



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

40 Fountain Street

Providence, RI 02903

(401) 222-3790 (Voice/TT) Fax: (401) 222-3382

ethics.email@ethics.ri.gov

<https://ethics.ri.gov>

**NOTICE OF OPEN MEETING**

**AGENDA**

**2<sup>nd</sup> Meeting**

**DATE:** Tuesday, February 14, 2023

**TIME:** 9:00 a.m.

**PLACE:** Rhode Island Ethics Commission  
Hearing Room - 8<sup>th</sup> Floor  
40 Fountain Street  
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on January 24, 2023.
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.) 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]

- b.) The Honorable George Nardone, a member of the Rhode Island House of Representatives, requests an advisory opinion regarding whether the Code of Ethics prohibits him from submitting, discussing, and voting on legislation that would relieve members of Homeowner Associations from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on Homeowner Association property, given that the Petitioner belongs to a Homeowner Association, the members of which would be impacted by such legislation. [Staff Attorney Radiches]
  - c.) The Honorable Tina Spears, a member of the Rhode Island House of Representatives, requests an advisory opinion regarding what restrictions the Code of Ethics places on her ability to participate in matters before the Rhode Island General Assembly given that she is employed as the Executive Director of the Community Provider Network of Rhode Island, a non-profit trade association of private providers of services and supports to people with developmental and intellectual disabilities. [Staff Attorney D'Arezzo]
  - d.) Steven G. Bois, a member of the Jamestown Harbor Commission, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting, if offered, the position of Jamestown Harbormaster, provided that he resigns from the Jamestown Harbor Commission upon accepting the position of Harbormaster. [Staff Attorney Popova Papa]
- 5. Discussion of Code of Ethics' application to employees of housing authorities consistent with Advisory Opinion No. 2021-55.
  - 6. Motion to go into Executive Session, to wit:
    - a.) Motion to approve minutes of Executive Session held on January 24, 2023, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
    - b.) In re: Harold G. Morgan, Jr., Complaint No. 2023-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
    - c.) Motion to return to Open Session.
  - 7. Motion to seal minutes of Executive Session held on February 14, 2023.
  - 8. Report on actions taken in Executive Session.
  - 9. New Business proposed for future Commission agendas and general comments from the Commission.

10. 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 February 9, 2023*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 14, 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 . . ."<sup>1</sup>

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<sup>1</sup> <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 City<sup>2</sup>, 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,

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<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>3</sup> 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).<sup>4</sup>

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

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<sup>4</sup> 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

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## Draft Advisory Opinion

Hearing Date: February 14, 2023

**Re: The Honorable George Nardone**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from submitting, discussing, and voting on legislation that would relieve members of Homeowner Associations from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on Homeowner Association property, given that the Petitioner belongs to a Homeowner Association, the members of which would be impacted by such legislation.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Rhode Island House of Representatives, a state elected position, is not prohibited by the Code of Ethics from submitting, discussing, and voting on legislation that would relieve members of Homeowner Associations from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on Homeowner Association property, notwithstanding that the Petitioner belongs to a Homeowner Association, the members of which would be impacted by such legislation, given that the circumstances herein justify the application of the class exception as set forth in Rhode Island General Laws § 36-14-7(b).

The Petitioner is a member of the Rhode Island House of Representatives and has served continuously in that capacity since his initial election in November 2018. He represents District 28 in Coventry and serves on the Finance Committee, the Labor Committee, and the Oversight Committee. The Petitioner states that he would like to draft and submit legislation that, if passed, would require the Kent County Water Authority (“KCWA”) to assume financial responsibility for the upkeep and maintenance of certain water pumping stations and infrastructure (collectively, “pumping stations”) in the Kent County Water District for which the members of two local Homeowner Associations are currently financially responsible. The Petitioner further states that the subject pumping stations, while owned by the HOA, are physically located on town property and not Homeowner Association (“HOA”) property.<sup>1</sup>

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<sup>1</sup> The Petitioner adds that there is also a water pumping station which services the Washington Oak School in Coventry, the upkeep and maintenance for which the residents of Coventry are currently financially responsible, notwithstanding that the pumping station is not physically located on the school property. The Petitioner informs that, were the proposed legislation to pass, the KCWA would also assume financial responsibility for the upkeep and maintenance of that particular water pumping station.

The Petitioner states that he presently resides in the Walker Ridge Neighborhood (“Walker Ridge”) located in Coventry and that he is a member of the Walker Ridge HOA, which is one of the two HOAs of which he is aware that receive water from the KCWA and that would be impacted by the proposed legislation. He further states that there are 65 homeowners in Walker Ridge, all of whom are the Petitioner’s constituents, and many of whom have approached the Petitioner to request that he submit legislation to address this issue. The Petitioner represents that the second HOA (“Eagle Glen”) is located in the Town of Scituate, and that there are approximately 65 homeowners there who would be similarly impacted by the proposed legislation.

The Petitioner states that, in addition to the water usage fees that they pay to the KCWA, the members of both the Walker Ridge and Eagle Glen HOAs also pay fees to an outside source for costs associated with the electricity, insurance, and maintenance of the pumping stations that provide water to both HOAs.<sup>2</sup> The Petitioner represents that the passage of the proposed legislation would relieve all members of both the Walker Ridge and Eagle Glen HOAs from financial responsibility for the upkeep and maintenance of the water pumping stations. He explains that the KCWA would be responsible for the maintenance and upkeep of the pumping stations. The Petitioner affirmatively represents that, because all Walker Ridge and Eagle Glen HOA members pay the same annual membership fee to each of their respective organizations, and those fees would be reduced by the same amount for the members of each organization were the legislation to pass, all Walker Ridge and Eagle Glen HOA members would be impacted in the same way.<sup>3</sup>

It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from submitting, discussing, and voting on legislation that would relieve members of the Walker Ridge HOA, of which he is a member, and the Eagle Glen HOA, from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on HOA property.<sup>4</sup>

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

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<sup>2</sup> The Petitioner explains that, during the construction of Walker Ridge approximately 20 years ago, there was an understanding between representatives of Walker Ridge and the builder that the Walker Ridge HOA would temporarily contribute to the upkeep and maintenance of the water pumping station used to provide water to its residents pending the construction of a water tower that would eventually serve as the water supply source for Walker Ridge. The Petitioner states that, after the water tower was built, it was realized that a pumping station would still need to be utilized to provide water to Walker Ridge, as the tower itself would be insufficient to do so.

