



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

1st Meeting

DATE: Tuesday, January 24, 2023

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 December 13, 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.) The Honorable Donald R. Grebien, the Mayor of the City of Pawtucket, requests an advisory opinion regarding whether his daughter's employment with the Pawtucket Housing Authority would present a conflict of interest for the Petitioner under the Code of Ethics. [Staff Attorney Popova Papa]
 - b.) Edward P. Morrone, a member of the Westerly Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits him from

participating in Town Council discussions and decision-making relative to certain matters expected to be submitted by Winn Properties, LLC, given that the principals of Winn Properties, LLC are the Petitioner's neighbors and friends. [Staff Attorney Popova Papa]

- c.) Mark H. Trimmer, the President of the Richmond Town Council, who in his private capacity is a customer of the Town of Richmond's water supply system, requests an advisory opinion regarding whether he may participate in the Town Council's discussions and voting regarding whether the Town should use funds made available to the Town under the American Rescue Plan Act to offset some of the cost associated with the installation of a chlorination system to the Town's water supply system or, alternatively, whether such cost should be borne entirely by the Town's water customers. [Staff Attorney Popova Papa]
- d.) Thomas E. Brun, a member of the East Providence Economic Development Commission, who in his private capacity owns and operates the Indoor Tennis Court, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from pursuing federal grant funding through the Storefront Improvement Program administered through the East Providence Department of Planning and Economic Development and, if so, whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the municipal agency of which he is a member for purposes of pursuing the grant funding. [Staff Attorney Radiches]
- e.) Douglas Duford, the Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to his potential new private employment with CODAC Behavioral Healthcare following his severance from state employment. [Staff Attorney Radiches]

5. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on December 13, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Stephen P. Mattscheck, Complaint No. 2022-1, 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 January 24, 2023.

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 January 19, 2023

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 24, 2023

Re: Donald R. Grebien

QUESTION PRESENTED:

The Petitioner, the Mayor of the City of Pawtucket, a municipal elected position, requests an advisory opinion regarding whether his daughter's employment with the Pawtucket Housing Authority would present a conflict of interest for the Petitioner under the Code of Ethics.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the employment of the Petitioner's daughter with the Pawtucket Housing Authority would not present a conflict of interest under the Code of Ethics for the Petitioner, the Mayor of the City of Pawtucket, a municipal elected position.

The Petitioner is the Mayor of the City of Pawtucket ("City"). He represents that his daughter applied for and was offered the position of Residential Service Coordinator with the Pawtucket Housing Authority ("Housing Authority"). The Petitioner states that the Residential Service Coordinator position was initially only advertised internally to existing Housing Authority employees, however, because no employees applied for the position, the position was eventually advertised externally to allow persons outside of the Housing Authority to apply. The Petitioner represents that his daughter, on her own initiative, became aware of the external posting, applied for the position, was interviewed, deemed qualified for, and offered the position.

The Petitioner describes the Housing Authority as a quasi-municipal agency, which exists in the City by virtue of Rhode Island General Laws § 45-25-1, *et seq.* He explains that its mission is "to provide safe, decent, and affordable housing and to establish programs that will educate, enhance, and empower the lives of all the people in the community"¹ it serves. The Petitioner represents that, since its creation, the Housing Authority has been and continues to be an autonomous body which is fiscally separate from the City and funded solely by federal appropriations, not by City tax revenue.² The Petitioner states that the Housing Authority is governed by a seven-member

¹ See <https://www.pawthousing.org/about/> (last visited on January 13, 2023).

² To further demonstrate the autonomy of the Housing Authority, the Petitioner cites the Rhode Island Supreme Court which held that a "housing authority is not a political subdivision of the state. Once created it becomes an autonomous body, subject only to the limits of power imposed by law. * * * [A]ctually a housing authority is one of a large class of corporations created by the government to undertake public enterprises in which the public interests are involved to such an extent as to justify conferring upon such corporations important governmental privileges and powers, such as eminent domain, but which are not created for political purposes and which are not instruments of the government

Board of Commissioners appointed by the Mayor pursuant to R.I. Gen. Laws §§ 45-25-10 and 45-25-10.6. However, he further states that the Housing Authority is not subject to the Mayor's direct control, and that the appointment of the members of the Board of Commissioners is the only power the Mayor has over the Housing Authority.

The Petitioner represents that the Board of Commissioners hires an Executive Director who oversees the day-to-day operation of the Housing Authority and hires the Housing Authority's staff members. The Petitioner further represents that the Housing Authority has approximately 46 full-time employees, including the Residential Service Coordinator. The Petitioner emphasizes that the Mayor's Office has no authority or role in the hiring or managing of any of the employees of the Housing Authority and that the employees are not part of the City's personnel system. The Petitioner specifies that he was not involved in creating the job description for, or the hiring process relative to, the Residential Service Coordinator position. Further, the Petitioner explains that the Housing Authority employees belong to one of two labor unions, and that any labor disputes and/or employee issues that may arise regarding the employees are resolved through a grievance and arbitration process, which does not involve the Mayor or his Office, or the Board of Commissioners. Cognizant of the Code of Ethics and desirous of acting in conformance therewith, the Petitioner seeks guidance regarding whether the hiring of his daughter by the Housing Authority would create a conflict of interest for him under the Code of Ethics.

