



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

3rd Meeting

DATE: Tuesday, March 7, 2023

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on February 14, 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.) The Honorable Stephen M. Casey, a member of the Rhode Island House of Representatives, requests an advisory opinion regarding his ability to discuss and vote on proposed legislation impacting firefighters that has been assigned for hearing and/or consideration to the House Municipal Government and Housing Committee, of which he is the Chair, given that he is employed as a full-time professional firefighter in the City of Woonsocket. [Staff Attorney D'Arezzo]

- b.) Deborah Ruggiero, a former legislator who served as a member of the Rhode House of Representatives, requests an advisory opinion regarding whether the Code of Ethics prohibits her from accepting, if offered, an appointment by the Speaker of the House of Representatives to the Broadband Advisory Council, prior to the expiration of one year after leaving her legislative office. [Staff Attorney Popova Papa]
 - c.) Garrett S. Mancieri, a member of the Woonsocket City Council, who in his private capacity is a non-voting, *ex officio* member of the Board of Directors of the Downtown Woonsocket Collaborative, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the City Council's discussions and decision-making relative to the Downtown Woonsocket Collaborative. [Staff Attorney Popova Papa]
 - d.) Garrett S. Mancieri, a member of the Woonsocket City Council, who in his private capacity is a member of the Board of Sponsors of Autumnfest, a private non-profit organization, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the City Council's discussions and decision-making relative to Autumnfest. [Staff Attorney Popova Papa]
 - e.) Mark A. Vieira, the Chief of the Johnston Police Department, requests an advisory opinion regarding whether the established alternate supervisory chain of command is sufficient to insulate him from conflicts of interest arising out of his position, given that his spouse is employed by the Johnston Police Department as its Administrative and Payroll Clerk. [Staff Attorney Radiches]
 - f.) John Preiss, a member of the Coventry Planning Commission, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, given that: 1) the development would be located on land that is in close proximity to the Petitioner's personal residence; and 2) representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development. [Staff Attorney Radiches]
5. Discussion regarding public housing authorities relative to the application of the Code of Ethics and financial disclosure requirements to housing authority commissioners and employees.
 6. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on February 14, 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 March 7, 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 March 2, 2023

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 7, 2023

Re: The Honorable Stephen M. Casey

QUESTION PRESENTED:

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding his ability to discuss and vote on proposed legislation impacting firefighters that has been assigned for hearing and/or consideration to the House Municipal Government and Housing Committee, of which he is the Chair, given that he is employed as a full-time professional firefighter in the City of Woonsocket.

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, may participate in the House Municipal Government and Housing Committee's discussions and votes on proposed legislation that would impact firefighters, notwithstanding the Petitioner's employment as a full-time professional firefighter in the City of Woonsocket, given that the circumstances herein justify the application of the class exception set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner has continuously served in the Rhode Island House of Representatives since 2013, and he currently serves as Chair of the House Municipal Government and Housing Committee ("Municipal Government & Housing Committee" or "Committee"). The Petitioner has been employed as a full-time professional firefighter in the City of Woonsocket since 2006. He informs that he also has Emergency Medical Technician ("EMT") certification and may perform emergency medical services on rescue calls in his employment as a Woonsocket firefighter. The Petitioner advises that proposed legislation pertaining to firefighters has been assigned to the Municipal Government & Housing Committee for hearing and/or consideration.

The first bill, 2023 – H 5201, would amend Chapter 45-19 of the General Laws entitled "Relief of Injured and Deceased Fire Fighters and Police Officers" to allow a firefighter¹ who is unable to perform duties as a result of heart disease, stroke, or hypertension to be presumed to have suffered an in-the-line-of-duty disability, unless the firefighter was hired after July 1, 2023, and there is clear and convincing evidence that the firefighter suffered the condition at the time of hire or regularly used tobacco products for the five (5) years prior to diagnosis.