<sup>3</sup> The Petitioner states that all Walker Ridge residents currently pay an annual HOA fee of \$500, regardless of the location or value of their homes or how long they have owned those homes. He further states that, because approximately 70% of the annual HOA fee is used to pay for the electricity, insurance, and maintenance of the HOA’s pumping station, all Walker Ridge residents would save approximately \$300 annually in HOA fees should the proposed legislation pass. The Petitioner represents that, while he does not know the amount that Eagle Glen residents are required to pay annually in HOA fees, or by how much that amount would decrease if the proposed legislation were to pass, all Eagle Glen residents currently pay the same amount in annual HOA fees and would benefit equally by a reduction of those fees as a result of the proposed legislation.

<sup>4</sup> The Petitioner represents that the subject legislation would affect not only the KCWA, but all Rhode Island Water Suppliers. He adds that, because he does not possess the resources to attempt to identify the entire class of citizens who would be impacted in the event that the legislation passes, he seeks the advice of the Ethics Commission relative only to the significant and definable class of the approximately 130 homeowners from Walker Ridge and Eagle Glen.

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, his family member, 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 his 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, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). However, pursuant to section 36-14-7(b), often referred to as the “class exception,” a public official will not have an interest that is in substantial conflict with his public duties if any benefit or detriment accrues to him, his family member, his business associate, or any business by which he is employed or which he represents “as a member of a . . . group, or of any significant and definable class of persons within the . . . group, to no greater extent than any other similarly situated member of the . . . group, or the significant and definable class of persons within the . . . group.” Section 36-14-7(b).

When determining whether any particular circumstances support and justify the application of the class exception, the Ethics Commission will consider the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class;<sup>5</sup> 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 proposed legislation. For example, in Advisory Opinion 2020-12, the Ethics Commission applied the class exception when opining that a member of the Rhode Island Senate was not prohibited from submitting a bill which would allow volunteer firefighters who met certain requirements to utilize the State’s vehicle bid list to purchase discounted personal vehicles, notwithstanding that the petitioner was a volunteer firefighter. The Ethics Commission reasoned that, given that the proposed legislation would impact equally all volunteer firefighters in Rhode Island who met the requisite requirements, the petitioner would not be impacted to any greater or lesser extent than any other similarly situated firefighter in the subclass. See also A.O. 2019-56 (applying the class exception to allow a member of the Providence City Council to participate in City Council discussions and decision-making relative to the reaffirmation of an existing Zoning Overlay, and its proposed expansion to an additional 90 properties, notwithstanding that the petitioner owned one of the additional properties, because the official action being contemplated by the petitioner would result in subjecting all of the properties in the Zoning Overlay, including those in the proposed expansion, to the same obligations and/or requirements); A.O. 2014-12 (applying the class exception to allow a member of the North Kingstown Town Council to participate in the Town Council’s consideration of certain proposed Comprehensive Plan and Zoning Ordinance amendments relative to the Preserve at Rolling Greens development plan, notwithstanding that the petitioner’s primary residence was one of 124 residences located in an abutting subdivision given that, among other things, there would likely be a common financial impact upon all of the property owners in the abutting subdivision); A.O. 2005-22 (applying the class exception to allow an Exeter Town Council member to participate in a proposed tax freeze ordinance for all property owners aged 65 and older, notwithstanding that his spouse was over 65

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<sup>5</sup> While the Ethics Commission has generally found larger classes to be more favorable to the application of the class exception, it has never imposed a minimum class number.

and could benefit from the tax freeze, because 250-300 other property owners would be similarly impacted by the ordinance).

Here, the circumstances are such that the official action contemplated by the Petitioner is the direct result of requests by a number of his constituents to act on their behalf. Further, the proposed legislation would similarly impact all 130 of the members of the Walker Ridge and Eagle Glen HOAs by relieving them of their current financial responsibility for the upkeep and maintenance of water pumping stations that not physically located on HOA property. Accordingly, it is the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception as set forth in section 36-14-7(b), and that the Petitioner may introduce and participate in the General Assembly's consideration of the proposed legislation. However, should the proposed legislation impact a smaller class or subclass of HOA members, or impact the Petitioner individually or differently than the other HOA members to which the legislation would apply, the Petitioner should either refrain from submitting the bill and/or recuse from participating in its consideration, or seek further guidance from the Ethics Commission. Notice of recusal, when necessary, shall be in accordance with section 36-14-6.

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

Code Citations:

§ 36-14-5(a)  
§ 36-14-5(d)  
§ 36-14-6  
§ 36-15-7(a)  
§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2020-12  
A.O. 2019-56  
A.O. 2014-12  
A.O. 2005-22

Keywords:

Class Exception

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 14, 2023

**Re: The Honorable Tina Spears**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding what restrictions the Code of Ethics places on her ability to participate in matters before the Rhode Island General Assembly given that she is employed as the Executive Director of the Community Provider Network of Rhode Island, a non-profit trade association of private providers of services and supports to people with developmental and intellectual disabilities.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Rhode Island House of Representatives, a state elected position, must recuse from participation in matters before the Rhode Island General Assembly that will have a direct financial impact upon her employer, the Community Provider Network of Rhode Island, and/or its membership of private providers of services and supports to people with developmental and intellectual disabilities. However, consistent with the guidance set forth herein, the Petitioner may participate in such matters, pursuant to application of the class exception of R.I. Gen. Laws § 36-14-7(b), provided that the Community Provider Network of Rhode Island and/or its member providers would be directly financially impacted to no greater extent than similarly situated providers of such supports and services.

The Petitioner was elected to the Rhode Island House of Representatives, representing District 36, in November 2022. In her private capacity, the Petitioner has been employed since April 2019 as the Executive Director of the Community Provider Network of Rhode Island (CPNRI), a non-profit trade association of private providers of services and supports to individuals with developmental and intellectual disabilities. The private providers receive funding from the State of Rhode Island from direct billing through Medicaid and from specific programs utilizing state and federal funds. CPNRI's membership consists of twenty-four (24) providers, each of which has a seat on CPNRI's Board of Directors. Additionally, CPNRI has nine (9) associate members that provide services for children.<sup>1</sup> As stated on its website, "CPNRI offers organizations the opportunity to join a collective voice that consistently advances the interests of disability providers and the system that serves children and Rhode Islanders with disabilities."<sup>2</sup> CPNRI describes the

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<sup>1</sup> Associate membership is offered to organizations that provide services for children with disabilities, although such providers may also seek full membership.

