



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

13th Meeting

DATE: Tuesday, December 13, 2022

TIME: 9:00 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 November 15, 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.) Jonathan Pascua, a firefighter with the Coventry Fire District, also known as the Anthony Fire District, who was recently elected to serve as a member of the Coventry Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving in both positions. [Staff Attorney Popova Papa]

- b.) James Restivo, a member of the South Kingstown School Committee, whose spouse is employed by the South Kingstown School District as a teaching assistant, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon his ability to participate in School Committee discussions and voting relative to the School District budget and to the contract negotiations with the labor union representing the teaching assistants. [Staff Attorney Popova Papa]
 - c.) Bradford A. Mayer, a member of the Coventry School Committee, whose spouse is employed by the Coventry School Department as a school nurse-teacher, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon his ability to participate in School Committee discussions and voting relative to the School Department's budget and to the contract negotiations with the local teachers' labor union, of which his spouse is a member. [Staff Attorney Popova Papa]
 - d.) Mark Aramli, a member of the Newport City Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Zoning Board of Review, a municipal agency over which the City Council has appointing authority, in order to pursue an appeal that was filed several months before he became a candidate for public office. [Staff Attorney Radiches]
 - e.) William L. Patenaude, an Environmental Engineer III with the Rhode Island Department of Environmental Management, Office of Water Resources Division, requests an advisory opinion regarding whether the Code of Ethics prohibits him from seeking and, if offered, accepting secondary employment as a contract trainer/facilitator for a local private company that offers leadership development, team building, and company culture improvement services to organizations and individuals. [Staff Attorney Radiches]
 - f.) Rebecca Elsing, MA CAGS QMHP, a Supplemental Block Grant Planner for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, requests an advisory opinion regarding whether the Code of Ethics prevents her from working part-time to provide counseling services to members of local municipal police departments. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on November 15, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- b.) In re: Timothy Milisauskas, Complaint No. 2022-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) Motion to return to Open Session.
- 6. Motion to seal minutes of Executive Session held on December 13, 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 December 8, 2022

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

November 15, 2022

The Rhode Island Ethics Commission held its 12th meeting of 2022 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, November 15, 2022, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Marisa A. Quinn, Chair
Kyle P. Palumbo, Secretary
Lauren E. Jones

Matthew D. Strauss
Holly J. Susi

The following Commissioners were not present: Arianne Corrente and Emma L. Peterson.

Also present were Herbert F. DeSimone, Jr., Commission Legal Counsel; Jason Gramitt, Commission Executive Director; Lynne M. Radiches, Staff Attorney/Education Coordinator; Staff Attorneys Teresa Giusti and Teodora Popova Papa; and Commission Investigators Peter J. Mancini, Gary V. Petrarca, and Kevin Santurri.

At 9:09 a.m., the Chair opened the meeting.

The first order of business was:

Approval of minutes of the Open Session held on October 18, 2022.

Upon motion made by Commissioner Susi and duly seconded by Commissioner Jones, it was unanimously

VOTED: To approve the minutes of the Open Session held on October 18, 2022.

The next order of business was:

Director's Report: Status report and updates.

a.) Complaints and investigations pending

There are four complaints pending, including three noticed on today's agenda. Executive Director Gramitt informed that the moratorium for filing complaints ended on Election Day.

b.) Advisory opinions pending

There are five advisory opinions pending, one of which has been noticed for today's

meeting.

c.) Access to Public Records Act requests since last meeting

There were four APRA requests received since the last meeting, three of which were granted within one business day. Executive Director Gramitt informed that one request required more than one day but was still granted within the 10-day required period. He explained that the responsive record was in draft form at the time of the request.

d.) 2021 Financial Disclosure

No updates.

e.) Ethics Administration/Office and Education Updates

Executive Director Gramitt informed that office renovations were largely complete, with only a few remaining items.

In response to Chair Quinn, Executive Director Gramitt stated that he will again reach out to the Governor's office regarding the two Commission vacancies, one of which is a direct appointment by the Governor and the other from a list submitted by the House Minority Leader. Chair Quinn expressed her interest in having the position(s) filled by a person of color and welcomed suggestions. Commissioner Jones proposed that Executive Director Gramitt contact Robert Barge, President of Rhode Island Legal Services, for suggestions. The consensus among the Commissioners was that having a mix of attorneys and non-attorneys has been productive and effective.

The next order of business was:

Advisory Opinions.

The advisory opinion was based on a draft advisory opinion prepared by Commission Staff for review by the Commission and was scheduled as an item on the Open Session Agenda for this date.

The advisory opinion was that of:

Nicole M. Shevory, alternate member of the Newport Zoning Board of Review, requests an advisory opinion regarding whether she qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before her own municipal agency, in order to seek approval of planned renovations to her home.

Staff Attorney Popova Papa presented the Commission Staff recommendation. The Petitioner was not present but had consented to proceeding in her absence. Commissioner Jones queried whether it made a difference in the analysis that any benefits of the relief sought to Unit 1 of the home, which is expected to be rented out after the renovations, are intertwined with those to Unit 2 as represented in the draft opinion. Commissioner Palumbo responded by stating that if the benefits were not intertwined, then arguably they would weigh in favor of a commercial purpose for the property and against granting a hardship exception. Staff Attorney Popova Papa explained

that the benefits to the primary residence and the commercial unit cannot be separated. In response to Commissioner Susi, Staff Attorney Popova Papa explained that the title of the Petitioner's application refers jointly to a request for a "Special Use Permit" and a variance, but the Petitioner is only seeking a variance. Commissioner Susi expressed some concern regarding whether the Petitioner is seeking to change the current use of Unit 1 from a primary residence to a commercial use. Chair Quinn stated that Unit 1 is already used for a commercial purpose. Commissioner Susi queried what the Petitioner would do if she were not permitted by the Code of Ethics to appear before the Zoning Board. Commissioner Palumbo inquired whether the Petitioner's spouse could appear on his own behalf. Legal Counsel DeSimone informed that the prohibition against representing herself before her own municipal agency also applies to the Petitioner's spouse given that his and the Petitioner's interests are jointly impacted.