The Code of Ethics provides that a public official shall not have any interest, financial or otherwise, direct or indirect, or engage in any 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 substantial conflict of interest exists if the public official has reason to believe or expect that he or any person within his family, among others, will derive a direct monetary gain or suffer a direct monetary loss by reason of the public official's official activity. Section 36-14-7(a). Also, a public official may not use his public position to obtain financial gain, other than that provided by law, for himself or any person within his family. Section 36-14-5(d).

Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”) contains specific prohibitions aimed at curbing nepotism. Pursuant to Regulation 1.3.1's general “catch-all” provision, a public official may not participate in any matter as part of his public duties if any person within his family is a party or participant in such matter, or if his family member will be financially impacted or will obtain an employment advantage by virtue of the public official's official participation. Regulation 1.3.1(B)(1). More specifically, Regulation 1.3.1(B)(2) prohibits a public official from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his family, or from delegating such tasks to a subordinate. The phrase “any person within his family” expressly includes “daughter.” See Regulation 1.3.1(A)(2).

Through a long line of prior advisory opinions which addressed nepotism-related conflicts of interest, the Ethics Commission has on numerous occasions reviewed and applied the Code of Ethics' nepotism provisions to the employment or potential employment of public officials' family members. The Ethics Commission has declined to adopt a blanket or absolute prohibition against

created for its own uses or subject to its direct control.” Housing Authority of Woonsocket v. Fetzik, 110 R.I. 26, 33, 289 A.2d 658, 662 (1972).

one family member serving in a department, agency or even municipality in which another family member has supervisory responsibilities. Rather, the Ethics Commission makes a determination on a case-by-case basis and has generally taken the position that a public official or employee serving in a supervisory capacity will satisfy the requirements of the Code of Ethics by recusing from participation in matters directly affecting his/her family member. See, e.g., A.O. 2007-7 (opining that the Newport City Solicitor could, in place of the City Manager, appoint seven individuals, including the City Manager's son, who were candidates for employment with the Newport Police Department, provided that certain procedures were followed so that the City Manager was completely removed from all personnel decisions or matters that particularly affected his son financially). Contra A.O. 2012-15 (opining that the Code of Ethics prohibited the petitioner's daughter from being hired as an intern in the Division of Infectious Disease and Epidemiology within the Department of Health given, among other things, that the petitioner was the Director of the Department of Health, his direct subordinate conducted the hiring process, the application process was competitive, and there were insufficient layers of insulation between the petitioner and his subordinate conducting the hiring process).

Here, unlike the examples above, the Petitioner affirmatively states that he does not have any supervisory responsibilities relative to the Board of Commissioners, the Executive Director, or the employees of the Housing Authority. Further, the Petitioner's appointees, the members of the Board of Commissioners, have no role in hiring Housing Authority employees other than the Executive Director. Housing Authority employees are not part of the City's personnel system and, instead, belong to one of two labor unions; therefore, any employment issues that may arise are reviewed through a grievance and arbitration process that does not involve the Mayor. Further, the Petitioner states that he did not participate in any of the aspects of the hiring process relative to the Residential Service Coordinator position, including the creation of the job description. Finally, the Petitioner represents that the Housing Authority is an autonomous body and stands fiscally independent from the City. Accordingly, absent additional facts indicating a conflict of interest, it is the opinion of the Ethics Commission that the employment of the Petitioner's daughter with the Pawtucket Housing Authority would not present a conflict of interest for the Petitioner. The Petitioner is advised, however, that if any of the facts change or any circumstances arise that may present a conflict of interest under the Code of Ethics relative to his daughter's employment, he should 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)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2012-15

A.O. 2007-7

Other Related Authority

§ 45-25-10

§ 45-25-10.6

Housing Authority of Woonsocket v. Fetzik, 110 R.I. 26, 33, 289 A.2d 658, 662 (1972).

Keywords:

Conflict of Interest

Nepotism

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 24, 2023

Re: Edward P. Morrone

QUESTION PRESENTED:

The Petitioner, a member of the Westerly Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Town Council discussions and decision-making relative to certain matters expected to be submitted by Winn Properties, LLC, given that the principals of Winn Properties, LLC are the Petitioner's neighbors and friends.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Westerly Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to certain matters expected to be submitted by Winn Properties, LLC, notwithstanding that the principals of Winn Properties, LLC are the Petitioner's neighbors and friends.