<sup>2</sup> See <https://www.cpnri.org/member-benefits> (last accessed February 7, 2023).

benefits of membership to include: participation in statewide systems transformation policy conversation; state level advocacy and lobbying for member organization's policy needs; management of statewide grassroots activities and communications; information sharing and best practices; group purchasing; regular member communication; and networking with other member agencies.<sup>3</sup>

In her capacity as Executive Director, the Petitioner advocates for provider entities that are members of CPNRI. CPNRI advocates for legislation to empower people with disabilities to have active lives in the community. The Petitioner advises that CPNRI has previously supported and/or will provide future support for policies and legislation that advance the rights of people with disabilities, such as the following: expansion of public transit access for people with disabilities; inclusion of accessible homes in affordable housing; and workforce issues to attract and retain service workers within the developmental and intellectual disability sector, such as reimbursement rate review, tuition reimbursement, and establishing a base minimum wage.

Prior to her recent election to office, the Petitioner lobbied the executive branch, as well as both the Rhode Island Senate and House of Representatives, on behalf of CPNRI's members. This prior lobbying activity included testifying at legislative hearings as well as writing to and meeting with the Governor and members of the General Assembly. The Petitioner informs that she has never advocated for benefits or funding that would be exclusive to CPNRI member providers or that would specifically financially impact CPNRI. Cognizant that, since her election, R.I. Gen. Laws § 36-14-5(e) prohibits her from representing CPNRI and its member providers before the General Assembly, the Petitioner represents that going forward another individual will be handling those duties on behalf of CPNRI and its members.

The Petitioner states that there are 38 agencies licensed by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals to provide support and services to people with developmental and intellectual disabilities, of which 24 (approximately 63%) are represented by CPNRI. In light of her private employment as CPNRI's Executive Director, the Petitioner seeks guidance from the Ethics Commission as to what limitations the Code of Ethics places upon her ability to sponsor, support, discuss, and vote on legislation before the General Assembly that may impact CPNRI members and other providers of services and supports to people with developmental and intellectual disabilities.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of her public duties if she has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of her official activity, to the official herself, any person within her family, her business associate, her employer, or any business that she represents. Section 36-14-7(a). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate or her employer.

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<sup>3</sup> Id.

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 her official duties if any benefit or detriment accrues to her, any person within her family, her business associate, or any business by which she is employed or which she 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 any particular circumstance justifies the application of the class exception, the Commission will consider the totality of the circumstances. Among the important factors to be 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 Commission has applied the class exception in numerous instances involving legislators and proposed legislation. See, e.g., A.O. 2018-31 (applying the class exception and opining that a legislator serving in the Rhode Island Senate, who in her private capacity was an attorney, could participate in the legislative process regarding proposed legislation to eliminate the statute of limitations applicable to civil actions alleging sexual abuse, given that the legislation would apply equally to all alleged victims of abuse and their attorneys); A.O. 2017-25 & 26 (members of the Rhode Island House of Representatives who are firefighters may participate and vote on legislation that would impact firefighters across the state pursuant to the Code of Ethics’ class exception); A.O. 2004-27 (State Senator who is a pharmacist and pharmacy owner may participate and vote on legislation that generally impacts pharmacies and health care if he is financially impacted to no greater or lesser extent than similarly situated pharmacists or facility owners); A.O. 98-14 (member of the House of Representatives who owns a restaurant which serves alcohol may vote on legislation relating to the legal alcohol limit since the legislation at issue affects all members of the restaurant, bar and hospitality industry to the same extent).

The Code of Ethics requires that the Petitioner recuse from taking any official action, including sponsoring, supporting, discussing, and voting, on legislation that is likely to result in a direct financial impact to CPNRI and/or its provider members unless the individual circumstances justify application of the class exception as set forth in section 36-14-7(b). In the absence of specific proposed legislation to review, the Commission is constrained to provide only general guidance as to *potential* application of the class exception. Consistent therewith, it is the opinion of the Commission that the Petitioner may participate in sponsoring, supporting, discussing, and voting on legislation that would financially impact CPNRI and/or its provider members to no greater extent than similarly situated provider entities. However, should proposed legislation impact a smaller subclass of service providers, or impact CPNRI member providers individually or differently than the other service providers to whom the legislation would apply, the Petitioner should either refrain from submitting the legislation and/or recuse from participating in its consideration, or seek further guidance from the Ethics Commission. Notice of recusal, when necessary, shall be in accordance with section 36-14-6 of the Code of Ethics.



Recusal would not be required, however, where the direct financial impact of the proposed legislation would be upon the recipients of developmental and intellectual disability services, rather than the providers. See, e.g., A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the General Assembly's discussions and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned and/or managed a number of child care centers in Rhode Island and voluntarily reimbursed the applicants she hired for the cost of obtaining a criminal-records check because, notwithstanding the petitioner's choice to voluntarily reimburse applicants for such fees, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment).

Additionally, section 36-14-5(e) prohibits a public official from representing herself, representing another person, or acting as an expert witness before a state or municipal agency of which she is a member or by which she is employed. Section 5(e)(1) - (3); see also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Section 5(e)'s prohibitions continue while the official remains in office and for a period of one year thereafter. Section 5(e)(4). A person is defined as "an individual or a business entity." Section 36-14-2(7). Accordingly, the Petitioner is prohibited from representing CPNRI and/or its members before the General Assembly while serving in the House of Representatives and for a period of one year following her severance from legislative office. See section 5(e)(4).

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. 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.

**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)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

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

Related Advisory Opinions:

A.O. 2021-32  
A.O. 2021-17  
A.O. 2018-31  
A.O. 2017-26  
A.O. 2017-25  
A.O. 2017-23  
A.O. 2008-25  
A.O. 2004-27  
A.O. 2003-2  
A.O. 98-14

Keywords:

Class Exception  
Private Employer  
Recusal  
Revolving Door

DRAFT

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: February 14, 2023

Re: Steven G. Bois

### **QUESTION PRESENTED:**

The Petitioner, a member of the Jamestown Harbor Commission, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting, if offered, the position of Jamestown Harbormaster, provided that he resigns from the Jamestown Harbor Commission upon accepting the position of Harbormaster.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Jamestown Harbor Commission, a municipal appointed position, is not prohibited by the Code of Ethics from accepting, if offered, the position of Jamestown Harbormaster.

