

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-33

Approved: 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and

are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 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