

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2022-28

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 programming 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,<sup>1</sup> 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 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

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<sup>1</sup> 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.

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 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)

§ 36-14-2(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