¹ As defined in § 45-19-1, a "firefighter" means and includes any chief or other member of the fire department or rescue personnel of any city, town, or fire district, and any person employed as a member of the fire department of the town of North Smithfield, or fire department or district in any city or town.

2023 – H 5373 would further amend Chapter 45-19 to extend injured-on-duty (“IOD”) benefits to police officers and firefighters who suffer from diagnosed post-traumatic stress injuries (“PTSI”), except under certain conditions. It would also provide that municipal police officers and firefighters who are unable to perform their duties due to PTSI would be entitled to receive an accidental disability retirement allowance as well as IOD benefits.

Finally, 2023 – H 5286 would amend Chapter 45-19.1 of the General Laws entitled “Cancer Benefits for Fire Fighters” to expand the definition of firefighter to include a member of a fire department or a city, town, or fire district emergency medical services (“EMS”) unit.

The Petitioner seeks guidance as to whether he may participate in the Municipal Government & Housing Committee’s discussions and votes on the proposed legislation given his employment as a Woonsocket firefighter. He represents that such legislation could be subject to future amendments relative to the parameters under which benefits would be extended but that such amendments would not increase or decrease the class of individuals to which the legislation applies.

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 public official has reason to believe or expect that he, or any person within his family, or 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, section 36-14-5(d) of the Code of Ethics 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, any person within his family, his business associate, or his employer.

Section 36-14-7(b) of the Code of Ethics, often referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with his official duties if any benefit or detriment accrues to him ... “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 Ethics 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 Ethics Commission has previously applied the class exception in a variety of circumstances involving proposed legislation. See, e.g., A.O. 2022-9 (opining that a legislator serving in the Rhode Island Senate may participate in the Senate’s discussions and decision-making relative to a

budget article recommending the phase-out of state income taxation on military service pensions, despite the fact that the petitioner is a retired naval officer receiving a military service pension); A.O. 2018-36 (concluding that a State Senator who is a public school teacher vested in the Employees' Retirement System of Rhode Island may participate in Senate discussions and votes regarding legislation that would provide for a stipend paid to all retired teachers or their beneficiaries during years where no cost of living adjustments were applied to teachers' retirement benefits because, upon retirement, he would be eligible for the stipend to the same extent as every other similarly situated member of the class); A.O. 2018-31 (opining that a legislator serving in the Rhode Island Senate, who in her private capacity is an attorney, may 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). See also A.O. 2020-12; A.O. 2004-27; A.O. 98-14.

Notably, in Advisory Opinion 2017-26, the Ethics Commission previously opined that the instant Petitioner could participate and vote on legislation that would impact firefighters across the state pursuant to the Code of Ethics' class exception. There, legislation had been introduced that would impact all Rhode Island firefighters who collectively bargain, either permitting or mandating expired contract terms to continue until a successor agreement is reached. The Ethics Commission concluded that application of the class exception was justified because, as a Woonsocket firefighter who was subject to a collective bargaining agreement, the Petitioner would not be impacted to any greater extent than other similarly situated firefighters. See also A.O. 2017-25.

In the instant matter, passage of the subject legislation would have broad impact on all firefighters, including EMS/rescue personnel, and, with respect to 2023 – H 5373, also all police officers. The Petitioner would be impacted to no greater extent than other similarly situated firefighters. It is therefore the opinion of the Ethics Commission that the specific facts justify the application of the class exception as set forth in section 36-14-7(b) of the Code of Ethics. The Petitioner may participate in discussions and votes regarding the subject legislation, and on any amendments thereto or other legislation having the same broad-based impact on all of the state's firefighters, whether before the Municipal Government & Housing Committee or the full House of Representatives. However, the Petitioner should either recuse or seek further guidance from the Ethics Commission relative to legislation that impacts a smaller subclass of firefighters, or that impacts him individually or differently than other firefighters. Notice of recusal, when required, 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

§ 36-14-7(a)
§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2022-9
A.O. 2020-12
A.O. 2018-36
A.O. 2018-31
A.O. 2017-26
A.O. 2017-25
A.O. 2004-27
A.O. 2003-57
A.O. 98-14