The Petitioner is a member of the Jamestown Harbor Commission (“Harbor Commission”). He explains that the Harbor Commission consists of seven members appointed by the Jamestown Town Council (“Town Council”). The Harbor Commission is the primary regulatory and management group for the waters of the Town of Jamestown consistent with the authority granted to the Town under R.I. Gen. Laws § 46-4-6.9.<sup>1</sup> The Petitioner identifies the following examples as duties of the Harbor Commission: advising the Town Council on matters concerning town-owned waterfront facilities, moorings, and leases to boatyard businesses; and providing opinions to the Town Council regarding budgets relating to the upgrade of town-owned waterfront facilities, citizen applications for moorings, or use of town-owned property.

The Petitioner states that he recently applied for the position of Jamestown Harbormaster, which was advertised by the Jamestown Chief of Police and the Jamestown Police Department. The Petitioner explains that the Chief of Police also serves as the Harbor Commission Executive Director (“Executive Director”). According to the Definitions section of the Jamestown Harbor Management Ordinance (“Ordinance”), the Executive Director is a member of the town administration, nominated by the Town Administrator and appointed by the Town Council.<sup>2</sup> The role of the Executive Director is to supervise the harbor staff, which includes a harbormaster, a harbor clerk, and additional personnel as needed who are hired by the Town Administrator

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<sup>1</sup> See <http://www.jamestownri.gov/town-departments/harbor/harbor-commission> (last visited on February 7, 2023).

<sup>2</sup> See Jamestown, R.I., Rev. Code of Ordinances ch.78, art. II, § 78-22 (2023), [https://library.municode.com/ri/jamestown/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH78WA\\_ARTIIHAM\\_AOR\\_S78-22DE](https://library.municode.com/ri/jamestown/codes/code_of_ordinances?nodeId=PTIICOOR_CH78WA_ARTIIHAM_AOR_S78-22DE) (last visited on February 7, 2023).

following approval by the Town Council.<sup>3</sup> The Ordinance further indicates that the Executive Director shall be an ex-officio, nonvoting member of the Harbor Commission, who shall not count as part of the quorum.<sup>4</sup>

The Harbormaster job description identifies the position as full-time and seasonal, with the Harbormaster reporting to the Chief of Police. Among the duties and responsibilities of the Harbormaster are the enforcement of the state laws and local ordinances pertaining to the operation of boats and moorings in Jamestown waters and the maintenance of the safety and security of the waterways. The job description further indicates that the Harbormaster works with the Executive Director, the Assistant Harbormaster, the Police and Fire Departments, the Rhode Island Department of Environmental Management, and the United States Coast Guard. The Petitioner explains that the Harbormaster attends the Harbor Commission's meetings as an advisor during the boating season which is during the months of May to September; however, the Harbormaster is not a member of the Harbor Commission and does not vote on any matters that are before the Harbor Commission. The Petitioner further explains that the Harbormaster provides the Harbor Commissioners with updates on actions taken or planned to be taken by the Harbormaster. However, the Petitioner represents that the Harbor Commission does not have any supervisory authority over the Harbormaster, whose duties are assigned and supervised by the Chief of Police/Executive Director. The Petitioner further represents that the Harbor Commission supports the Town Council, whereas the Harbormaster supports the Chief of Police.

The Petitioner states that the creation of the Harbormaster job description and the advertisement of the position were done by the Chief of Police without participation by the Petitioner or the Harbor Commission. The Petitioner further states that the Harbor Commission has no hiring authority over the Harbormaster and no involvement with the hiring process. The Petitioner represents that the Chief of Police is conducting the interviews with the candidates and will select a finalist whose name he will then forward to the Town Council for approval. The Petitioner further represents that he has already had one interview for the position with the Chief of Police and the retired Harbormaster. The Petitioner states that, if selected for the position of Harbormaster, he will immediately resign from the Harbor Commission. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from accepting, if offered, the position of Jamestown Harbormaster.

Commission Regulation 520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006) ("Regulation 1.5.1") prohibits any elected or appointed official from accepting any appointment or election that requires approval by the body of which he is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one (1) year after the termination of his membership in or on such body. See, e.g., A.O. 2010-24 (opining that a

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<sup>3</sup> See Jamestown, R.I., Rev. Code of Ordinances ch.78, art. II, §§ 78-22 & 78-29 (2023), [https://library.municode.com/ri/jamestown/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH78WA\\_ARTIIHAM\\_AOR\\_S78-22DE](https://library.municode.com/ri/jamestown/codes/code_of_ordinances?nodeId=PTIICOOR_CH78WA_ARTIIHAM_AOR_S78-22DE) (last visited on February 7, 2023).

<sup>4</sup> See Jamestown, R.I., Rev. Code of Ordinances ch.78, art. II, § 78-28 (2023), [https://library.municode.com/ri/jamestown/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH78WA\\_ARTIIHAM\\_AOR\\_S78-28HACO](https://library.municode.com/ri/jamestown/codes/code_of_ordinances?nodeId=PTIICOOR_CH78WA_ARTIIHAM_AOR_S78-28HACO) (last visited on February 7, 2023).

member of the Coventry Housing Authority Board of Commissioners (“Board”) was prohibited by what is now Regulation 1.5.1 from accepting employment from the Housing Authority as its Maintenance Director because the Board was responsible for hiring the Executive Director who was then responsible for hiring the other employees, including the Maintenance Director).

Further, a person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, 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 occurs if a person subject to the Code of Ethics 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 his official activity. Section 36-14-7(a). Finally, section 36-14-5(d) prohibits a public official from using his position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, his family member, his business associate, or any business by which he is employed or which he represents.

In Advisory Opinion 2020-46, the Ethics Commission reviewed a similar question, under virtually identical circumstances, opining that another member of the Jamestown Harbor Commission was not prohibited from interviewing for and accepting, if offered, the position of Jamestown Harbormaster, provided that he resigned from the Jamestown Harbor Commission upon accepting the position of Harbormaster. There, the Ethics Commission determined that the prohibitions of Regulation 1.5.1 were inapplicable because, were the Chief of Police to offer the position of Harbormaster to that petitioner, the offer would have required the approval of the Town Council rather than the Harbor Commission. Further, the Ethics Commission based its opinion on the fact that the Harbor Commission had no supervisory authority over the Harbormaster because the Harbormaster duties were assigned and supervised by the Chief of Police in his capacity as the Harbor Commission’s Executive Director. Consistent with the facts of the instant matter, neither that petitioner nor the Harbor Commission participated in the creation of the job description for the Harbormaster position or its advertisement and would have no involvement in the selection process.