The Petitioner was elected to the Westerly Town Council ("Town Council") in November of 2022, and currently serves as its president. He states that, just prior to his election, the outgoing Town Council considered and ultimately denied an application submitted by Winn Properties, LLC ("Winn Properties") for a zoning ordinance amendment that would have altered certain regulations currently applicable to the Commercial Recreation Zoning District, which includes yacht clubs and golf courses. The Petitioner explains that the approval of the zoning ordinance amendment would have allowed Winn Properties to upgrade the facilities of the Winnapaug Golf Course ("Golf Course"), which is owned by Winn Properties, to include a new clubhouse, a hotel, condos for rental, and extensive course upgrades.¹

The Petitioner expects Winn Properties to resubmit its application for a zoning ordinance amendment, which would ultimately be reviewed by the current Town Council. The Petitioner

¹ During a telephone conversation with the Staff of the Ethics Commission, the Town Solicitor explained that the Winn Properties' zoning ordinance amendment application was submitted initially to the Westerly Planning Board ("Planning Board") along with an application for a proposed development project relative to the Golf Course. The Town Solicitor further explained that the Planning Board then forwarded the zoning ordinance amendment application along with its advisory recommendation to the Town Council for review and approval. The Solicitor stated that approval of the zoning ordinance amendment by the Town Council was a prerequisite for the review of the proposed development project by the Planning Board. The Town Solicitor further stated that Winn Properties is not precluded from resubmitting its applications for a proposed development and/or zoning ordinance amendment. He explained that any new application for a zoning ordinance amendment would ultimately be reviewed by the Town Council.

states that the principals of Winn Properties, Jill and Nick Scola (collectively, the "Scolas") have been his abutting neighbors for more than twenty years, during which time they have become friends. The Petitioner further states that, although his property abuts the Scolas' property, it does not abut the Golf Course. The Petitioner represents that he has never been a member of the Winnapaug Golf Club, that neither he nor any of his family members are employed by the Winnapaug Golf Club, and that he does not have a business relationship with the Scolas. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in the Town Council's discussions and decision-making relative to the anticipated resubmission of Winn Properties' application in connection to its desired zoning ordinance amendment or any other potential matter relative to Winn Properties' desired upgrades of the facilities of the Golf Course.

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 in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of the public official's official activity. Section 36-14-7(a). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). The Code of Ethics further prohibits a public official 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).

In prior advisory opinions, the Ethics Commission has concluded that a social relationship or personal acquaintance between a public official and a person appearing before that public official does not, in and of itself, create an inherent conflict of interest within the meaning of the Code of Ethics. In Advisory Opinion 2019-9, for example, the Ethics Commission opined that a member of the Smithfield Planning Board was not prohibited from participating in the Planning Board's discussions and decision-making relative to a proposed development of property owned by the petitioner's friend, whose son had contributed to the petitioner's prior political campaign for election to the Smithfield Town Council, because there was no familial or business relationship between the petitioner and the petitioner's friend or between the petitioner and his friend's son. See also A.O. 2017-45 (opining that a member of the Woonsocket City Council was not prohibited by the Code of Ethics from participating in discussions and decision-making relative to matters that involved and financially impacted her former employer, notwithstanding the personal relationship between the parties and provided that she could remain impartial regarding the matter); A.O. 92-72 (opining that a Middletown Zoning Board member could participate in a matter where a social relationship but no business relationship existed with the applicant in the matter, provided that the Zoning Board member could act in an impartial manner concerning the matter).

Here, no familial or business relationship exists between the Petitioner and the Scolas that would bar the Petitioner from participating in and voting on Town Council matters concerning the anticipated application or any other matter relative to Winn Properties' desired upgrades to the

Golf Course. Accordingly, based on the facts as represented by the Petitioner, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to the above-referenced matters that involve and financially impact the Scolas, notwithstanding the personal relationship between the Petitioner and the Scolas.

The Ethics Commissions notes that this advisory opinion is limited to whether the Petitioner may participate in Town Council discussions and decision-making relative to matters that involve and financially impact his neighbors and friends, the Scolas. It does not address whether any other conflict may exist relative to the applications that may require his recusal, given that the applications have yet to be submitted. The Petitioner is advised that, when in doubt, he should seek further guidance from the Ethics Commission or recuse pursuant to section 36-14-6. Further, the Rhode Island Constitution states that: "The people of the State of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage." R.I. Const. art III, sec. 7. Therefore, although the Code of Ethics permits the Petitioner's participation in the Town Council's discussions and decision-making relative to the matters referenced above involving his friends, the Petitioner should give due consideration to the appearance of such participation under the circumstances, focusing on the question of whether it is reasonable for him to remain fair and impartial in carrying out his duties in the public 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:

§ 36-14-2(3)
§ 36-14-5(a)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)

Constitutional Authority

R.I. Const., art. III, sec. 7

Related Advisory Opinions:

A.O. 2019-9
A.O. 2017-45
A.O. 92-72

Keywords:
Code Jurisdiction
Conflict of Interest
Recusal

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 24, 2023

Re: Mark H. Trimmer

QUESTION PRESENTED:

The Petitioner, the President of the Richmond Town Council, a municipal elected position, who in his private capacity is a customer of the Town of Richmond's water supply system, requests an advisory opinion regarding whether he may participate in the Town Council's discussions and voting regarding whether the Town should use funds made available to the Town under the American Rescue Plan Act to offset some of the cost associated with the installation of a chlorination system to the Town's water supply system or, alternatively, whether such cost should be borne entirely by the Town's water customers.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the President of the Richmond Town Council, a municipal elected position, who in his private capacity is a customer of the Town of Richmond's water supply system, may participate in the Town Council's discussions and voting regarding whether the Town should use funds made available to the Town under the American Rescue Plan Act to offset some of the cost associated with the installation of a chlorination system to the Town's water supply system or, alternatively, whether such cost should be borne entirely by the Town's water customers. In accordance with the Code of Ethics' class exception, the Petitioner would be affected by the Town Council's discussions and voting on the matter to no greater extent than the significant and definable class of all water customers.