Keywords:

Class exception
Recusal

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 7, 2023

Re: Deborah Ruggiero

QUESTION PRESENTED:

The Petitioner, a former legislator who served as a member of the Rhode House of Representatives, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from accepting, if offered, an appointment by the Speaker of the House of Representatives to the Broadband Advisory Council, prior to the expiration of one year after leaving her legislative office.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former legislator who served as a member of the Rhode House of Representatives, a state elected position, is not prohibited by the Code of Ethics from accepting, if offered, an appointment by the Speaker of the House of Representatives to the Broadband Advisory Council, prior to the expiration of one year after leaving her legislative office.

The Petitioner is a former member of the House of Representatives, having served in that capacity for 14 years. Her last day of public service was January 3, 2023. The Petitioner states that during her legislative tenure she helped frame legislation that was adopted in the 2022-2023 Rhode Island state budget and which implemented broadband¹ governance through the creation of a Broadband Director and Broadband Advisory Council under the Rhode Island Executive Office of Commerce (“Office of Commerce”). See R.I. Gen. Laws § 42-163-1, *et seq.* The Petitioner represents that, for the past seven years, Rhode Island had been one of only two states without any broadband governance and, therefore, was unable to access broadband infrastructure funds available through the United States Department of Commerce, National Telecommunications and Information Administration, but that the legislation now allows Rhode Island to access federal funds available through the Broadband Equity, Access, and Deployment Program.² The Petitioner explains that the federal funding allows states to create GIS mapping that shows which communities are unserved

¹ “Broadband” is defined as “a high-capacity transmission technique using a wide range of frequencies to deliver high-speed internet including both wireline and wireless technologies” and shall include, but not be limited to: goals for broadband elements such as speed, latency, affordability, access, sustainability, and digital equity.” Section 42-163-1.

² The Broadband Equity, Access, and Deployment Program was established by the Infrastructure Investment and Jobs Act under the National Telecommunications and Information Administration. It “provides federal funding to states and territories for grants to utilize for high speed Internet deployment, mapping, and adoption projects.” See <https://broadbandusa.ntia.doc.gov/resources/federal/federal-funding/departments-commerce-broadband-equity-access-and-deployment> (last visited on February 19, 2023).

and underserved, and to develop a broadband strategic plan to deliver to all residents, small businesses, and municipalities fast, affordable, and reliable broadband services.

Rhode Island's Broadband Advisory Council ("BAC") is comprised of nine members who serve without compensation. Section 42-163-4. The BAC "advise[s] the [E]xecutive [O]ffice of [C]ommerce on broadband implementation efforts undertaken by the agency including, but not limited to, the development of a state strategic plan and broadband-related investment strategies." Section 42-163-5. The BAC also provides a written report³ to the Speaker of the House and Senate President quarterly with the status of Rhode Island broadband efforts and the level and type of funding obligation and expenditure by an awardee through any grant program as well as recommendations for accessing further federal or other funding opportunities for as long as federal funding is available for this work. *Id.* The legislation provides that the Commerce Corporation shall be responsible for providing administrative and other support services to the BAC. Section 42-163-6. Finally, section 42-163-7 mandates that the BAC report at least annually to the General Assembly on its findings and recommendations which could include its recommendations for a proposed legislation.

The Petitioner would like to be considered for an appointment to the BAC by the Speaker of the House. For that reason, and under this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from accepting, if offered, an appointment to the BAC.

The Code of Ethics contains both statutory and regulatory "revolving door" provisions that apply to state elected officials, including current and former members of the legislature, and which require a one-year "cooling off" period after leaving public office before seeking or accepting other state employment not held at the time of their respective elections. *See* R.I. Gen. Laws § 36-14-5(n)(1) & Commission Regulation 520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007). Additionally, Regulation 520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006) provides that "[n]o elected or appointed official may accept any appointment or election that requires approval by the body of which he or she 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 termination of his or her membership in or on such body" *See, e.g.,* A.O. 2016-43 (opining that a North Smithfield Planning Board member was required to wait one year following his resignation to accept, if offered, appointment by the Town Administrator to the position of Town Planner where the selection process and final decision required the Board's approval).

