

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2022-37

Approved: 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.<sup>1</sup> 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"), a private organization, and the New England Interstate Water Pollution Control Commission ("NEIWPC"), a quasi-public organization. The Petitioner adds that the New England Water Environment Association ("NEWEA"), a private organization, occasionally sends a speaker to the Boot Camp to present information about that 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 NEIWPC 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 NEIWPC 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 NEIWPC 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.

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<sup>1</sup> 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 judgement 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 NEIWPC 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 NEIWPC 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.**

Code Citations:

- § 36-14-5(a)
- § 36-14-5(b)
- § 36-14-5(d)
- § 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-43

A.O. 2019-27

A.O. 2017-40

GCA 2009-4

Keywords:

Secondary Employment