Here, as in Advisory Opinion 2020-46, the prohibitions of Regulation 1.5.1 are inapplicable. The Chief of Police is not a member of the Harbor Commission and, were he to offer the position of Harbormaster to the Petitioner, an appointed member of the Harbor Commission, the offer would require the approval of the Town Council rather than the Harbor Commission. Further, the Harbor Commission has no supervisory authority over the Harbormaster because the Harbormaster duties are assigned and supervised by the Chief of Police in his capacity as the Executive Director, having been appointed by the Town Council, and not by the Harbor Commission. Additionally, neither the Petitioner nor the Harbor Commission participated in the creation of the job description for the Harbormaster position or its advertisement and will have no involvement in the selection process. Finally, the Petitioner states that, if he is selected to serve as the Harbormaster, he will resign immediately from his position as a Harbor Commission member.

Accordingly, based on the Petitioner’s representations above, and consistent with the applicable provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics

Commission that the Petitioner is not prohibited by the Code of Ethics from accepting, if offered, the position of Harbormaster.

**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-00-00-1.5.1 Employment from Own Board (36-14-5006)

Related Advisory Opinions:

A.O. 2020-46

A.O. 2010-24

Other Statutory Authority

§ 46-4-6.9

Keywords:

Employment from Own Board

DRAFT



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**RHODE ISLAND ETHICS COMMISSION**

40 Fountain Street  
Providence, RI 02903  
(401) 222-3790 (Voice/TT)  
Fax Number: 222-3382

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**To: Rhode Island Ethics Commission**

**From: Jason Gramitt, Executive Director**

**Date: February 14, 2023**

**Re: General Commission Advisory Opinion – Housing Authorities**

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At the Ethics Commission's January 24, 2023 meeting, in the context of the Commission's consideration of a proposed advisory opinion involving a local housing authority, Commissioners recalled that an individual advisory opinion had issued in 2021 clarifying that the Executive Director of the Woonsocket Housing Authority was subject to the Code of Ethics. Discussion ensued regarding whether the Ethics Commission should consider issuing a General Commission Advisory Opinion to clarify that housing authority employees across the state are similarly subject to the Code of Ethics. I stated that I would, at a future Ethics Commission meeting, provide Commissioners with a copy of the 2021 Woonsocket advisory opinion (see attached), as well as information regarding the procedures for issuing a General Commission Advisory Opinion (see below).

The Ethics Commission issues two types of advisory opinions. The first is an individual advisory opinion that is requested by, and issued to, a person who is subject to the Code of Ethics. Such individual advisory opinions are only applicable to the person who requested the opinion. Occasionally, the Ethics Commission may wish to issue a general opinion containing a more universal interpretation or likely application of the Code of Ethics. In such cases, the Ethics Commission may adopt a General Commission Advisory Opinion ("GCA"). Examples of previously issued GCAs include: GCA 2009-1 (Nepotism); GCA 2009-2 (Public Officials' Salaries); GCA 2009-3 (Secondary Employment); and GCA 2010-1 (Historic District Commissions).

The procedure for adopting a GCA is different and slightly more involved than adopting an individual advisory opinion. In order to adopt a GCA the Commission must vote at *two* separate meetings, and it must allow for public comment prior to the second vote:

Final adoption of any policy or general Commission advisory opinion shall require an affirmative vote at two separate meetings of the Commission. The initial vote may occur at any public meeting of the Commission. The second or final vote shall only be taken after the proposed policy or general advisory opinion has been incorporated by specific reference on a public meeting notice relating to an open and public meeting of the Commission, thereby providing an opportunity for public comment on any proposed policy or general advisory opinion. Specifically excluded from these policies are any proposed regulations which are subject to promulgation pursuant to R.I. Gen. Laws § 42-35-3.

Commission Regulation 520-RICR-00-00-2.10 Adoption of Commission Policy and General Commission Advisory Opinions (1027).

Applying this procedure, if the Ethics Commission is inclined to move forward with considering a GCA regarding housing authorities, the staff will prepare a draft GCA for presentation, discussion, and a potential first vote at a future Ethics Commission meeting. If the Ethics Commission makes an initial vote to adopt the GCA, the staff will solicit and schedule public comment on the draft GCA at a subsequent meeting. Following public comment, the Ethics Commission may take its second vote to adopt the GCA.



# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion 2021-55

Approved: October 5, 2021

**Re: Robert R. Moreau**

### **QUESTION PRESENTED:**

The Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, requests an advisory opinion regarding whether such employment subjects him to the provisions of the Rhode Island Code of Ethics.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, is subject to the Rhode Island Code of Ethics.

The Petitioner represents that he has been employed by the Housing Authority of the City of Woonsocket (“Woonsocket Housing Authority” or “WHA”) since 2009, first as its Director of Security and, since January 1, 2019, as its Executive Director.<sup>1</sup> The Petitioner states that, as Executive Director, he is responsible for the day-to-day leadership and management of the WHA. The Executive Director is selected and appointed by the WHA’s 7-member Board of Commissioners, who themselves are all selected and appointed to their positions by the Mayor of the City of Woonsocket (“the City” or “Woonsocket”).

The Petitioner represents that the WHA, like other public housing authorities, is funded and regulated by the U.S. Department of Housing and Urban Development (“HUD”), and that it does not receive any state or municipal funds. He further states that, notwithstanding the political appointment of its Board members and while the WHA works “cohesively” with city and state leaders, its operations are “fully autonomous” from the City. For these reasons, he seeks clarification as to whether he is subject to the Rhode Island Code of Ethics.

### **Public Housing Authorities are Public Corporations**

Public housing authorities (“PHAs”) exist in cities and towns across Rhode Island and the United States. Often referred to as “quasi-public” entities having characteristics of both private and public bodies, their authority, governance, and relationship to federal, state, and local governments are often misunderstood. A comprehensive report on public housing prepared by the Congressional

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<sup>1</sup> The Petitioner previously served on the Woonsocket Police Department for twenty-three years, the Woonsocket Zoning Board for ten years, and the Woonsocket City Council from 2011 through 2016, serving as Council President in his last year.

