

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-8

Approved: 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 § 46-4-6.9.¹ 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.² 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

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

² 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 (last visited on February 7, 2023).

following approval by the Town Council.³ 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.⁴

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

³ 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 (last visited on February 7, 2023).

⁴ 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 (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 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-00-00-1.5.1 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