In response to Commissioner Jones and Chair Quinn, Staff Attorney Popova Papa referred to an opinion with similar facts cited in the draft and explained that the Commission therein opined that prior use of the subject property was a factor in its analysis. Legal Counsel DeSimone stated that the Code does not enumerate the factors that must be examined when considering the applicability of the hardship exception to a set of facts, and the Commission has discretion in what factors to consider in conducting its analysis. In response to Commissioner Jones, Staff Attorney Popova Papa stated that the past opinions in which the Commission has denied a hardship exception mostly relate to purely commercial ventures, such as the AT&T advisory opinion. Executive Director Gramitt added reference to another opinion in which the Commission denied relief to someone who was seeking to sub-develop his property to create a separate development. He informed that since 2000, in matters involving requests for a hardship exception, the Commission has applied a totality of the circumstances analysis with a focus on transparency. Upon motion made by Commissioner Jones and duly seconded by Commissioner Palumbo, it was unanimously

VOTED: To issue an advisory opinion to **Nicole M. Shevory**, alternate member of the Newport Zoning Board of Review.

At 9:35 a.m., upon motion by Commissioner Jones and duly seconded by Commissioner Susi, it was unanimously

VOTED: To go into Executive Session, to wit:

- a.) Motion to approve minutes of the Executive Session held on October 18, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) **In re: Calvin Ellis**, Complaint No. 2022-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) **In re: Richard Nassaney**, Complaint No. 2022-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- d.) **In re: Timothy Milisauskas**, Complaint No. 2022-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

e.) Motion to return to Open Session.

At 10:25 a.m., the Commission reconvened in Open Session.

The next order of business was:

Motion to seal minutes of Executive Session held on November 15, 2022.

Upon motion made by Commissioner Susi and duly seconded by Commissioner Jones, it was unanimously

VOTED: To seal the minutes of the Executive Session held on November 15, 2022.

The next order of business was:

Report on actions taken in Executive Session.

Chair Quinn reported that the Commission took the following actions in Executive Session:

1. Unanimously voted (5-0) to approve the minutes of the Executive Session held on October 18, 2022.
2. Unanimously voted (5-0) in the matter of **In re: Calvin Ellis**, Complaint No. 2022-7, to approve an Informal Resolution and Settlement by which the Ethics Commission imposed a civil penalty of \$500 for violations of the Financial Disclosure Mandate.

Copies of the Informal Resolution and Settlement will be available at the conclusion of the meeting.

3. Unanimously voted (5-0) in the matter of **In re: Richard Nassaney**, Complaint No. 2022-6, to approve an Informal Resolution and Settlement by which the Ethics Commission imposed a civil penalty of \$300 for violation of the Code of Ethics.
4. Unanimously voted (5-0) in the matter of **In re: Timothy Milisauskas**, Complaint No. 2022-5, to enlarge time for investigation by 60 days.
5. Unanimously voted (5-0) to return to Open Session.

The next order of business was:

Election of Officers.

In response to Commissioner Jones, Legal Counsel DeSimone informed that a Commission member may nominate and vote for himself/herself and read the election rules to the Commission. Legal Counsel DeSimone stated that the Commission must take separate votes for each position.

Commissioner Palumbo nominated Marisa A. Quinn as Chairperson. Commissioner Susi commented that Chair Quinn does a wonderful job and serves as a role model. Chair Quinn expressed gratitude and encouraged others to consider serving as officers. She also expressed gratitude to the staff for their hard work and integrity. It was unanimously

VOTED: To elect Marisa A. Quinn as Chairperson.

Commissioner Jones nominated Arianne Corrente as Vice Chairperson. Chair Quinn represented that she recently spoke with Vice Chairperson Corrente who is looking forward to returning. It was unanimously

VOTED: To elect Arianne Corrente as Vice Chairperson.

Chair Quinn nominated Commissioner Palumbo as Secretary. It was unanimously

VOTED: To elect Kyle P. Palumbo as Secretary.

The next order of business was:

**New Business proposed for future Commission agendas and
general comments from the Commission.**

Commissioner Palumbo inquired of the status of financial disclosure reform. Executive Director Gramitt stated that if the Commission is willing to proceed with its current number of members, the staff can prepare the issues to bring to the Commission for discussion and possible rulemaking. Executive Director Gramitt informed that the process will involve multiple meetings and public workshops. In response to Chair Quinn, Executive Director Gramitt stated that there will be discussion of adding or changing relevant definitions where necessary and possible. He explained that the Commission cannot change statutes, but it can amend regulations and the financial disclosure form and instructions sheet. In response to Commissioner Jones, Executive Director Gramitt stated that these discussions will be held in open session. Commissioner Palumbo requested that thoughtful consideration be given to the placement of this discussion on the agenda, given the amount of time that will be involved. Executive Director Gramitt noted that these discussions will begin in the new year given that only one Commission meeting remains for 2022.

At 10:36 a.m., upon motion made by Commissioner Susi and duly seconded by Commissioner Jones, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

Kyle P. Palumbo
Secretary

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 13, 2022

Re: Jonathan Pascua

QUESTION PRESENTED:

The Petitioner, a firefighter with the Coventry Fire District, also known as the Anthony Fire District, a quasi-municipal employee position, who was recently elected to serve as a member of the Coventry Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a firefighter with the Coventry Fire District, also known as the Anthony Fire District, a quasi-municipal employee position, who was recently elected to serve as a member of the Coventry Town Council, is not prohibited by the Code of Ethics from simultaneously serving in both positions.

The Petitioner is employed full-time as a firefighter with the Coventry Fire District, also known as the Anthony Fire District ("Fire District"). The Petitioner states that the Fire District is a quasi-municipal entity that was created by an Act of the General Assembly in 1889 and registered with the Office of the Rhode Island Secretary of State as a Domestic Non-Profit Corporation. The Petitioner further states that Fire District is one of four fire districts serving residents of the Town of Coventry ("Coventry" or "Town") and that the Fire District is not a part of the Coventry town government, but rather an entity that is separate and independent from the Town. The Petitioner represents that the Fire District has its own taxing power and is governed by a Board of Directors elected by the residents of the Fire District. He adds that the Fire District operates on its own budget that is put forth and approved solely by the voters of the Fire District, absent any involvement by the Town. The Petitioner states that the collective bargaining and personnel management of Fire District employees rest solely with the Fire District.

The Petitioner represents that the Town is a municipal entity, the governing body of which is the Coventry Town Council ("Town Council"). He adds that the members of the Town Council are elected by the Town's residents. The Petitioner states that he was elected to the Town Council on November 18, 2022, and is expected to be sworn into office on November 28, 2022. The Petitioner notes that section 3.03 of Coventry's Town Charter prohibits Town Council members from holding, "other public office or employment in the service of the Town of Coventry, the State of Rhode Island, or the government of the United States[.]" It is the Petitioner's understanding that the Fire District, as an independent entity, does not fall within the Town Charter's prohibition on dual office holding. Given this set of facts, the Petitioner seeks guidance regarding whether the

Code of Ethics prohibits him from simultaneously serving as a member of the Town Council and as a firefighter for the Fire District.

