she is employed. R.I. Gen. Laws § 36-14-5(e)(1) & (2) ("section 5(e)"). This prohibition extends for a period of one year after the public employee has officially severed her position with the agency. Section 5(e)(4). The "revolving door" language of section 5(e) is designed to both prevent any undue influence that a current employee may have over her agency and colleagues by reason of her employment there, and to minimize any undue influence that a former employee may have over her former agency and colleagues by reason of her past employment there. Under the Code of Ethics, a person represents herself or another person before a state agency if she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in her own favor or in favor of another person. Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). A "person" is defined as an individual or business entity. Section 36-14-2(7).

The prohibitions within section 5(e) are absolute and apply to the entire agency, including all of its offices, sections, programs or divisions. See, e.g., A.O. 2020-7 (opining that the Chief Civil Engineer of the Transportation Planning Division of the Rhode Island Department of Transportation ("RIDOT") was prohibited by the Code of Ethics from preparing plans to be submitted by a private client to RIDOT, including any separate divisions thereof or entities therein, while he was employed by RIDOT and for a period of one year thereafter). Therefore, for purposes of this advisory opinion and the Ethics Commission's determination of the applicability of the relevant sections of the Code of Ethics, the Petitioner's former public employment with the EOHHS will also encompass each of the departments, offices, sections, programs or divisions within that state agency.

The Ethics Commission has issued numerous advisory opinions interpreting section 5(e)(4)'s requirements with respect to former state employees interacting with their former agencies during

the one-year period following the severance of their state employment. For example, the Ethics Commission issued Advisory Opinion 2020-32 to the former Senior Projects Review Coordinator for the Rhode Island Historical Preservation & Heritage Commission, opining that he was prohibited from representing himself or others, including his private employer, or from acting as an expert witness, before the Rhode Island Historical Preservation & Heritage Commission until the expiration of one year following the date of severance from his state employment. That petitioner was further prohibited from using or disclosing any confidential information he obtained while working as the Senior Projects Review Coordinator to financially benefit himself or his private employer. See also A.O. 2020-27 (opining that the former Administrator of Project Management for the Rhode Island Department of Transportation ("RIDOT") was prohibited from representing himself or his private employer, or from acting as an expert witness, before the RIDOT until the expiration of one year after he had officially severed his position with that agency, and that the petitioner was further prohibited from using any confidential information he obtained while working as the Administrator of Project Management to financially benefit himself or his private employer); A.O. 2017-34 (opining that a former Principal Civil Engineer in the Bridge Design Section of the Rhode Island Department of Transportation ("RIDOT"), while not prohibited from working for a private engineering firm upon his retirement, was prohibited by the Code of Ethics from representing himself or others, including his new private employer, or from acting as an expert witness, before the RIDOT for a period of one year following the date of severance from his state employment, and from using any confidential information he obtained while working for the RIDOT for financial gain).

Activities that would constitute representation and/or acting as an expert generally include the presentation of information or arguments for the purpose of influencing the judgment of the agency on matters concerning the Petitioner and/or her new employer. Such prohibited activities include, but are not limited to, signing any responses to Requests for Proposals issued by the EOHHS or any of its departments; and/or attending and participating at meetings between the PCG and the EOHHS or any of its departments relative to the award of a Rhode Island contract to the PCG. The Petitioner is cautioned that prohibited interactions are not limited to business meetings, and could occur at a restaurant, on the phone, in an email or at 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' post-employment revolving door restrictions. On the other hand, contacts involving purely personal or ministerial matters that do not involve discretion or decision-making on the part of the EOHHS or any of its departments are not prohibited.

Here, in consideration of the Petitioner's factual representations, the applicable provisions of the Code of Ethics, and consistent with our past advisory opinions addressing this issue, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing herself or others, including her new private employer, or from acting as an expert witness, before the EOHHS and any of its departments, offices, sections, programs or divisions for a period of one year following the severance of her employment with that agency. Further, the Petitioner may not use any confidential information she obtained while working for the EOHHS to obtain financial gain for herself or her new employer. Lastly, until the expiration of one year following the date of her departure from state service, the Petitioner is advised, when in doubt, to seek further guidance from the Ethics Commission regarding the Code of Ethics' potential application to her 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)

§ 36-14-2(12)

§ 36-14-2 (13)

§ 36-14-5(e)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5006)

Related Advisory Opinions:

A.O. 2020-32

A.O. 2020-27

A.O. 2020-7

A.O. 2017-34

Keywords:

Revolving Door

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 18, 2022

Re: Charles A. Collins, Jr.

QUESTION PRESENTED:

The Petitioner, a member of the Scituate Budget Committee, a municipal appointed position, who is also a member of the Scituate Housing Authority, also a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from continuing to serve in either position if he accepts an offer of private employment from First Student, Inc., the bussing company with which the Scituate School Committee/Scituate School Department currently contracts for services.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Scituate Budget Committee, a municipal appointed position, who is also a member of the Scituate Housing Authority, also a municipal appointed position, is not prohibited by the Code of Ethics from continuing to serve in either position if he accepts an offer of private employment from First Student, Inc., the bussing company with which the Scituate School Committee/Scituate School Department currently contracts for services, subject to the parameters outlined herein.

The Petitioner is a member of the Scituate Budget Committee ("Budget Committee"), having been appointed to that position by the Scituate Town Council ("Town Council") in 2006, and having served continuously since. The Petitioner states that the Budget Committee is tasked with advising the Town Council on matters related to the creation of Scituate's town budget and that Budget Committee members receive no financial benefit or remuneration for their service. He adds that all members of the Town Council are also members of the Budget Committee.

