

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-31

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 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:

§ 36-14-5(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