At the outset, the Ethics Commission finds it necessary to clarify that the Ethics Commission's jurisdiction applies only to the enactment, application, interpretation, and enforcement of the Rhode Island Code of Ethics. Whether the Petitioner's dual office holding violates the Coventry Town Charter, the Fire District Charter or Bylaws, or any other provision of the law other than what is contained within the Code of Ethics is not for the Ethics Commission to determine. Accordingly, the sole issue before the Ethics Commission is whether the Code of Ethics prohibits the Petitioner from simultaneously holding office as a member of the Town Council and as a firefighter with the Fire District.

Under the Code of Ethics, a public official or employee 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 public official or employee will have an interest that is in substantial conflict with the proper discharge of his 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 or employee's activity, to the public official or employee, his family member, his business associate, or any business by which he is employed or which he 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 or employee is prohibited 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). Finally, a public official or employee may 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 his 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 public agencies, 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 99-149, the Ethics Commission was presented with facts very similar to the ones presented by the instant Petitioner. The petitioner in that advisory opinion sought guidance regarding whether the Code of Ethics prohibited him from seeking election to and serving on the Coventry Town Council, given his employment as a firefighter by the Washington Fire District. The Ethics Commission opined that the petitioner was not prohibited from simultaneously serving in both positions, even though his service in those positions was within the same municipality. Also, in Advisory Opinion 2010-57, the Ethics Commission opined that the Chairman of the Board of Directors for the Coventry Fire District, a municipal elected position, was not prohibited from simultaneously holding office as a member of the Coventry Town Council, also a municipal elected position. However, the Ethics Commission advised that petitioner that he was required to conduct a matter-by-matter analysis of potential conflicts or circumstances in which it was reasonably foreseeable that there would be financial impact upon him personally and to seek further advice from the Ethics Commission or recuse in accordance with section 36-14-6. See also A.O. 2010-48 (opining that the Code of Ethics did not bar a petitioner from simultaneously serving as a Fire Commissioner for the East Greenwich Fire District and as a member of the East Greenwich Town Council).

Here, the Petitioner represents that the Fire District is an entity separate and independent from the Town of Coventry. The Petitioner further represents that the Fire District is governed by its own Board of Directors, has its own budget that is separate and apart from that of the Town, and has its own taxing powers. Thus, based on the facts as represented by the Petitioner, and given the different spheres of responsibilities of the two public entities, there is no indication that serving in both capacities would create a substantial conflict of interest for the Petitioner with respect to carrying out his duties in the public interest in either role. Nor is there any indication that the Petitioner's simultaneous service in both positions would impair his independence of judgment as to his public responsibilities in either position, or require him to disclose confidential information acquired by him in the course of his official duties in either role.

Accordingly, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from simultaneously serving as a firefighter with the Fire District and as a member of the Town Council. However, the above provisions of the Code of Ethics require matter-by-matter evaluations to determine whether a substantial conflict exists with respect to carrying out a public official or employee's duties in the public interest. Therefore, the Petitioner is advised that, if in the unlikely event that any particular matter should arise in either of his positions in which it is reasonably foreseeable that there will be a financial impact upon the Petitioner, any person within his family, his business associate, or any business by which he is employed or which he represents, the Petitioner must either recuse from participation in discussions and/or decision-making on such matter pursuant to section 36-14-6, or seek further guidance from the Ethics Commission.

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)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2014-23

A.O. 2010-57

A.O. 2010-48

A.O. 99-149

Keywords:

Dual Public Roles

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 13, 2022

Re: James Restivo

QUESTION PRESENTED:

The Petitioner, a member of the South Kingstown School Committee, a municipal elected position, whose spouse is employed by the South Kingstown School District as a teaching assistant, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon his ability to participate in School Committee discussions and voting relative to the School District budget and to the contract negotiations with the labor union representing the teaching assistants.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the South Kingstown School Committee, a municipal elected position, whose spouse is employed by the South Kingstown School District as a teaching assistant, shall be in compliance with the provisions of the Code of Ethics by following the guidelines outlined in this advisory opinion.

The Petitioner is a newly elected member of the South Kingstown School Committee ("School Committee"). He represents that his spouse is employed by the South Kingstown School District ("School District") as a teaching assistant and is a member of the labor union which represents the educational support personnel, including employees in clerical, secretarial, and teaching assistant positions ("Union"). The Petitioner states that his School Committee duties may include participating in discussions and voting relative to the School District budget and the contract negotiations with various labor unions, including his spouse's Union. The Petitioner further states that, while the School District budget is expected to be reviewed sometime in the months of April and May of next year, the School Committee and representatives from the School District Administration are presently in ongoing contract negotiations with the Union, from which the Petitioner plans to recuse because of his spouse's employment. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding what limitations, if any, the Code of Ethics places upon his ability to participate in the School Committee discussions and voting relative to the School District budget and to the contract negotiations with the Union.

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 public official will have an interest that is in substantial conflict with the proper discharge of his 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, his family member, his business

associate, his employer, or any business by which he is employed or which he represents. Section 36-14-7(a); Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Further, section 36-14-5(d) prohibits a public official from using his public position or confidential information received through his public position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents.

In addition to the above-cited provisions, the Code of Ethics contains specific prohibitions targeting nepotism which are embodied in Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”). The regulation addresses the prohibitions against nepotism in general, and also provides specific guidance about various matters including those raised by the Petitioner in his request for this advisory opinion.

Participation in Budgets

Regulation 1.3.1 addresses a public official’s participation in budgets that could financially impact or involve the public official’s family member. Specifically, a public official is prohibited from participating “in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family[.]” Regulation 1.3.1(B)(3)(a). However, Regulation 1.3.1(B)(3)(c) provides that a public official is not prohibited from participating “in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his [] family . . . is impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.”