Notably, however, the receipt of compensation for services rendered is a necessary element in the application of the above-cited provisions of the Code of Ethics. Here, service as a member of the BAC does not carry with it any financial benefit or remuneration. Therefore, the above-cited revolving door provisions of the Code of Ethics do not apply to the circumstances presented by the instant Petitioner.

The Code of Ethics also prohibits a public official from representing herself or any other person before any state agency of which she is a member or by which she is employed. Section 36-14-5(e)(1) & (2). This prohibition applies not only during the period of the public official's

³ The Petitioner represents that the written report is prepared and signed by the Broadband Director.

employment, but also for a period of one year after the public official has officially severed her position with a particular state agency. Section 36-14-5(e)(4). A person is defined as “an individual or a business entity.” Section 36-14-2(7). A business is defined as “a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted.” Section 36-14-2(2).

In prior advisory opinions, the Ethics Commission has consistently concluded that the Code of Ethics does not consider the relationship between a public official and a public body to be that of “business associates.” See, e.g., A.O. 2012-1 (opining that a member of the Rhode Island Transportation Advisory Committee (“TAC”), who was also a member of the Rhode Island Board of Governors for Higher Education, could participate in TAC discussions and votes concerning funding for institutions subject to the jurisdiction for the Board of Governors because under the Code of Ethics neither the Board of Governors nor TAC were considered “businesses”). Here, both the Office of Commerce and the BAC are public bodies and, as such, are not considered businesses under the Code of Ethics. Therefore, the prohibitions of section 36-14-5(e), would not apply to the Petitioner in her role as a member of the BAC because, were the Petitioner to appear before the General Assembly as part of her duties as a member of the BAC on behalf of the BAC or the Office of Commerce, she would be doing so on behalf of a public body as opposed to her own or any other person’s behalf.

Accordingly, absent additional facts indicating a conflict of interest, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from accepting, if offered, an appointment by the Speaker of the House to serve on the Broadband Advisory Council prior to the expiration of one year after leaving her legislative office.

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(2)

§ 36-14-2(7)

§ 36-14-5(e)

§ 36-14-5(n)

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

520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007)

Related Advisory Opinions:

A.O. 2016-43

A.O. 2012-1

Other Related Authority:
§ 42-163-1, *et seq.*

Keywords:
Revolving Door

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 7, 2023

Re: Garrett S. Mancieri

QUESTION PRESENTED:

The Petitioner, a member of the Woonsocket City Council, a municipal elected position, who in his private capacity is a non-voting, *ex officio* member of the Board of Directors of the Downtown Woonsocket Collaborative, a private non-profit organization, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the City Council's discussions and decision-making relative to the Downtown Woonsocket Collaborative.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Woonsocket City Council, a municipal elected position, who in his private capacity is a non-voting, *ex officio* member of the Board of Directors of the Downtown Woonsocket Collaborative, a private non-profit organization, is not prohibited by the Code of Ethics from participating in the City Council's discussions and decision-making relative to the Downtown Woonsocket Collaborative.

The Petitioner is a member of the Woonsocket City Council ("City Council"), to which he was elected in November 2022. In his private capacity, the Petitioner serves as an "*ex officio* member" of the Board of Directors of the Downtown Woonsocket Collaborative ("DWC"),¹ a private non-profit entity that advocates for the revitalization of the Main Street area of the City of Woonsocket ("City") through the building of community support, encouraging investment, improving the reputation and appearance of the downtown area, and increasing economic growth through the retention and recruitment of the arts, culture, business, and tourism.² The Petitioner states that pursuant to the DWC's bylaws, the DWC's Board of Directors may nominate elected or appointed government officials to the position of "*ex-officio* member" to run concurrently with their terms of public office. *Ex-officio* members may attend Board of Directors meetings but do not have any voting rights and do not count towards a quorum.³

¹ The Petitioner represents that prior to becoming an *ex officio* member he served as the DWC's Executive Director from 2015 to 2020, and as the DWC's Board of Directors Chairperson from 2020 to 2021.