Research Service for the members and committees of the United States Congress describes the history of public housing and PHAs as follows:

PHAs were, for the most part, created by states in response to the federal government's creation of the low-rent public housing program [in 1937]. Their authorities and structures are dictated by the state laws under which they were chartered. PHAs typically have an executive director as well as a governing board. The board generally has members appointed by local government officials, but it may also have elected members. The board's role is generally to approve policy, clarify goals, and delegate responsibility and authority to the executive director, who acts on its behalf. [P]HAs' governing structures are dictated primarily by their state charters . . . .<sup>2</sup>

And also:

Public housing has a unique administrative structure that pairs local administration and local discretion with federal funding and federal regulations. Public housing properties are owned and managed by quasi-governmental local public housing authorities (PHAs). PHAs have contracts, called Annual Contributions Contracts (ACCs), with the federal government. Under the terms of their contracts, PHAs agree to administer their properties according to federal rules and regulations, and in exchange they receive federal funding in the form of operating and capital grants . . . .<sup>3</sup>

All Rhode Island PHAs, including the WHA, were created and chartered by enabling legislation adopted by the General Assembly.<sup>4</sup> As described in this enabling statute, a Rhode Island PHA is "a public body and a body corporate and politic, exercising public powers[.]"<sup>5</sup> Therefore, a PHA is a "public corporation," which "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."<sup>6</sup>

The Rhode Island Supreme Court has described PHAs as having "a dual nature which partakes of a public as well as a private character."<sup>7</sup> However, "[a] housing authority is not a political subdivision of the state[.]"<sup>8</sup> nor is it a municipal department.<sup>9</sup> "Once created it becomes an

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<sup>2</sup> Congressional Research Service, *Introduction to Public Housing*, 9-10 (2014).

<https://crsreports.congress.gov/product/pdf/R/R41654/14>.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> The WHA was established on March 8, 1940 under the provisions of an enabling act, then R.I. Gen. Laws 1938, ch. 344, as amended, and now R.I. Gen. Laws § 45-25-1 *et seq.*

<sup>5</sup> R.I. Gen. Laws § 45-25-15.

<sup>6</sup> *Little v. Conflict of Interest Commission*, 397 A.2d 884, 887-88 (R.I. 1979)(quoting *Housing Authority of Woonsocket v. Fetzik*, 110 R.I. 26, 32-33, 289 A.2d 658, 662 (1972)). See also *State ex rel. Costello v. Powers*, 80 R.I. 390, 394, 97 A.2d 584, 586 (1953) (A housing authority is akin to "a public or quasi-municipal corporation which exercise[s] police powers in the general public interest . . .").

<sup>7</sup> *Fetzik*, 110 R.I. at 33, 289 A.2d at 662 (citing *Parent v. Woonsocket Housing Authority*, 87 R.I. 444, 143 A.2d 146 (1958)).

<sup>8</sup> *Id.*

<sup>9</sup> *Parent*, 87 R.I. at 447, 143 A.2d at 147.

autonomous body, subject only to the limits of power imposed by law.”<sup>10</sup> Nevertheless, “[a] housing authority exercises some of its powers as a representative of the city government and other powers as an agent of the federal government[.]”<sup>11</sup> Furthermore, the Rhode Island Supreme Court has stated that “the services which these authorities render are impressed with a public character to such an extent that we think it is a matter of public policy that they be bound in some particulars by the rules which govern the activities of municipal corporations and departments thereof.”<sup>12</sup>

In a recent audit of the WHA by HUD’s Office of Inspector General, the WHA was described as follows:

The Housing Authority of the City of Woonsocket, RI, was incorporated under the laws of the State of Rhode Island and operates under a board of commissioners. The executive director, who is appointed by the board of commissioners, runs the day-to-day operations of the Authority. The Authority owns and operates six developments under an annual contributions contract with the U.S. Department of Housing and Urban Development (HUD).<sup>13</sup>

An earlier report of HUD’s Inspector General described the WHA as “a quasi-governmental public entity responsible for the ownership, oversight, and management of [] low income units in the City of Woonsocket.”<sup>14</sup>

The above-discussed opinions of the Rhode Island Supreme Court, reports authored by the HUD Auditor General and the Congressional Research Service, as well as the WHA’s own chartering statutes enacted by the General Assembly, all make clear that the WHA’s legal status is that of either a “public corporation” or a “quasi-public corporation,” created and constrained by laws enacted by the Rhode Island Legislature. Therefore, the answer to the Petitioner’s question presented - whether he is subject to the State of Rhode Island’s ethics laws - depends upon whether Rhode Island law requires the employees of public or quasi-public corporations such as the WHA to be subject to the Code of Ethics.

### **Rhode Island’s Former Standards of Conduct and Persons Subject Thereto: 1977-1986**

Rhode Island’s first comprehensive set of statutory “standards of conduct” for public officials was enacted by the General Assembly in 1976 and became effective in January of 1977, ten years prior to the creation of today’s Rhode Island Ethics Commission.<sup>15</sup> These initial standards of conduct were enforced by a 9-member “Conflict of Interest Commission” and were applicable only to state or municipal *elected* and *appointed* officials who were defined as “an officer or member of state

<sup>10</sup> *Fetzik*, 110 R.I. at 33, 289 A.2d at 662.

<sup>11</sup> *Id.* (citing *Costello*, 80 R.I. 390, 97 A.2d 584).

<sup>12</sup> *Parent*, 87 R.I. at 448, 143 A.2d at 147.

<sup>13</sup> U.S. Department of Housing and Urban Development (HUD), *Office of Inspector General’s Audit of the Housing Authority of the City of Woonsocket, RI’s Public Housing Capital Fund 3* (2019)(footnotes omitted). <https://www.hudoig.gov/sites/default/files/2019-06/2019-BO-1002.pdf>.

<sup>14</sup> U.S. Department of Housing and Urban Development, *Audit Report of the Office of Inspector General*, 1 (1998), <https://archives.hud.gov/offices/oig/reports/files/ig811003.pdf>.

<sup>15</sup> 1976 R.I. Pub. Laws, ch. 93, § 1.

or municipal government . . .”<sup>16</sup> State or municipal *employees*, however, were not subject to the those standards of conduct enacted at that time.