Applying Regulation 1.3.1 under an analogous fact pattern, in Advisory Opinion 2021-59 the Ethics Commission opined that a member of the East Greenwich School Committee was required to recuse from participating in the School Committee’s discussions and voting on budgetary line items that addressed or affected the employment, compensation, or benefits of her spouse, a teacher in the East Greenwich School Department, but that she could discuss and vote to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that her spouse would be impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. See also A.O. 2007-30 (opining that an East Providence School Committee member was prohibited by the Code of Ethics from participating in any budgetary line items relative to bus monitors, given that he had a family member who was employed as a bus monitor, but that he could vote to approve or reject the budget as a whole).

The basis for allowing participation relative to a budget as a whole is an assumption that a vote on the entire budget is sufficiently remote from most particular line items so as not to constitute a substantial conflict of interest in violation of the Code of Ethics. Therefore, while the Petitioner is prohibited from participating in the School Committee’s discussions and decision-making relating to budgetary line items that would address or affect the employment, compensation or benefits of his spouse, he may participate in the School Committee’s discussions and voting to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that his spouse would be impacted by the entire budget as a member of a significant and

definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also specifically addresses a public official's participation in collective bargaining/employee contracts that impact a family member. Specifically, it prohibits a public official from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation, or benefits of any person within his family or a household member. Regulation 1.3.1(B)(4)(a). This blanket prohibition against involvement in contract negotiations is based on an understanding that, during negotiations, the impact of decisions as to individual components of a contract can be difficult to predict. For that reason, a public official's participation in a contract issue that is seemingly unrelated to a family member can have a resulting impact on other areas of the contract that would directly affect the family member.

Although barred from participating in the contract negotiations, the public official may participate in the ultimate vote to accept or reject the entire employee contract or collective bargaining agreement as a whole, provided that the person within his family or household member would be impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. Regulation 1.3.1(B)(4)(b). The basis for allowing such participation is an assumption that a vote on an entire contract, once negotiated by others, is sufficiently remote from individual contract issues impacting a family member so as to not constitute a substantial conflict of interest in violation of the Code of Ethics.

For example, in Advisory Opinion 2019-19 the Ethics Commission opined that a member of the Warwick School Committee was prohibited from participating in the negotiation of the teachers' union contract, given that his mother was a member and an officer of the teachers' union. However, the petitioner could participate in the School Committee's discussion and decision-making relative to approving or rejecting the contract in its entirety once it had been negotiated by others. See also A.O. 2018-49 (opining that a member of the Cumberland School Committee was prohibited from participating in the negotiation of the teachers' union contract, given that his spouse was a teacher with the Cumberland School Department and a member of the local teachers' union, but could participate in the vote to ratify the contract in its entirety, provided that his spouse would be impacted by the contract as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class).

Consistent with Regulation 1.3.1(B)(4) and prior advisory opinions issued involving similar facts, the instant Petitioner is prohibited from participating in contract negotiations with the Union, given that his spouse is a teacher in the School Department and a member of the Union. However, the Petitioner may participate in the School Committee's decision to accept or reject the contract or the collective bargaining agreement as a whole, once it has been negotiated by others, provided that his spouse will be impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

Although the Petitioner is permitted to participate in the overall vote to approve or reject the contract as a whole, the Ethics Commission is aware that a general discussion can quickly devolve into a narrower review of specific contractual provisions. As such, the Petitioner must be vigilant about recognizing instances where a general conversation begins to focus on individual aspects of a contract that are likely to financially impact his spouse. Should such an instance arise, the Petitioner must recuse from further participation in that discussion pursuant to section 36-14-6 or seek further guidance from the Ethics Commission.

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(d)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2021-59

A.O. 2019-19

A.O. 2018-49

A.O. 2007-30

Keywords:

Nepotism

Budget

Collective Bargaining

Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 13, 2022

Re: Bradford A. Mayer

QUESTION PRESENTED:

The Petitioner, a member of the Coventry School Committee, a municipal elected position, whose spouse is employed by the Coventry School Department as a school nurse-teacher, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon his ability to participate in School Committee discussions and voting relative to the School Department's budget and to the contract negotiations with the local teachers' labor union, of which his spouse is a member.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Coventry School Committee, a municipal elected position, whose spouse is employed by the Coventry School Department as a school nurse-teacher, shall be in compliance with the provisions of the Code of Ethics by following the guidelines outlined in this advisory opinion.

The Petitioner is a newly elected member of the Coventry School Committee ("School Committee"). He represents that his spouse is employed by the Coventry School Department ("School Department") as a school nurse-teacher and is a member of the local teachers' labor union ("Union"). The Petitioner explains that in the upcoming months the School Committee will begin the annual review and approval of the School Department's budget and contract negotiations with the Union. The Petitioner states that the discussions relative to the School Department's budget may hypothetically include a determination about whether to increase or decrease the number of the school nurse-teachers employed by the School Department. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding what limitations, if any, the Code of Ethics places upon his ability to participate in School Committee discussions and voting relative to the School Department's budget and the contract negotiations with the Union.

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 public official will have an interest that is in substantial conflict with the proper discharge of his 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, his family member, his business associate, his employer, or any business by which he is employed or which he represents. Section 36-14-7(a); Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001).

Further, section 36-14-5(d) prohibits a public official from using his public position, or confidential information received through his public position, to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents.

In addition to the above-cited provisions, the Code of Ethics contains specific prohibitions targeting nepotism which are embodied in Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”). The regulation addresses the prohibitions against nepotism in general, and also provides specific guidance about various matters, including those raised by the Petitioner in his request for this advisory opinion.

Participation in Budgets

Regulation 1.3.1 addresses a public official’s participation in budgets that could financially impact or involve the public official’s family member. Specifically, a public official is prohibited from participating “in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family[.]” Regulation 1.3.1(B)(3)(a). However, Regulation 1.3.1(B)(3)(c) also provides that a public official is not prohibited from participating “in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his [] family . . . is impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.”

Applying Regulation 1.3.1 under an analogous fact pattern, in Advisory Opinion 2021-59 the Ethics Commission opined that a member of the East Greenwich School Committee was required to recuse from participating in the School Committee’s discussions and voting on budgetary line items that addressed or affected the employment, compensation, or benefits of her spouse, a teacher in the East Greenwich School Department, but that she could discuss and vote to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that her spouse would be impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. See also A.O. 2007-30 (opining that an East Providence School Committee member was prohibited by the Code of Ethics from participating in any budgetary line items relative to bus monitors, given that he had a family member who was employed as a bus monitor, but that he could vote to approve or reject the budget as a whole).