² See <https://www.dwc02895.org/> (last visited on February 13, 2023).

³ The Petitioner states that there is no limit on the number of *ex officio* members that can serve on the Board of Directors and that, currently, there are two public officials serving in that position: the Petitioner, by virtue of his position as a City Council member, and Senator Melissa Murray, by virtue of her position as a member of the General Assembly.

The Petitioner represents that the DWC appears before the City Council approximately four times per year in order to seek funds available through Community Development Block Grants and/or to seek permission to use City property for various events such as the annual Holiday Stroll, the Month in the Museum, and the Dinner on the Bridge. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in the City Council's discussions and decision-making relative to matters involving the DWC.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also 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). Additionally, a public official must recuse from participation when his business associate appears or presents evidence or arguments before his state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7).

The Ethics Commission has stated that persons are "business associates" of the entities for which they serve as either officers or members of the Board of Directors, or in some other leadership position that permits them to affect the financial objectives of the entities. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management ("RIDEM"), who was also a Director of the Rhode Island Boy Scouts ("Boy Scouts"), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any RIDEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization's interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club ("TYC"), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board's consideration of a proposed amendment to the Tiverton Zoning Ordinance as requested by the TYC).

A common element in the above-cited advisory opinions was the ability of each of those petitioners to affect the financial objectives of the particular organization with which each was affiliated, generally accomplished through the powers of voting and decision-making. Importantly, unlike the petitioners in those advisory opinions, the instant Petitioner is a non-voting member of the DWC's Board of Directors.

A similar fact pattern was presented in Advisory Opinion 2013-4, in which the Ethics Commission reviewed the relationship between ProvPort, a domestic non-profit corporation that operated the

Port of Providence pursuant to an agreement with the City, and the City's Director of Economic Development who was assigned by the Mayor to be the City's liaison to ProvPort and to serve as a non-voting, *ex officio* member of its Board of Directors. The Ethics Commission concluded that no business associate relationship existed between ProvPort and the petitioner, and, as such, the Code of Ethics did not restrain the petitioner's ability to perform his duties as the Director of Economic Development as they related to ProvPort. The basis for the Ethics Commission's opinion was two-fold: (1) the petitioner was a non-voting Director who, for that reason, had no formal say in the financial objectives of the organization; and (2) he was serving as a Director in an *ex officio* capacity as part of his public duties as a City official and not on his own behalf.⁴ See also A.O. 2014-29 (opining that a member of the North Smithfield Planning Board ("NSPB"), who was also a general, non-voting member, volunteer, and annual contributor of the North Smithfield Land Trust ("NSLT"), a private nonprofit entity, was not a business associate of the NSLT, because he did not hold a leadership position within that organization that would have allowed him to affect its financial objectives and was not required to recuse from participating in NSPB matters relating to the NSLT).

Similarly, here the Petitioner is a non-voting member of the DWC's Board of Directors and, as such, is unable to affect the financial objectives of that organization; therefore, the Petitioner is not a business associate of the DWC. Accordingly, based on the Petitioner's representations above and consistent with the applicable provisions of the Code of Ethics, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in the City Council's discussions and decision-making relative to the Downtown Woonsocket Collaborative.

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)

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2014-29

⁴ Similarly, in In re: Stephen P. Mattscheck, Complaint No. 2022-1, the Ethics Commission did not find business associate relationship to exist between the Respondent and a fellow Board member, because, although the Respondent and his fellow Board member served together on the same Board of Directors of a private non-profit organization, the Respondent had voting and decision-making rights, whereas his fellow Board member had no voting or decision-making rights and, thus, no ability to affect the financial objectives of that organization.

