

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-1

Approved: January 24, 2023

Re: The Honorable 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 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(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