The basis for allowing participation relative to a budget as a whole is an assumption that a vote on the entire budget is sufficiently remote from most particular line items so as not to constitute a substantial conflict of interest in violation of the Code of Ethics. Therefore, while the Petitioner is prohibited from participating in the School Committee’s discussions and decision-making relating to budgetary line items that would address or affect the employment, compensation or benefits of his spouse, including any line items relative to whether to increase or decrease the number of school nurse-teachers employed by the School Department, he may participate in the School Committee’s discussions and voting to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that his spouse would be impacted by the

entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also specifically addresses a public official's participation in collective bargaining/employee contracts that impact a family member. Specifically, it prohibits a public official from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation, or benefits of any person within his family or a household member. Regulation 1.3.1(B)(4)(a). This blanket prohibition against involvement in contract negotiations is based on an understanding that, during negotiations, the impact of decisions as to individual components of a contract can be difficult to predict. For that reason, a public official's participation in a contract issue that is seemingly unrelated to a family member can have a resulting impact on other areas of the contract that would directly affect the family member.

Although barred from participating in the contract negotiations, the public official may participate in the ultimate vote to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his family or household member would be impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. Regulation 1.3.1(B)(4)(b). The basis for allowing such participation is an assumption that a vote on an entire contract, once negotiated by others, is sufficiently remote from individual contract issues impacting a family member so as to not constitute a substantial conflict of interest in violation of the Code of Ethics.

For example, in Advisory Opinion 2019-19, the Ethics Commission opined that a member of the Warwick School Committee was prohibited from participating in the negotiation of the teachers' union contract, given that his mother was a member and officer of the teachers' union. However, the petitioner could participate in the School Committee's discussion and decision-making relative to approving or rejecting the contract in its entirety once it had been negotiated by others. See also A.O. 2018-49 (opining that a member of the Cumberland School Committee was prohibited from participating in the negotiation of the teachers' union contract, given that his spouse was a teacher with the Cumberland School Department and a member of the local teachers' union, but could participate in the vote to ratify the contract in its entirety, provided that his spouse would be impacted by the contract as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class).

Consistent with Regulation 1.3.1(B)(4) and prior advisory opinions issued involving similar facts, the instant Petitioner is prohibited from participating in contract negotiations with the Union, given that his spouse is a school nurse-teacher in the School Department and a member of the Union. However, the Petitioner may participate in the School Committee's decision to accept or reject the contract or the collective bargaining agreement as a whole, once it has been negotiated by others, provided that his spouse would be impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.

Although the Petitioner is permitted to participate in the overall vote to approve or reject the contract as a whole, the Ethics Commission is aware that a general discussion can quickly devolve into a narrower review of specific contractual provisions. As such, the Petitioner must be vigilant about recognizing instances where a general conversation begins to focus on individual aspects of a contract that are likely to financially impact his spouse. Should such an instance arise, the Petitioner must recuse from further participation in that discussion pursuant to section 36-14-6 or seek further guidance from the Ethics Commission.

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(d)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2021-59

A.O. 2019-19

A.O. 2018-49

A.O. 2007-30

Keywords:

Nepotism

Budget

Collective Bargaining

Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 13, 2022

Re: Mark Aramli

QUESTION PRESENTED:

The Petitioner, a member of the Newport City Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Zoning Board of Review, a municipal agency over which the City Council has appointing authority, in order to pursue an appeal that was filed several months before he became a candidate for public office.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport City Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Zoning Board of Review, a municipal agency over which the City Council has appointing authority, in order to pursue an appeal that was filed several months before he became a candidate for public office.

The Petitioner was elected to a two-year term as a member of the Newport City Council ("City Council") on November 8, 2022, and states that this is his first time holding municipal office. He identifies among his Town Council duties the participation in the appointments of members to various boards and commissions in the City of Newport, including the Newport Zoning Board of Review ("Zoning Board"). The Petitioner represents that he currently has an appeal pending before the Zoning Board, filed by his attorney on March 25, 2022, prior to the Petitioner becoming a candidate for public office. He describes the events leading to the appeal as follows: In November of 2020, the Petitioner and his spouse purchased a parcel of land located in Newport on which they intend to construct a new home to serve as their primary residence. He states that the land is located within a Newport Historic District, resulting in his application to the Newport Historic District Commission ("HDC") for permission to construct the home at the desired location. The Petitioner states that the application was denied by the HDC at a hearing in March of 2022, and that the Petitioner filed an appeal of the HDC's decision to the Zoning Board later that month. He explains that the appeal has yet to be heard, adding that the holdup is due to delays in obtaining the transcripts of the HDC meetings at which the Petitioner's application was considered and, ultimately, denied. The Petitioner informs that a briefing schedule is to be established by the Zoning Board on November 28, 2022, at which time the Petitioner would like

his attorney to appear on his behalf, and after which it is anticipated that the appeal will be heard and adjudicated within approximately 90 to 120 days.¹

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf 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) (“section 5(e)”); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receipt of a hardship exception, the public official must also “[f]ollow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter.” Section 5(e)(1)(iii). See, e.g., A.O. 2014-4 (granting a hardship exception to a member of the Portsmouth Town Council and permitting him to represent himself before the Portsmouth Zoning Board in order to seek a variance for his personal residence, provided that, in order to avoid any appearance of impropriety, he recused from the Town Council’s appointment or reappointment of any person to the Zoning Board until after the election cycle following the resolution of his applications for zoning relief).

The Petitioner’s proposed conduct falls squarely within the Code of Ethics’ prohibition on representing oneself before an agency over which one has appointing authority. Having determined that section 5(e)’s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the Zoning Board.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the public official’s principal residence or principal place of business; whether the public official’s interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved an existing business or a new commercial venture; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions on a number of occasions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences. In Advisory Opinion 2021-42, for example, the Ethics Commission granted a hardship exception to a member of the North Kingstown Town Council, permitting him to represent himself before the North Kingstown Historic District Commission, and/or potentially the North Kingstown Zoning Board of Review, entities over which the Town

¹ The Petitioner’s request for this advisory opinion was received by the Ethics Commission on November 18, 2022. Because it was not feasible to provide the Petitioner with an advisory opinion prior to November 28, 2022, the Petitioner was advised by Ethics Commission Staff that his interests could be represented by his attorney before the Zoning Board on November 28, 2022, for the sole purpose of scheduling the appeal hearing. The Petitioner was further advised by Ethics Commission Staff that, in the event that the Ethics Commission denies the Petitioner’s request for a hardship exception, neither the Petitioner nor anyone authorized and/or directed by the Petitioner to act on his behalf will be allowed to appear before the Zoning Board to pursue the appeal. Finally, the Petitioner was advised to ask his attorney to inform the Zoning Board of the Petitioner’s pending request for an advisory opinion relative to this matter, and that it is expected be issued in advance of the appeal hearing.