Notwithstanding this narrow definition, in its first year of existence the Conflict of Interest Commission asserted that it had jurisdiction over an appointed member of another form of municipal public corporation, the Narragansett Redevelopment Agency. The dispute over this issue was recounted, and resolved, by an opinion of the Rhode Island Supreme Court in *Little v. Conflict of Interest Commission*.<sup>17</sup> There, the Court affirmed a decision of the Superior Court holding that a member of the Narragansett Redevelopment Agency, a public corporation compared by the Court to public housing authorities, was not required to file an annual financial disclosure statement because he was not an appointed “officer or member of state or municipal government,” as was then-required under the statute.<sup>18</sup> The Court reasoned that the Conflict of Interest Act in effect at that time must be given its plain and ordinary meaning, and “the Legislature was aware at the time it enacted the Conflict of Interest Act that this court had refused unequivocally to equate *public corporations* with municipal government.”<sup>19</sup> The clear takeaway from *Little* was that if the General Assembly had intended to include public or quasi-public corporations within the reach of its standards of conduct for public officials, it could and should have done so by clearly referring to them in the Conflict of Interest Act. Some years later, apparently aware of the Court’s holding in *Little*, the General Assembly did just that.

### **The Rhode Island Code of Ethics: 1987-Present**

After the 1986 Constitutional Convention and successful ballot measure creating the Rhode Island Ethics Commission, in 1987 the General Assembly repealed the Conflict of Interest Act and replaced it with a new “Code of Ethics in Government” to be administered and enforced by the Ethics Commission.<sup>20</sup> This new Code of Ethics applied not only to appointed and elected officials, as had the prior Conflict of Interest Act, but also specifically included state and local employees as well as employees of public and quasi-public state and municipal corporations. Section 36-14-4, entitled “Persons subject to the Code of Ethics,” which is still in effect today, was enacted as follows:

The following persons shall be subject to the provisions of the Rhode Island Code of Ethics in government:

- (1) State and municipal elected officials;
- (2) State and municipal appointed officials; and
- (3) *Employees of state and local government, of boards, commissions and agencies.*<sup>21</sup>

In order to leave no doubt as to which employees were meant to be included in subsection (3), above, the new Code of Ethics defined its entire phrase:

<sup>16</sup> R.I. Gen. Laws §§ 36-14-2 and 36-14-3(2) (1977).

<sup>17</sup> *Little*, 121 R.I. 232, 397 A.2d 884.

<sup>18</sup> *Id.* at 886-887.

<sup>19</sup> *Id.* at 888 (emphasis added).

<sup>20</sup> 1987 R.I. Pub. Laws ch. 195, §§ 1, 3.

<sup>21</sup> R.I. Gen. Laws § 36-14-4 (emphasis added).

“Employees of state and local government, of boards, commissions and agencies” means any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation[.]<sup>22</sup>

This deliberate and express addition in 1987 of “employees of any public or quasi-public . . . municipal . . . commission or corporation” to the list of persons “subject to the provisions of the Code of Ethics” appears to directly address the Supreme Court’s opinion in *Little*, and leaves no doubt that the employees of public corporations such as the WHA are subject to the Code of Ethics. Just as the Court noted in *Little* that, “we must presume that the Legislature, when enacting the [1977] Conflict of Interest Act, was familiar with our prior analysis of the relationship between public corporations . . . and municipal government[.]”<sup>23</sup> the Ethics Commission must also presume that the General Assembly was aware of the Court’s ruling in *Little* when, in its aftermath, it adopted the new Code of Ethics and expressly added employees of public and quasi-public corporations as regulated persons.

### **The Ethics Commission’s Longstanding and Consistent Exercise of Authority Over PHAs**

Following the 1987 enactment of the Code of Ethics by the General Assembly, the Ethics Commission enacted regulations consistent with the statutory Code of Ethics, clarifying that the definition of “Employees of state and local government, of boards, commissions and agencies” includes “any individual receiving a salary from any public or quasi-public state or municipal board, commission, corporation, or other public or quasi-public agency however named[.]”<sup>24</sup> Consistent therewith, the Ethics Commission began asserting its jurisdiction over PHA employees throughout the state, and it has continued that practice to the present through the issuance of numerous advisory opinions.<sup>25</sup>

Furthermore, another amendment to the Code of Ethics by the General Assembly, in 1992, expanded the definition of “municipal agency” to expressly include any “quasi-public authority,”

<sup>22</sup> R.I. Gen. Laws § 36-14-2(4)(emphasis added).

<sup>23</sup> *Little*, 121 R.I. at 237-238, 397 A.2d 887 (citing *Romano v. Duke*, 111 R.I. 459, 462, 304 A.2d 47, 49 (1973); *Loretta Realty Corp. v. Massachusetts Bonding & Insurance Co.*, 83 R.I. 221, 225-26, 114 A.2d 846, 848-49 (1955)).

<sup>24</sup> Commission Regulation 520-RICR-00-00-1.1.3(C)(4) Additional Definitions (36-14-2002).

<sup>25</sup> See A.O. 88-53 (A violation of the Code of Ethics will arise for the Executive Director of the Lincoln Housing Authority if his spouse applies for, or is hired to the position of Assistant Executive Director); A.O. 97-131 (Executive Director of the Pawtucket Housing Authority will not violate the Code of Ethics if he is a member of the Laborer’s International Union pension plan and also participates in the negotiation of the Laborer’s Union contract with the Housing Authority, given that his own salary and pension benefits would not be affected by those negotiations but are set by the City); A.O. 2002-42 (Central Falls Housing Authority employee must recuse from participation in any Housing Authority matters involving his own property); A.O. 2018-13 (an employee and tenant of the Providence Housing Authority may become a member of the Housing Authority’s Board of Commissioners, but must recuse from Commission matters that would financially impact her as an employee and tenant); A.O. 2018-25 (the Code of Ethics does not prohibit a Research/Executive Assistant at the Pawtucket Housing Authority from seeking election to the Pawtucket School Committee).

thereby further clarifying that the General Assembly considered the *appointed* PHA board members/commissioners to also be within the reach of the Code of Ethics.<sup>26</sup> Since then, the Ethics Commission has, on numerous occasions, issued advisory opinions applying the Code of Ethics to the actions of appointed PHA commissioners, including the commissioners of the WHA.<sup>27</sup>

### **The WHA's Administrative Regulations Support Application of the Code of Ethics**

Finally, we find support in the WHA's own duly adopted regulations, which appear to recognize the applicability of the Code of Ethics to its employees and commissioners. The General Assembly has authorized PHAs to promulgate regulations that are necessary for the just and effective administration of their operations.<sup>28</sup> Pursuant thereto, the WHA has enacted its own Administrative Regulations, some of which govern conflicts of interest by WHA commissioners and employees.<sup>29</sup> Section 9-11 of its Administrative Regulations, entitled "Application of Other Codes of Conduct," reads:

This article is *in addition to* other requirements relating to the conduct of Authority employees. *Authority officers, directors and employees are required to follow the*

<sup>26</sup> 1992 R.I. Pub. Laws, ch. 396.