The Petitioner is also a member of the Scituate Housing Authority ("Housing Authority"), having been appointed to that position by the Town Council in 2021, and having served continuously since. The Petitioner states that the Housing Authority is tasked with operating Scituate's elderly housing complex and that Housing Authority members receive no financial benefit or remuneration for their service. He adds that he serves as the Chairperson for the Housing Authority and, as such, his duties include implementing policy and hiring the Housing Authority Director ("Director") to run the day-to-day Housing Authority operations. The Petitioner states that he and the Director, with the consent of the other Housing Authority members, hire vendors to provide services to the Housing Authority.

The Petitioner represents that he has been offered the position of bus yard manager ("manager") by First Student, Inc. ("First Student"), the private bussing company with which the Scituate School Committee/Scituate School Department (collectively, "School Department") currently contracts for services. He further represents that his duties as manager would include communicating with the parents of students, assisting with the assignment of bus routes, and attending to general day-to-day operations. The Petitioner explains that the School Department is responsible for selecting the provider of bussing services for students and is also responsible for executing the contract for those services on behalf of the Town of Scituate ("Town" or "Scituate").¹ The Petitioner explains that neither the Budget Committee nor the Housing Authority has any involvement in the selection and/or compensation of the vendor that provides student bussing services to the Town. He clarifies that, to the extent that the cost of bussing appears as a line item on a budget proposal submitted by the School Department to the Budget Committee, neither the Budget Committee nor the Town Council would address a budgetary line item, but would vote only to approve or reject an entire budget as a whole.² It is in the context of these representations that the Petitioner seeks advice from the Ethics Commission regarding whether he may continue to serve on the Budget Committee and the Housing Authority if he accepts the offer from First Student to become its bus yard manager.³

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that 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 has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Also, section 36-14-5(b) of the Code of Ethics provides that a public official may not accept other employment which would impair his independence of judgment or require him to disclose confidential information acquired in the course of and by reason on his official duties. Additionally, a public official shall not use his public office or confidential information received through his public office to obtain financial gain for himself or for a business by which he is employed or which he represents. Section 36-14-5(d). Finally, a public official must recuse from participation in a matter when his business associate or employer appears or presents evidence or arguments before his municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002).

¹ The Petitioner states that the bussing contract is reviewed by the School Department every five years.

² The Petitioner states that the citizens of Scituate ultimately decide at the annual town meeting whether to approve or reject a budget.

³ The Petitioner represents that he is currently a candidate for the Scituate Town Council, on which he previously served from 2006 through 2020. In his letter to the Ethics Commission requesting this advisory opinion, the Petitioner also inquired regarding whether, if elected to the Town Council, his private employment by First Student would present an impermissible conflict with his Town Council duties that would preclude his continued employment with First Student. Because the Petitioner has yet to be elected to the Town Council, any question about his limitations in that role relative to his private employment are hypothetical at this time. For that reason, the Ethics Commission suggests that, if and when he is elected to the Town Council, the Petitioner submit another request for an advisory opinion relative to a specific set of facts and circumstances for which an analysis is required.

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited by the Code of Ethics from holding private positions in addition to their primary public employment or positions subject, however, to certain restrictions, and provided that their private positions will neither impair their independence of judgment relative to their public duties nor create an interest in substantial conflict with those duties. The Ethics Commission has also required that (1) the public officials or employees' public duties are not directly related to their private duties; (2) they complete their private work outside of their normal public working hours; (3) they do not appear before their own public agencies; (4) their private work is performed without the use of public resources; and (5) they do not use their public positions to solicit business or customers. See, e.g., 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 employment would be in substantial conflict with the exercise of his public duties as a member of the Budget Committee or as a member of the Housing Authority, given that his public duties with regard to each of those positions appear to be separate and distinct from the duties associated with his pending private employment. Accordingly, the Code of Ethics does not prohibit the Petitioner from continuing to serve in either position if he accepts the offer of employment from First Student, provided that all work is performed on his own time and without the use of public resources or confidential information obtained as part of his public duties. The Petitioner is advised to either recuse himself or seek further guidance from the Ethics Commission if matters relating to or impacting First Student or his private employment come before him in either of his public positions.⁴ The Petitioner shall further recuse from participating in discussions and decision-making in matters where First Student, or someone authorized by that entity to act on its behalf, appears before the Petitioner in either of his public positions. Any notice of recusal must be filed with the Ethics Commission consistent with section 36-14-6.

⁴ Although the Code of Ethics prohibits the Petitioner from taking any official action that would financially impact his private employer or himself, the Petitioner is not prohibited from participating in discussions and a vote by the Budget Committee on the Town Budget as a whole. See, e.g., A.O. 2020-31 (opining that a legislator serving as a member of the Rhode Island Senate could participate in Senate discussions and voting relative to the FY2021 State Budget, but that he must recuse from participating in any discussions or voting on particular line items or budget amendments that could financially impact his private employer). In the event that a specific budget amendment or line item that addresses or impacts him or his employer is ever the subject of discussions and voting by the Budget Committee, the Petitioner is required to recuse from participating in those discussions and voting and must file a notice of recusal with the Town and the Ethics Commission consistent with the provisions of section 36-14-6.

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:

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2020-31

A.O. 2019-27

A.O. 2016-37

Keywords:

Private Employment