Council had appointing authority. That petitioner was seeking to install a small portable shed in the backyard of his home, which was located within the Town of North Kingstown's Historic District. The changes sought by the petitioner to his home's exterior were subject to the jurisdiction of the North Kingstown Historic District Commission, denials by which were appealable to the North Kingstown Zoning Board of Review. The Ethics Commission allowed the petitioner to represent himself, either personally or through a representative, before both the HDC and the Zoning Board (in the event of an appeal). However, in order to avoid even the appearance of impropriety, the petitioner was required to recuse from the Town Council's appointment or reappointment of any persons to the HDC and the Zoning Board (in the event of an appeal) until after the election cycle for his Town Council seat following the complete resolution of the HDC's review of his application and the Zoning Board's potential consideration of an appeal of the HDC's decision. See also A.O. 2020-18 (granting a hardship exception to a member of the Jamestown Town Council, permitting him to appeal the tax assessment of his personal residence before the Jamestown Tax Assessment Board of Review ("Board of Review"), over which the Town Council had appointing authority, provided that he recuse from the Town Council's appointment or reappointment of any persons to the Board of Review until after the election cycle for his Town Council seat following the resolution of his tax appeal); A.O. 2019-64 (granting a hardship exception to the President of the North Smithfield Town Council and permitting him to appear before the North Smithfield Zoning Board of Review ("NSZB") to seek a dimensional variance for his personal residence, which he purchased prior to his election, provided that he recused from the Town Council's appointment or reappointment of any person to the NSZB until after the election cycle for his Town Council seat and following the complete resolution of his application before the NSZB, including appeals, and that, prior to the NSZB's consideration of his variance application, he informed the NSZB members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

Here, the Petitioner would like to authorize and/or direct his attorney to appear on the Petitioner's behalf before the Zoning Board in order to appeal the decision by the HDC denying the Petitioner's application to construct a new single family home on a parcel of land located within the Newport Historic District in which the Petitioner intends to live with his family. The Petitioner purchased the parcel of land in November of 2020, which predates his election to the Town Council by two years. In consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with past advisory opinions issued, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to section 5(e)'s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the Zoning Board relative to the appeal described above.

However, section 5(e) authorizes the Ethics Commission to condition such exception upon the Petitioner's agreement to follow certain steps aimed at reducing any appearance of impropriety. Section 5(e)(1)(iii). Pursuant thereto, the Petitioner must recuse from the Town Council's appointment or reappointment of any persons to the Zoning Board until after the election cycle for his Town Council seat following the complete resolution of his appeal before the Zoning Board, including any further appeals of the Zoning Board's decision, if applicable. Additionally, the Petitioner shall, prior to the Zoning Board's consideration of his appeal, inform the Zoning Board members of his receipt of the instant advisory opinion and that, consistent therewith, he will

recuse from their reappointments as set forth above. Notice of recusal shall be filed with the Ethics Commission in accordance with 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(e)

§ 36-14-6

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

Related Advisory Opinions:

A.O. 2021-42

A.O. 2020-18

A.O. 2019-64

A.O. 2014-4

Keywords:

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 13, 2022

Re: William L. Patenaude

QUESTION PRESENTED:

The Petitioner, an Environmental Engineer III with the Rhode Island Department of Environmental Management, Office of Water Resources Division, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from seeking and, if offered, accepting secondary employment as a contract trainer/facilitator for a local private company that offers leadership development, team building, and company culture improvement services to organizations and individuals.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an Environmental Engineer III with the Rhode Island Department of Environmental Management, Office of Water Resources Division, a state employee position, is not prohibited by the Code of Ethics from seeking and, if offered, accepting secondary employment as a contract trainer/facilitator for a local private company that offers leadership development, team building, and company culture improvement services to organizations and individuals, consistent with his representations set forth herein, and provided that all of the work is performed on his own time and without the use of public resources or confidential information obtained as part of his state employment and, further provided, that the Petitioner does not use his public employment to advertise or promote his private work or to recruit or obtain potential clients for his private employer.

The Petitioner has been employed for 34 years by the Rhode Island Department of Environmental Management ("RIDEM"), Office of Water Resources Division ("OWR"), which oversees the regulation, monitoring, and other aspects of water-related environmental management. He states that, during the course of his employment at RIDEM, he has held various engineering positions, from entry-level to supervisory, exclusively in the OWR's Operations & Maintenance Section ("O&M"), which oversees the municipal wastewater sector. He further states that, in his current role, he both supports the O&M's regulatory functions and leads its training efforts. The Petitioner explains that, under his management, the O&M's training efforts have expanded from purely technical trainings to include professional and personal development for individuals holding various levels of management within Rhode Island's wastewater sector. The Petitioner identifies as the most notable example of his training efforts, the Wastewater Operator Leadership Boot Camp ("Boot Camp"), an annual year-long professional development program created in 2007 by RIDEM for wastewater operators who could potentially later transition into wastewater

management positions.¹ The Petitioner represents that the Boot Camp training is currently organized and offered by the Petitioner as part of his state employment, but that at least one other staff member within the O&M is currently being trained to take over the Boot Camp in anticipation of the Petitioner's eventual retirement. He further represents that RIDEM receives assistance with the organization, presentation, and funding of the Boot Camp from the Rhode Island Clean Water Association ("RICWA") and the New England Water Environment Association ("NEWEA"), both private organizations, and the New England Interstate Water Pollution Control Commission, a quasi-public organization.

The Petitioner states that he would like to seek secondary employment, most likely on a part-time contract basis, as a contract trainer/facilitator with Half Full, LLC ("Half Full"), a local private company that offers leadership development, team building, company culture improvement services, corporate service days, and retreats to organizations and individuals in both the private and public sectors. The Petitioner further states that Half Full was previously retained by RICWA and NEWEA to provide professional development opportunities during the Boot Camp, but that Half Full has no current business contract or relationship with RIDEM.