<sup>27</sup> See A.O. 96-27 (Chairperson of the Cumberland Housing Authority who is also an attorney engaged in the practice of law may represent an outside vendor's employee in a personal injury action that does not involve the Housing Authority); A.O. 96-77 (Newport Housing Authority Board of Commissioners member must recuse herself from participation in any discussion or voting in matters concerning her employer, Newport Residents Council Inc.); A.O. 96-92 (Chairperson of the Westerly Housing Authority Board of Commissioners is not prohibited from voting on a union contract involving Local 1217 given that he is also employed by the Town of Westerly and a member of the same union, but a different local, Local 1215, and would not be impacted by the vote); A.O. 96-94 (Commissioner of the Woonsocket Housing Authority, a municipal appointed official, may not participate in decisions of the Housing Authority to purchase advertising time at a radio station for which he is employed as general manager); A.O. 96-116 (Westerly Housing Authority Commissioner is not prohibited by the Code of Ethics from purchasing gifts for staff with public funds, provided such gifts are not for the benefit of Commissioners); A.O. 97-113 (Woonsocket Housing Authority Commissioner is not prohibited by the Code of Ethics from participating in discussions or votes on matters concerning the Police Department, where she is employed); A.O. 99-115 (members of the Gloucester Housing Authority may not receive compensation for their efforts if the members of the Housing Authority themselves take action to provide for or set their own compensation); A.O. 2000-21 (a member of the Pawtucket Housing Authority Commission may not participate in negotiations, votes or other matters affecting the labor contract with the Laborers' Union of the Housing Authority, a labor organization representing half of the approximately 45 employees of the Housing Authority, given that his son-in-law is an employee represented by that union); A.O. 2000-67 (the Pawtucket Housing Authority Chairperson must recuse from all participation in Housing Authority matters relating to his tenant's employer); A.O. 2000-74 (the Code of Ethics prohibits Westerly Housing Authority Commissioners from participating in the discussion or vote to donate funding to the Westerly Housing Association, a non-profit association, since they are all members of the Board of Directors of the Association); A.O. 2005-46 (Commissioner for the Cumberland Housing Authority may continue his full-time employment with the Cumberland School Department); A.O. 2010-24 (a member of the Coventry Housing Authority Board of Commissioners is prohibited by the Code of Ethics from accepting employment from the Housing Authority as its Maintenance Director, while serving on the Housing Authority and for one year thereafter); A.O. 2012-14 (a prospective Commissioner for the Johnston Housing Authority is not prohibited by the Code of Ethics from serving as a Commissioner while he is also a Section 8 landlord in Johnston, given that his tenant's Section 8 housing choice voucher was transferred from the Johnston Housing Authority to Rhode Island Housing).

<sup>28</sup> R.I. Gen. Laws § 42-25-18.1(b).

<sup>29</sup> *Woonsocket Housing Authority Administrative Legislation and Administrative Regulations*. <https://ecode360.com/WO1105> (last visited Sept. 29, 2021).

*Rhode Island laws and regulations relating to the conduct of public officials and employees.*<sup>30</sup>

The “Rhode Island laws and regulations relating to the conduct of public officials and employees” are those contained in the statutory and regulatory provisions of the Code of Ethics.

### **Conclusion**

Based on all of the above, including a clear statutory grant of jurisdiction by the General Assembly in the Code of Ethics and the Ethics Commission’s longstanding interpretation thereof, it is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the WHA, is subject to the provisions of the Code of Ethics.<sup>31</sup>

**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:

R.I. Gen. Laws § 36-14-2(4)

R.I. Gen. Laws § 36-14-2(8)

R.I. Gen. Laws § 36-14-2(9)

R.I. Gen. Laws § 36-14-4

Commission Regulation 520-RICR-00-00-1.1.3(C)(4) Additional Definitions (36-14-2002)

#### Other Authorities:

R.I. Gen. Laws § 45-25-10

R.I. Gen. Laws § 45-25-10.5

R.I. Gen. Laws § 45-25-15

*Little v. Conflict of Interest Commission*, 121 R.I. 232, 397 A.2d 884 (R.I. 1979)

*Housing Authority of City of Woonsocket v. Fetzyk*, 110 R.I. 26, 289 A.2d 658 (1972)

*Parent v. Woonsocket Housing Authority*, 87 R.I. 444, 143 A.2d 146 (1958)

*State ex rel. Costello v. Powers*, 80 R.I. 390, 97 A.2d 584 (1953).

#### Related Advisory Opinions:

A.O. 2018-25

A.O. 2018-13

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<sup>30</sup> *Woonsocket Housing Authority Administrative Legislation and Administrative Regulations, Ch. 9 Ethics and Standards of Conduct.* <https://ecode360.com/14482439> (last visited Sept. 29, 2021).

<sup>31</sup> In his letter requesting an advisory opinion, the Petitioner correctly notes that he and other executive directors of public housing authorities have not been directed to file annual financial disclosure statements with the Ethics Commission. While this is true, it is not relevant to our analysis of whether such employees are subject to the Code of Ethics. Only a small fraction of public, or quasi-public, employees are required to file financial disclosure statements under the current statutory scheme, but *all* are nevertheless subject to the conduct requirements of the Code of Ethics.

A.O. 2012-14  
A.O. 2010-24  
A.O. 2005-46  
A.O. 2002-42  
A.O. 2000-74  
A.O. 2000-67  
A.O. 2000-21  
A.O. 99-115  
A.O. 97-131  
A.O. 97-113  
A.O. 96-116  
A.O. 96-94  
A.O. 96-92  
A.O. 96-77  
A.O. 96-27  
A.O. 88-53

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