A.O. 2014-14
A.O. 2013-4
A.O. 2012-28

Other Related Authority:

In re: Stephen P. Mattscheck, Complaint No. 2022-1

Keywords:

Business Associate

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 7, 2023

Re: Garrett S. Mancieri

QUESTION PRESENTED:

The Petitioner, a member of the Woonsocket City Council, a municipal elected position, who in his private capacity is a member of the Board of Sponsors of Autumnfest, a private non-profit organization, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the City Council's discussions and decision-making relative to Autumnfest.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Woonsocket City Council, a municipal elected position, who in his private capacity is a member of the Board of Sponsors of Autumnfest, a private non-profit organization, is not prohibited by the Code of Ethics from participating in the City Council's discussions and decision-making relative to Autumnfest.

The Petitioner is a member of the Woonsocket City Council ("City Council"), to which he was elected in November 2022. In his private capacity, the Petitioner is a member of the Board of Sponsors of Autumnfest ("Organization"), a non-profit entity that organizes and holds a festival each year in the City of Woonsocket ("City") during the Columbus Day weekend. The festival includes music, crafts, food, amusement rides, and a parade.¹

According to the Organization's bylaws, its membership consists of the five persons that encompass the Board of Sponsors, including: a) the Mayor of Woonsocket or their designee; b) the President of the City Council or their designee; c) the President of the Rotary Club of Woonsocket, Rhode Island, Inc. or their designee; d) the President of the Blackstone Valley Tourism Council or their designee; and e) a former General Chairperson of the Organization chosen by a majority of the Steering Committee. Pursuant to the bylaws, the Board of Sponsors is responsible for: a) the approval or disapproval of any amendment, changes, additions, or deletions to the bylaws; b) the monitoring of the general corporate affairs to ensure that overall performance of the Steering Committee of the Organization is in every respect in compliance with the bylaws; c) the development of a cooperative attitude with state officials, state department heads, and government agencies, as well as with city and surrounding community governments. Additionally, the members of the Board of Sponsors serve as the Organization's Election Committee that selects and appoints individuals to the Steering Committee. The Petitioner

¹ See <https://autumnfest.org/> (last visited on February 9, 2023).

represents that the Board of Sponsors meets once or twice per year to review and approve any changes to the bylaws proposed by the Steering Committee and to vote on new members of the Steering Committee. The Petitioner further represents that the Board of Sponsors has no financial duties and cannot influence the financial objectives of the Organization.

The Steering Committee is described by the Organization's bylaws as consisting of ten to twenty-five persons who manage the property, business, and affairs of the Organization. The bylaws specify, among others, the following responsibilities of the Steering Committee: to review and approve any contracts in excess of \$3,000; to amend the bylaws at any of its meetings, subject to the approval of the Board of Sponsors; to elect from among each other the officers of the Organization including a General Chairperson, Vice Chairperson, Secretary, and Treasurer; and to designate a Finance Committee to be responsible for the Organization's financial affairs. The Petitioner represents that he was a member of the Steering Committee for six years and served as General Chairperson for three of those years. The Petitioner further represents that in 2023 he did not seek re-appointment to the Steering Committee; however, he was voted by the Steering Committee to the Board of Sponsors based on his former service as General Chairperson. The Petitioner explains that the Steering Committee is the equivalent of the Board of Directors of other organizations and that the members of the Steering Committee are listed as directors on the Organization's annual reports filed with the Office of the Secretary of State.

The Petitioner states that the Organization appears once per year before the City Council to seek permission to use City property for the festival. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in the City Council's discussions and decision-making relative to matters impacting the Organization or on matters in which the Organization appears before the City Council.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also 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). Additionally, a public official must recuse from participation when his business associate appears or presents evidence or arguments before his state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7).