The Petitioner anticipates that, if hired by Half Full on a contract basis, his role would be to facilitate discussions around leadership strengths and the improvement thereof, and to assist with organizational improvement for the clients of Half Full. The Petitioner states that, if hired by Half Full, he would not engage in projects in which RICWA and/or NEWEA are involved, including the Boot Camp, nor would he remain involved in the organization or delivery of the Boot Camp Program in his capacity as a RIDEM employee. This would include, but not be limited to, assisting RICWA and NEWEA with the process of determining whether Half Full or one of its competitors would be retained to provide services for a future Boot Camp. The Petitioner adds that, out of an abundance of caution, and to maintain the separation of his duties as a RIDEM employee and as a contract/facilitator for Half Full, to the extent that any of the twenty-four municipal wastewater treatment facilities, industrial facilities, or the package treatment plant that make up the municipal wastewater facilities within his purview at RIDEM were to become clients of Half Full, the Petitioner would inform Half Full that he would not be able to work on projects involving anyone from those facilities.

The Petitioner represents that, in the event that he is not prohibited by the Code of Ethics from seeking and, if offered, accepting contract employment with Half Full, he would perform those duties on his own time and without the use of public resources. He adds that he would not appear before RIDEM or any of its divisions, nor would he use his public position to advertise or promote his private work or to solicit business or clients for Half Full. The Petitioner states that, to the extent that representatives from any organization for which he provides or has provided trainer/facilitator services for Half Full were to come before him in his official capacity as a RIDEM employee, something he does not and cannot anticipate, he would recuse from participation in the matter. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may seek and, if offered, accept secondary employment as a contract trainer/facilitator for Half Full.

¹ The Petitioner states that the Boot Camp has since been replicated by every New England state.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of his duties in the public interest if he 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 represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Additionally, the Code of Ethics provides that a public employee shall not use his office or confidential information received through his office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). The Code of Ethics further provides that a public employee shall not accept other employment which will either 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).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public positions, provided that the private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties, and subject to certain other restrictions. The Ethics Commission examines several factors when considering potential conflicts regarding secondary employment. These factors include, but are not limited to, the nexus between the official's public duties and private employment; whether the employee completes such work outside of his normal working hours and without the use of public resources; whether the employee is to appear before, or his work product is to be presented to, his own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his position to solicit business or customers. See General Commission Advisory No. 2009-4.

For example, in Advisory Opinion 2019-27, the Ethics Commission opined that a Motor Vehicle Operator Examiner for the Division of Motor Vehicles ("DMV") was not prohibited from accepting employment as a Course Administrator for the Driver Retraining Program at the Community College of Rhode Island. The Ethics Commission determined that the petitioner's proposed private undertaking would neither impair his independence of judgment nor create an interest in substantial conflict with his public duties at the DMV. However, the Ethics Commission required the petitioner to perform all of the work for the Driver Retraining Program on his own time and without the use of public resources or confidential information obtained as part of his state employment at the DMV. See also A.O. 2021-43 (opining that the Director of the Cumberland Parks and Recreation Department was not prohibited from purchasing land in the Commonwealth of Massachusetts with two individuals in connection with a new business opportunity, notwithstanding that those individuals annually organized and sponsored a Halloween event at a park owned by the Town of Cumberland, provided that such endeavor was performed on his own time and without the use of public resources or confidential information obtained as part of his public duties and, further provided, that the petitioner would not use his public position to promote or solicit clients for his private business during the hours of his public employment or from any of his subordinates in his public position); A.O. 2017-40 (opining that a Probation and

Parole Supervisor for the Rhode Island Department of Corrections was not prohibited from working in his private capacity as an adjunct professor at Rhode Island College, provided that all work and preparation for his classes was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment).

Here, the Petitioner states that, if hired by Half Full, he would not engage in projects in which RICWA and/or NEWEA are involved, including the Boot Camp, nor would he remain involved in the organization or delivery of the Boot Camp Program in his capacity as a RIDEM employee, including, but not be limited to, assisting RICWA and NEWEA with the process of determining whether Half Full or one of its competitors would be retained to provide services for a future Boot Camp. The Petitioner adds that, out of an abundance of caution and to maintain the separation of his duties as a RIDEM employee from those as a contract/facilitator for Half Full, to the extent that any of the municipal wastewater facilities within his purview at the RIDEM were to become clients of Half Full, the Petitioner would inform Half Full that he would be unable to perform any tasks relative to projects involving those facilities or anyone employed by those facilities.

Based upon the facts as represented by the Petitioner, there is no evidence to suggest that his performance of trainer/facilitator duties for Half Full would impair his independence of judgment or create an interest that is in substantial conflict with his public duties at RIDEM. Accordingly, the Petitioner is not prohibited by the Code of Ethics from seeking and, if offered, accepting secondary employment as a contract trainer/facilitator for Half Full, consistent with his representations set forth herein, and provided that all of the work is performed on his own time and without the use of public resources or confidential information obtained as part of his state employment and, further provided, that the Petitioner does not use his public employment to advertise or promote his private work or to recruit or obtain potential clients for his private employer.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented herein. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest arise, particularly with regard to the application of the revolving door provisions of the Code of Ethics following the Petitioner's retirement or separation from RIDEM.

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)

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-43

A.O. 2019-27

A.O. 2017-40

GCA 2009-4

Keywords:

Secondary Employment

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 13, 2022

Re: Rebecca Elsing, MA CAGS QMHP

QUESTION PRESENTED:

The Petitioner, a Supplemental Block Grant Planner for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prevents her from working part-time to provide counseling services to members of local municipal police departments.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Supplemental Block Grant Planner for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, a state employee position, is not prohibited by the Code of Ethics from working part-time to provide counseling services to members of local municipal police departments, consistent with the representations set forth herein, and provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her state employment and, further provided, that the Petitioner does not use her public employment to advertise or promote her private work or to recruit or obtain clients.

The Petitioner is currently employed as a Supplemental Block Grant Planner ("Grant Planner") for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals ("BHDDH"). She has worked at the BHDDH since August 29, 2022, and her work hours are Monday through Friday, 8:00 am – 3:30 pm. The Petitioner states that, in her capacity as a Grant Planner, she assists with the oversight of Substance Abuse and Mental Health Services Administration ("SAMHSA") Grants from the Federal Government that are distributed to qualified behavioral health agencies in Rhode Island to provide substance abuse and mental health services to those in need ("Block Grant Program"). She describes among her duties the following: organize, coordinate, and analyze specific programs, services, and resources with a cost-benefit lens to increase the efficiency and effectiveness of the Block Grant Program; assist in the development of programs, short and long-term goals and objectives, management plans and operating plans, and to oversee their implementation and evaluation; provide strategic and technical support to meet the goals and objectives of the Block Grant awards; and ensure accurate and detailed budgets in order to maximize the effectiveness of RI Block Grant Funding. The Petitioner emphasizes that she has no decision-making authority regarding which agencies receive SAMHSA Grant funding. She explains that the Federal Government posts the grants and determines the grant requirements, and

that the state advertises the grants, collects the bids, and awards the grants – all without decision-making involvement from the Petitioner.