The Petitioner was elected to the Richmond Town Council ("Town Council") in November of 2022, and currently serves as its president. He represents that the Rhode Island Department of Health requires that the Town of Richmond ("Town" or "Richmond") install a chlorination system to the Town's water supply system ("water system"). He further represents that the Town Administrator had asked the Town Council for permission to use funds available to the Town through the American Rescue Plan Act ("ARPA") in order to offset some of the cost of the chlorination system and its installation ("cost"). The Petitioner states that, therefore, the Town Council will consider whether to grant the Town Administrator's request or, alternatively, whether the cost should be absorbed entirely by the water system customers. The Petitioner further states that either decision of the Town Council would result in an increase in the water usage rate; however, the rate will be substantially higher if the cost is absorbed entirely by the water system customers.

The Petitioner explains that while some of the Town's residents utilize water wells and are not connected to the water system, there are approximately 280 customers, including the Petitioner,

who are connected to the water system and who will be financially impacted by the Town Council's decision on the matter. The Petitioner represents that the 280 customers include approximately 100 commercial users and 180 residential users, one of whom is the Petitioner. The Petitioner states that all of the water system customers will be impacted the same way in the form of an equal increase of the water rate, regardless of whether the customer is a commercial or residential user. The Petitioner further states that, of the five Town Council members, he is the only one who is connected to the water system and, therefore, the only one who will be financially impacted by the decision. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in the Town Council's discussions and voting relative to the cost of the chlorination system.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of the public official's official activity. Section 36-14-7(a). Additionally, the Code of Ethics prohibits a public official 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).

Here, the Petitioner is one of the customers connected to and utilizing the water system, and represents that he will be financially impacted by the Town Council's decision regarding the cost associated with the installation of the chlorination system. Because the above representations include that the financial impact will be the same among all of the water system customers, the Ethics Commission will consider whether the "class exception" applies to this unique set of circumstances, in which case the Petitioner would be allowed to participate.

Section 36-14-7(b) of the Code of Ethics, referred to as the "class exception," states that a public official will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, or any person within his family, or any business associate, or any business by which he is employed or which he represents, "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group." When determining whether the class exception applies, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

The Ethics Commission has previously applied the class exception in a variety of circumstances involving municipal officials and their real estate holdings. In Advisory Opinion 2005-39, for example, the Ethics Commission applied the class exception, allowing a member of the Bristol County Water Authority to participate and vote on a Discount Program which permitted a person

over 65 years of age to receive a discount on water rates otherwise charged to a residential customer, notwithstanding that the petitioner was 65 years old and he would immediately benefit from the program, reasoning that he would be affected to no greater extent than any of the other 3,117 water customers who would benefit from the program. See also A.O. 2015-4 (applying the class exception and permitting a Charlestown Town Council member to participate in the Town Council's discussions and decision-making relative to remediating ground water pollution, given that it was reasonably foreseeable that the financial impact upon the entire class would be substantially similar in the form of equal or proportional assessments to connect to community water and/or wastewater systems, or, alternatively, a Town-wide tax increase to subsidize improvements to the water and sewer infrastructure to prevent pollution and salt water intrusion); A.O. 2005-22 (applying the class exception and permitting an Exeter Town Council member to participate in a proposed tax freeze ordinance for all property owners aged 65 and over, notwithstanding that his spouse was over 65 and could benefit from the tax freeze, because 250 to 300 other property owners would be similarly impacted by the ordinance).

In the instant matter, the Petitioner is one of approximately 280 water system customers who will be impacted by any increase in the water rate associated with the installation of the chlorination system. Although the Petitioner will be financially impacted by a change in the amount of the water rate, he represents that he will be impacted to no greater extent than any other of the approximately 280 water system customers. Therefore, it is the opinion of the Ethics Commission that the circumstances justify the application of the class exception set forth in section 36-14-7(b), and the Petitioner may participate in the Town Council's discussions and voting relative to the cost associated with the Town's installation of a chlorination system to its water system.

However, in the event that the Town Council's discussions veer in a way that would impact the Petitioner individually, or as a member of a much smaller class or subclass of water system customers, the Petitioner is advised that he must either recuse from participation or seek additional guidance from the Ethics Commission. Upon recusal, a statement of conflict of interest must be filed with the Town Council and the Ethics Commission pursuant to 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(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2015-4

A.O. 2005-39

A.O. 2005-22

Keywords:
Class Exception

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 24, 2023

Re: Thomas E. Brun

QUESTION PRESENTED:

The Petitioner, a member of the East Providence Economic Development Commission, a municipal appointed position, who in his private capacity owns and operates the Indoor Tennis Court, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from pursuing federal grant funding through the Storefront Improvement Program administered through the East Providence Department of Planning and Economic Development and, if so, whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the municipal agency of which he is a member for purposes of pursuing the grant funding.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, a member of the East Providence Economic Development Commission, a municipal appointed position, who in his private capacity owns and operates the Indoor Tennis Court, is prohibited by the Code of Ethics from pursuing federal grant funding through the Storefront Improvement Program administered through the East Providence Department of Planning and Economic Development; however, the Petitioner qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the municipal agency of which he is a member for purposes of pursuing the grant funding, subject to the conditions outlined below.