The Ethics Commission has stated that persons are "business associates" of the entities for which they serve as either officers or members of the Board of Directors, or in some other leadership position that permits them to affect the financial objectives of the entities. If a public official holds such a leadership position, the Ethics Commission has required that the official recuse himself or

herself if the interests of the organization would be affected by an action to be taken by his or her public agency. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“RIDEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any RIDEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance as requested by the TYC).

In the instant matter, the limited responsibilities of the Board of Sponsors do not allow it to affect the financial objectives of the Organization. Rather, it is the Steering Committee that manages the property, business, and affairs of the Organization. The Steering Committee reviews contracts in excess of \$3,000, elects the officers of the Organization, and designates a Finance Committee to be responsible for the Organization’s financial affairs. 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 a business associate of the Organization and, therefore, is not prohibited by the Code of Ethics from participating in the City Council’s discussions and decision-making relative to Autumnfest.

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)

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2014-14

A.O. 2012-28

Keywords:

Business Associate

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 7, 2023

Re: Mark A. Vieira

QUESTION PRESENTED:

The Petitioner, the Chief of the Johnston Police Department, a municipal employee position, requests an advisory opinion regarding whether the established alternate supervisory chain of command is sufficient to insulate him from conflicts of interest arising out of his position, given that his spouse is employed by the Johnston Police Department as its Administrative and Payroll Clerk.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the established alternate supervisory chain of command, as modified herein, is sufficient to insulate the Petitioner, the Chief of the Johnston Police Department, a municipal employee position, from conflicts of interest arising out of his position, given that his spouse is employed by the Johnston Police Department as its Administrative and Payroll Clerk.

On January 9, 2023, the Petitioner was sworn in as Chief of the Johnston Police Department (“Police Department” or “Department”). On the same date, Matthew LeDuc was sworn in as Deputy Chief of the Department, the position from which the Petitioner had been promoted to Chief. The Petitioner states that the Deputy Chief reports to the Chief and the Chief reports to the Mayor’s Chief of Staff. The Petitioner’s spouse, who has been employed by the Police Department for more than fifteen years, currently serves as its Administrative and Payroll Clerk, a position with responsibilities which include the recording, filing, and maintenance of all daily absences and extended leave for all Police Department personnel; the update and maintenance of all files concerning Department personnel; and the processing and maintaining of all benefits for Department personnel.

The Petitioner, who previously had been promoted to the position of Deputy Chief in August 2020, states that, prior to that particular promotion, and pursuant to the standard supervisory chain of command, the Administrative and Payroll Clerk reported directly to both the Deputy Chief and to the Operations and Training Division Manager, who is under the direct supervision of the Deputy Chief. On the same date that the Petitioner was sworn in as Deputy Chief of the Department, former Deputy Chief Joseph Razza was sworn in as Chief. Following his appointment to the position of Chief, Chief Razza issued a Special Order to all Department personnel stating that, effective immediately, the Petitioner’s spouse would (continue to) report directly to Chief Razza

regarding all matters relating to her duties and responsibilities. The Special Order further directed that, in the event of Chief Razza's unavailability, supervision of the Petitioner's spouse would be performed by the Mayor's Chief of Staff, whose responsibilities already included the supervision of all Department Heads. The Special Order issued by Chief Razza became the subject of Advisory Opinion 2020-48, which was issued to the Petitioner on December 8, 2020, and which opined that the established alternate supervisory chain of command contained within the Special Order was sufficient to insulate the Petitioner from conflicts of interest arising out of his new position as Deputy Chief, given his spouse's employment by the Department as its Administrative and Payroll Clerk.