The Petitioner represents that, prior to starting her work at the BHDDH, she worked as a clinical supervisor for the HOPE Initiative, a program coordinated through the Rhode Island State Police in partnership with municipal police departments throughout Rhode Island. She further represents that she was contracted to the HOPE Initiative through her then private employer, CODAC Behavioral Healthcare. The Petitioner states that she would ride with local police officers and knock on doors to find people in need of clinical support for substance abuse. She explains that she performed this work for 2.5 years and left to accept her current position with the BHDDH.¹

The Petitioner states that she has been contacted by the Rhode Island Police Chiefs' Association ("RIPCA"), the members of which are familiar with her and her previous work for the HOPE Initiative, and has been requested to provide one-to-one counseling services on a part-time basis to members of local municipal police departments ("clients" or "police officers"). The Petitioner states that, subject to an advisory opinion from the Ethics Commission that accepting this particular secondary employment would not be a violation of the Code of Ethics, she would like to do so. She represents that this would be a pilot program in which she would provide counseling to clients by telephone from an office in her home. She further represents that she would do this on various evenings during the week after 5:00 pm and on weekends. She explains that she would have no face-to-face contact with her clients, who would be given only her first name and be told nothing about her primary employment. Highlighting the importance of confidentiality for her clients, the Petitioner states that she would perform this work alone and, in the event that one of her clients required a referral for additional treatment outside of the telephone counseling, the Petitioner would make referrals only to out-of-state providers.

The Petitioner represents that the RIPCA would pay for the Petitioner's phone that she uses to conduct counseling sessions and that the RIPCA would also inform municipal police departments in Rhode Island about the opportunity for confidential counseling. The Petitioner further represents that she would invoice the RIPCA for the cost of the sessions that she provides to clients, adding that the RIPCA would pay for her services with monetary donations from private corporations and individuals. The Petitioner explains that the RIPCA has not applied for or received grant funding from the BHDDH, nor does she anticipate that it would. She states that, in the unlikely event that the RIPCA were to apply for grant funding from the BHDDH, she would recuse from any participation in the matter, regardless of the task. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may accept secondary part-time employment providing confidential counseling services to municipal police officers referred to her by the Rhode Island Police Chiefs' Association.

The Code of Ethics provides that a public employee shall 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. R.I. Gen. Laws § 36-

¹ The Petitioner states that, immediately prior to accepting her current position with the BHDDH, she had accepted a part-time position with Gateway Healthcare ("Gateway") to work part-time as a clinician; however, upon accepting employment with the BHDDH and learning that Gateway receives funding from the SAMHSA Grants that the Petitioner helps to administer, she decided against working for Gateway.

14-5(b). Further, a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of her duties or employment in the public interest. Section 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of her duties or employment in the public interest if she has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). Finally, the Code of Ethics provides that a public employee may not use her office or confidential information received through her office to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or positions subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties. The Ethics Commission examines several factors when considering potential conflicts regarding secondary employment. These factors include, but are not limited to, the nexus between the public official or employee's public duties and private employment; whether the public official or employee completes such work outside his or her normal working hours and without the use of public resources; whether the public official or employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the public official or employee has decision-making jurisdiction; and whether the public official or employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.

For example, in Advisory Opinion 2019-53, the Ethics Commission opined that a Vocational Rehabilitation Counselor for the Rhode Island Department of Human Services ("DHS") was not prohibited from working on her own time as a certified yoga instructor for young children and/or adults with disabilities. After determining that the petitioner's desired secondary employment would not impair her independence of judgment or create an interest in substantial conflict with her public duties at the DHS, the Ethics Commission opined that the petitioner could perform the work, provided that she did so on her own time and without the use of public resources or confidential information obtained as part of her state employment at the DHS. Additionally, the petitioner could not use her public position to promote or advertise her private employment or list her public employment as part of the advertisement of her private work. See also A.O. 2020-1 (opining that a Probation and Parole Officer at the Rhode Island Department of Corrections was not prohibited from working in her private capacity in Rhode Island as an independent contractor providing supervised visitation services between non-custodial parents and their child or children, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment); A.O. 2012-32 (opining that the Acting Director of the Department of Planning and Development for the City of Providence was not prohibited from teaching a course at Brown University, provided that all teaching work was performed on his own time and he did not use public resources or confidential information obtained as part of his employment with the City; however, the petitioner was required

to recuse from any matters relating to Brown University that might come before him in his public capacity as Acting Director of the Department of Planning and Development and to refer such matters to his superiors).

Here, the Petitioner describes her proposed duties as a counselor as being separate and distinct from those for which she is responsible as a BHDDH employee. She states that she would perform her part-time counseling work outside of her regular hours as a state employee and outside of the areas over which she has decision-making jurisdiction as a Grant Planner. There is nothing in the facts as represented to suggest that the Petitioner would appear before, or that her work product as a counselor would be presented to, the BHDDH, and the Petitioner represents that the RIPCA would be the sole source of her client referrals.

Based upon the facts as represented by the Petitioner, there is no evidence to suggest that her part-time secondary employment as the provider of counseling services to police officers would either impair her independence of judgement or create an interest that in substantial conflict with her public duties at the BHDDH. Accordingly, the Petitioner is not prohibited by the Code of Ethics from working in her private capacity as a counselor in the manner described herein, provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her state employment with the BHDDH. Also, the Petitioner shall not use her public position to promote or advertise her private employment, nor shall she list her public employment as part of the advertisement of her private work. Additionally, the Petitioner shall recuse from any matter that comes before her in her capacity as a Grant Planner at the BHDDH that involves the RIPCA or for which the RIPCA or its representative on behalf of RIPCA appears and to refer that matter to her supervisors. Recusal shall be pursuant to section 36-14-6. Finally, the Petitioner is advised to seek further guidance from the Ethics Commission if any changes occur within either her private or public employment that could present a conflict of interest.

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)

Related Advisory Opinions:

- A.O. 2020-1
- A.O. 2019-53
- A.O. 2012-32

GCA 2009-4

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