The Petitioner is a member of the East Providence Economic Development Commission ("EDC"), having been appointed to that position by the East Providence City Council ("City Council") in March of 2020. He states that the role of the EDC is to promote a healthy and vigorous local economy in the City of East Providence ("City" or "East Providence"). Its powers and duties include, but are not limited to, the following: "to confer with and advise the City Council and the Mayor on all matters concerning economic development in the City; to advertise the economic advantages and opportunities of the City within the means provided by any appropriations made therefor by the City Council; . . . to cooperate with all community groups that are dedicated to the orderly economic expansion of the City and to furnish them such aid and advice as is deemed appropriate; [and] to cooperate with all industries and businesses in the City in the solution of any community problems which they might have and to encourage the management of such concerns to have a healthy and constructive interest in the City's welfare . . ." ¹

¹ <https://www.eastprovidencebusiness.com/economic-development-commission> (last visited December 28, 2022).

In his private capacity, the Petitioner owns and operates the Indoor Tennis Court, a business located in East Providence that is available for rental on an hourly basis by those who wish to play indoor tennis there. The Petitioner states that the Indoor Tennis Court also hosts visitors seeking to tour the facility, which was built in 1914 and is one of the oldest tennis courts of its kind in the country. The Petitioner further states that he purchased the Indoor Tennis Court 32 years ago and is its sole proprietor and only employee. He adds that the Indoor Tennis Court has been his only employment for the past 15-20 years. The Petitioner represents that he has no plans to sell his business or the building that houses it and that he hopes to continue to operate the Indoor Tennis Court for at least another decade.

The Petitioner states that the City is currently offering qualified local businesses the opportunity to apply for federal grant funding through the Storefront Improvement Program ("Program"), which utilizes federal funds awarded to the City under the American Rescue Plan Act ("ARPA") in response to the COVID-19 pandemic. He explains that the Program was developed as a means of providing long-term benefits and improvements to small businesses in the City, particularly in demographic areas that are disproportionately affected by higher levels of demographic distress. The Petitioner represents that the Program is directly administered by a staff member ("Storefront Improvement Manager") of the City's Department of Planning and Economic Development ("Department") who receives the applications and reviews them for compliance with all eligibility requirements under the Program.

According to the Storefront Improvement Program information sheet issued by the City², eligible commercial property owners and tenants can receive a grant of up to \$40,000 for eligible storefront improvements. For grant requests over \$10,000, applicants are required to provide a 25% match of the amount over \$10,000 (which may not be met by using funds from other ARPA-funded programs). Grant amounts up to \$10,000 do not require a match. The Program covers items such as window repair or replacement, doors, awnings, painting, siding, exterior lighting, window boxes, landscaping, and signage. Eligible businesses include those related to the arts, entertainment, recreation, accommodation, food services, and personal care services. Successful applicants will receive payment in two installments: the first installment upon submission of an invoice from qualified contractors and a second payment upon completion of all proposed improvements.

The Petitioner represents that he was appointed to the EDC prior to the availability of ARPA funds to the City and the decision to use them for the Program, and further represents that the EDC had no role in establishing the criteria, application or design guidelines for the Program. He further represents that the role of the EDC in the Program process is to review the applications for purposes of then making a recommendation to the Mayor as to whether they should be granted, adding that after the applications are reviewed by the EDC, they are returned to the Department for an advisory sign-off for approval by the Department Director. The Department then submits the applications and advisory sign-off to the Mayor for final approval. The Petitioner explains that the Storefront Improvement Manager presents every application that she receives to the EDC for review and consideration, and that the application for ARPA funds cannot be reviewed and approved or denied without participation by the EDC. He states that applications will be accepted until December 31,

² See <https://eastprovidenceri.gov/storefront-improvement-program> (last visited December 22, 2022).

2024, that grants are issued on a rolling basis, and that grant funds, which the Petitioner estimates to total approximately one million dollars, could be depleted prior to the end of the application period.

The Petitioner states that he recently applied for grant funding through the Program, adding that consideration of his application is on hold pending the issuance of an advisory opinion from the Ethics Commission that either the Code of Ethics does not prohibit him from applying or that the circumstances justify application of the hardship exception. He further states that he is applying for grant funds to remove old wooden shingles from the entire front of the Indoor Tennis Court building and to install new wooden shingles there, adding that the new shingles would be of similar style and material as the original wooden siding. The Petitioner represents that, because the lowest bid he received for the project is \$54,000, he is requesting \$40,000, which is the maximum amount available under the grant. He further represents that he will have in his budget the necessary funds above the requested grant award to complete the project. The Petitioner states that, if allowed to pursue the grant funding, he would recuse not only from participation in the discussion and voting relative to his own application, but from the discussion and voting relative to all other applications submitted to the EDC for consideration on or before December 31, 2024.³ It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited by the Code of Ethics from pursuing federal grant funding through the Storefront Improvement Program and, if so, whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the EDC for purposes of pursuing the grant funding.

The Code of Ethics prohibits a public official from representing himself or any other person before any state or municipal agency of which he is a member. R.I. Gen. Laws § 36-14-5(e) ("section 5(e)") (1) & (2). This prohibition extends for a period of one year after the public official has officially severed his position with the agency. Section 5(e)(4). The "revolving door" language of section 5(e) is designed to both prevent any undue influence that a current public official may have over his agency and colleagues by reason of his membership thereon, and to minimize any undue influence that a former public official may have over his former agency and colleagues by reason of his past membership thereon. Under the Code of Ethics, a person represents himself or another person before a state or municipal agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his own favor or in favor of another person. Section 36-14-2(12) and (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Section 5(e)'s prohibitions are stricter than virtually any other provisions in the Code of Ethics. In most instances under the Code of Ethics, public officials and employees may address potential conflicts of interest by declining to participate in related discussions and votes. Such is not the case with section 5(e). Absent an express finding by the Ethics Commission that a hardship exists, the prohibitions in section 5(e) are absolute.

³ The Petitioner states that there have already been seven applications for grant funding from the Program for which he participated in discussions and voting that resulted in the approval of those applications, but that his participation occurred prior to him submitting his own application.

The Submission of Grant Applications is Representation Before One's Own Agency

Historically, the Ethics Commission has consistently recognized the submission of grant applications by a public official as the representation of that public official before his or her own state agency. See A.O. 2020-32 (opining that a former Senior Projects Review Coordinator for the Rhode Island Historical Preservation & Heritage Commission ("RIHPHC") was prohibited from, among other things, submitting a grant application to the RIHPHC from the petitioner's new private employer on which the petitioner's name appeared); A.O. 2016-23 (opining that Pawtucket's Assistant City Solicitor, who was also President of the Board of Directors of Cape Verdean American Community Development ("CACD"), was prohibited from representing the CACD before the City of Pawtucket on any matter, including Block Grant applications, and from signing and submitting such applications); A.O. 2002-59 (opining that a former Rhode Island State Council on the Arts ("RISCA") member could not apply for a grant from the RISCA, given that she would have to appear before her former board prior to the expiration of one year following her resignation).⁴

Given the advisory opinions issued herein which recognize a public official's application for grant funding as an appearance before one's own agency, the Petitioner's proposed conduct falls within the Code of Ethics' prohibition against representing oneself before a municipal agency of which he is a member. 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 apply for a Storefront Improvement Program Grant.

The Hardship Exception

Section 5(e)(1) specifically authorizes the Ethics Commission to grant an exception, in certain circumstances, to allow a public official to represent himself before his own agency, based upon a finding that a denial of such self-representation would result in a hardship. Upon receiving a hardship exception, the public official is required to recuse from participating in his agency's consideration and disposition of the matter at issue. Section 36-14-5(e)(1)(ii). 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 36-14-5(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 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

⁴ In the cases of Advisory Opinions 2020-32, 2016-23, and 2002-59, while each of the petitioners had either been, or could potentially have been, tasked with reviewing grant applications as part of the performance of their duties for each of their respective agencies, none of the subject grants sought by the petitioners related to their own real property.

the public official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

In past advisory opinions, the Ethics Commission has applied the hardship exception where the matter involved a modification to a public official's place of business. For example, in Advisory Opinion 2017-54, the Ethics Commission granted a hardship exception to a member of the Bristol Town Council to appear before the Bristol Zoning Board of Review for permission to install a 9-foot fence around a commercial boat storage facility that he had owned and managed for several years prior to his election to the Town Council. Similarly, in Advisory Opinion 2001-29, the Ethics Commission granted a hardship exception to a member of the Narragansett Town Council permitting him to appear before the Narragansett Zoning Board, over which he had appointing authority, to apply for an alteration to the site plan to enclose the outdoor seating areas of his restaurant that were used during the summer season. The Ethics Commission based its decision primarily on the fact that the petitioner had owned and operated the restaurant for eight years prior to his election to the Town Council. See also A.O. 2011-33 (granting a hardship exception to a former Westerly Planning Board member and permitting him to seek a permit from his former board to install an additional sign at his ice cream shop because the business was his primary source of income and his ownership interest predated his service on the Planning Board); A.O. 2010-19 (granting a hardship exception to an alternate member of the Newport Zoning Board to appear before his own board and appeal the denial of a building permit to refurbish unused space for commercial rental use within a residential rental property, where his ownership predated his public service, the desired use was consistent with prior use, and had the least financial impact on the petitioner); A.O. 2005-32 (granting a hardship exception to a Westerly Planning Board member to appear before the Planning Board to request a zone change which would allow the petitioner to relocate his business, an ice cream shop, notwithstanding that his property rights did not pre-exist his appointment to the Planning Board). Compare A.O. 2003-49 (opining that the Assistant Solicitor for the Town of Lincoln who wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board regarding the development of two parcels of real estate he owned in the town did not qualify for a hardship exception because the petitioner's ownership of the lots did not predate his appointment as Assistant Solicitor, and it was uncertain whether either lot would be resold in commercial transactions after development).

Here, the Petitioner seeks to avail himself of the opportunity to seek federal funds in the form of a grant in order to restore and renovate the front of a commercial property from which he has operated the business which has been his only employment for approximately two decades prior to his appointment to the EDC. The Petitioner affirmatively represents that he does not intend to sell the property or the business anytime in the next ten years. Considering these representations, and consistent with our past opinions in this area, it is the opinion of the Ethics Commission that the totality of the circumstances justifies making an exception to section 5(e)'s prohibitions to allow the Petitioner to pursue federal grant funding through the Storefront Improvement Program.

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 36-14-5(e)(1)(iii). Pursuant thereto, the Petitioner must recuse from participating in the

discussion and voting not only from the EDC's consideration of his own grant application, but from the discussion and voting by the EDC relative to all grant applications through the Storefront Improvement Program, given that any decisions made by the Petitioner concerning other applications prior to a determination by the other members of the EDC concerning his own application would likely affect the availability of ARPA funds. Additionally, participation by the Petitioner in the consideration of grant applications submitted by other business owners following a determination by the other members of the EDC concerning his own grant application could carry with it an appearance of impropriety of the nature that section 5(e) aims to reduce. Finally, the Petitioner shall not use his public position to attempt to influence his or any other application for grant funding. All notices of recusal shall be made consistent with the provisions of 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:

§ 36-14-2(12)

§ 36-14-2(13)

§ 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. 2020-32

A.O. 2017-54

A.O. 2016-23

A.O. 2014-04

A.O. 2011-33

A.O. 2010-19

A.O. 2005-32

A.O. 2003-49

A.O. 2002-59

A.O. 2001-29

Keywords:

Grant

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 24, 2023

Re: Douglas Duford

QUESTION PRESENTED:

The Petitioner, the Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, a state employee position, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to his potential new private employment with CODAC Behavioral Healthcare following his severance from state employment.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, a state employee position, is prohibited by the Code of Ethics from representing himself or others, including his private employer, and/or from acting as an expert witness, before the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, or any of its departments, offices, sections, programs or divisions, until the expiration of one year following the date of the severance from his state employment there. The Petitioner is further prohibited from using or disclosing any confidential information he obtained while working as Associate Director of the Quality Management Unit to financially benefit himself or his private employer.

The Petitioner states that he has been employed by the State of Rhode Island for the last ten months as Associate Director of the Quality Management Unit for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals ("BHDDH").¹ He describes the Quality Management Unit as the ultimate authority on licensure for organizations in Rhode Island that provide behavioral healthcare services, services for persons with intellectual/developmental disabilities, and services for persons with cognitive disabilities ("providers"), adding that the Quality Management Unit also receives complaints against providers and manages the investigations resulting from those complaints. He identifies among his duties as Associate Director the management of all Quality Improvement, Quality Assurance, Licensing and Accreditation Departments that are responsible for thousands of patients in public and private care in Rhode Island. The Petitioner represents that he leads a team of 20 clinicians, administrators and support staff that partner with legal teams and the Attorney General's Office to drive projects. The

¹ The Petitioner further states that, immediately prior to his hiring by the State of Rhode Island, he worked at Pappas Rehabilitation Hospital for Children in Canton, Massachusetts.

Petitioner states that his last day with the BHDDH will be January 27, 2023, and that he is currently pursuing other employment opportunities in anticipation of his departure from state service.

The Petitioner represents that he recently received an offer of employment to become the Director of Quality Improvement for CODAC Behavioral Healthcare ("CODAC").² He identifies among the major duties and responsibilities of the Director of Quality Improvement the following: to research and develop quality improvement programs to provide services that lead to better outcomes; to communicate the strategic vision, scope and mission of performance improvement management to CODAC employees; to monitor patient satisfaction surveys and develop a process for the incorporation of patient voice in decision-making; to act as Keeper of the Records, Health Insurance Portability and Accountability Act Privacy Officer, and Corporate Compliance Officer; and to review new contracts to ensure support of the agency's strategic vision and mission. The Petitioner further identifies the following additional major duties and responsibilities of the Director of Quality Improvement: maintaining BHDDH licensing, Commission on Accreditation of Rehabilitation Facilities accreditation, and National Commission on Correctional Health Care accreditation; participating in program development as relates to quality and performance; and developing a legislative agenda to promote CODAC's mission and advocate with state leadership in all three levels of government (collectively, "duties which could include involvement with the BHDDH").

The Petitioner represents that he made clear during two interviews with representatives from CODAC that, under the Code of Ethics, he would be prohibited from representing himself or anyone else, including CODAC, before the BHDDH, including all of its departments and divisions, for a period of one year following the severance of his employment with that state agency. He explains that, following his second interview with CODAC, the Petitioner met with CODAC's Chief Executive Officer ("CEO") to discuss his obligations under the Code of Ethics, including with respect to those duties which could include involvement with the BHDDH, which culminated in the CEO's acknowledgment of those obligations, and the offer to formally attest to that acknowledgement.³ The Petitioner states that, if hired by CODAC, he would be able to perform his duties as the Director of Quality Improvement and still honor his obligations under the Code of Ethics for the next year because CODAC would be prepared to accommodate him in that regard and because CODAC's licensing from the BHDDH will not be due again for another two years. The Petitioner explains that he shared with the representatives from CODAC who interviewed him that he has sought this advisory opinion. It is in the context of these facts that the Petitioner seeks advice from the Ethics Commission regarding the application of the revolving door provisions of the Code of Ethics to his potential employment with CODAC.

The Code of Ethics prohibits a public employee from representing himself or any other person, and from acting as an expert witness, before any state agency by which he is employed. R.I. Gen. Laws § 36-14-5(e) ("section 5(e)")(1) - (3). This prohibition extends for a period of one year after

² CODAC, a nonprofit organization based in Cranston, RI, has provided treatment, recovery and prevention services to individuals and families within local communities for more than 50 years. <https://codacinc.org/#:~:text=Contact%20us%20now%20for%20access.Book%20Appointment> (Last visited on January 12, 2023).

³ The Petitioner states that, following a telephone conversation with a member of the Ethics Commission staff the day before his second interview at CODAC, he informed the CEO that a formal attestation would not be necessary.

the public employee has officially severed his position with the state agency. Section 5(e)(4). The “revolving door” language of section 5(e) is designed to prevent any undue influence that a current or recently departed public official or employee may have over an agency and its personnel by reason of current or recent employment there. Under the Code of Ethics, a person represents himself or another person before a state agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his own favor or in favor of another person. Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). A “person” is defined as an individual or business entity. Section 36-14-2(7). Additionally, section 36-14-5(c) prohibits the use and/or disclosure of confidential information received through one’s public employment for the purpose of pecuniary gain.

The prohibitions within section 5(e) are absolute and apply to the entire agency, including all of its offices, sections, programs or divisions. See, e.g., A.O. 2020-7 (opining that the Chief Civil Engineer of the Transportation Planning Division of the Rhode Island Department of Transportation (“RIDOT”) was prohibited from preparing plans for submission by a private client to RIDOT, including any separate divisions thereof or entities therein, while he was employed by RIDOT and for a period of one year thereafter).

The Ethics Commission has issued numerous advisory opinions interpreting section 5(e)’s requirements with respect to former state employees interacting with their former agencies during the one-year period following the severance of their state employment. For example, the Ethics Commission issued Advisory Opinion 2022-30 to the former Deputy Director of the Medicaid Program within the Executive Office of Health and Human Services opining that she was prohibited from representing herself or others, including her private employer, or from acting as an expert witness, before the Executive Office of Health and Human Services, or any of its departments, offices, sections, programs or divisions, until the expiration of one year following the date of her severance from state employment. That petitioner was further prohibited from using or disclosing any confidential information she obtained while working as the Deputy Director of the Medicaid Program to financially benefit herself or her private employer. See also A.O. 2020-27 (opining that the former Administrator of Project Management for the Rhode Island Department of Transportation (“RIDOT”) was prohibited from representing himself or his private employer, or from acting as an expert witness, before the RIDOT until the expiration of one year after he had officially severed his position with that agency, and that the petitioner was further prohibited from using any confidential information he obtained while working as the Administrator of Project Management to financially benefit himself or his private employer).

Activities that would constitute representation and/or acting as an expert generally include the presentation of information or arguments for the purpose of influencing the judgment of the agency on matters concerning the Petitioner and/or his new employer. Here, such prohibited activities include, but are not limited to, communicating with and/or appearing before the BHDDH or any of its departments, and/or attending and participating at meetings between CODAC and the BHDDH or any of its departments relative to CODAC’s licensing or other matters. The Petitioner is cautioned that prohibited interactions are not limited to business meetings, and could occur at a restaurant, on the phone, in an email or at any social or political gathering. It is the content of a discussion, rather than its venue, that is most relevant in applying the Code of Ethics’ post-

employment revolving door restrictions. On the other hand, contacts involving purely personal or ministerial matters that do not involve discretion or decision-making on the part of the BHDDH or any of its departments are not prohibited.

In the instant matter, the Petitioner's anticipated actions to avoid conflicts of interest during the one-year period after leaving his employment with the BHDDH are not only appropriate, but required under the Code of Ethics. Accordingly, in consideration of the Petitioner's factual representations, the applicable provisions of the Code of Ethics, and consistent with our past advisory opinions addressing this issue, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing himself or others, including his new private employer, or from acting as an expert witness, before the BHDDH, including any of its departments, offices, sections, programs or divisions, for a period of one year following the severance of his employment with that agency. Further, the Petitioner may not use any confidential information he obtained while working for the BHDDH to obtain financial gain for himself or his new employer. Lastly, until the expiration of one year following the date of his departure from state service, the Petitioner is advised to avail himself of further guidance from the Ethics Commission regarding the Code of Ethics' potential application to his interactions with his former state agency.

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 (7)

§ 36-14-2 (12)

§ 36-14-2 (13)

§ 36-14-5(c)

§ 36-14-5(e)

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

Related Advisory Opinions:

A.O. 2022-30

A.O. 2020-27

A.O. 2020-7

Keywords:

Post-Employment

Revolving Door