Because the Special Order issued by Chief Razza in 2020 directed the Administrative and Payroll Clerk to report directly to Chief Razza, and not to the Petitioner in his role as Deputy Chief due to the spousal relationship between the Administrative and Payroll Clerk and the Deputy Chief, the Petitioner has since issued his own Special Order (Special Order #016) which, in essence, reestablishes the standard supervisory chain of command whereby the Administrative and Payroll Clerk once again reports directly to the Police Department's Deputy Chief, rather than to the Chief. It is under this set of facts that the Petitioner seeks advice from the Ethics Commission regarding whether the established supervisory chain of command outlined in Special Order #016 is sufficient to insulate him from conflicts of interest arising out of his new position as Chief, given his spouse's continued employment by the Police Department as its Administrative and Payroll Clerk.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if the public employee has reason to believe or expect that he or any family member, among others, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Also, a public employee may not use his public position to obtain financial gain, other than that provided by law, for himself or any family member, among others. Section 36-14-5(d).

Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1") contains specific provisions aimed at curbing nepotism. Pursuant to Regulation 1.3.1(B)(1), a public employee may not participate in any matter as part of his public duties if "any person within his [] family" is a participant or party, or if there is reason to believe that a family member will be financially impacted or will obtain an employment advantage. Additionally, Regulation 1.3.1(B)(2) prohibits a public employee from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission. The phrase "any person within his [] family" expressly includes "spouse." Regulation 1.3.1(A)(2).

In addition to Advisory Opinion 2020-48 that was issued to the Petitioner three years ago, the Ethics Commission has issued numerous advisory opinions applying the above-cited provisions of the Code of Ethics in response to analogous questions from petitioners involving their family members. For example, in Advisory Opinion 2009-26, the Ethics Commission opined that the Code of Ethics did not prohibit the Deputy Chief of the Valley Falls Fire Department from serving

in that position while his nephew simultaneously served as a firefighter within the same department. The Ethics Commission determined that the recusal procedures and alternate supervisory chain of command approved by the Fire Chief and the Chairman of the Board of Fire Commissioners, whereby the Fire Chief would handle supervisory matters concerning the Deputy Chief's nephew, were reasonable and sufficient to insulate the Deputy Chief from apparent conflicts of interest. See also A.O. 2010-40 (opining that the Chief of the Manville Fire Department, whose son was employed as a firefighter in the department, would not violate the Code of Ethics because an alternate chain of command had been established where the Chief recused from the supervisory chain of command in matters involving his son, and that the Chairman of the Board of Fire Wardens had agreed to become the son's designated supervisor regarding all administrative matters such as the scheduling of work shifts and disciplinary actions); A.O. 2005-19 (opining that the Code of Ethics would not prohibit the Chief of the Cranston Police Department from continuing in that position notwithstanding that his brother served in the department, given that an alternate chain of command had been established wherein the Mayor would replace the Chief as the final decision-maker on matters concerning the Chief's brother).

Here, in consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and past advisory opinions issued, it is the opinion of the Ethics Commission that the chain of command outlined in Special Order #016 appropriately requires that the Petitioner's spouse shall report directly to Deputy Chief Matthew LeDuc regarding all matters that pertain to her duties and responsibilities within the Johnston Police Department. Notably, the supervision of all such matters is among Deputy Chief LeDuc's regular Department duties and not the result of the Petitioner having delegated them to a subordinate. However, in the event that there are any matters involving the Petitioner's spouse for which the Deputy Chief would ordinarily consult the Petitioner in his role as Chief, such as those related to her salary, benefits, or other terms of employment, and/or such tasks relating to the supervision, evaluation, appointment, classification, promotion, transfer or discipline of the Petitioner's spouse, Deputy Chief LeDuc would instead consult the Mayor's Chief of Staff regarding such matters. Also, in the event of Deputy Chief LeDuc's unavailability, the Mayor's Chief of Staff will supervise the Petitioner's spouse. With these modifications, which are subject to the agreement of the Mayor of Johnston, the supervisory chain of command implemented by the Petitioner will be reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest involving his spouse's current employment.

The Petitioner is advised, however, to remain vigilant in identifying and avoiding any conflicts of interest that might arise given his position of authority over his spouse that are not addressed herein and is encouraged to seek further guidance from the Ethics Commission as needed. Any episodes of recusal shall be exercised 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:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2020-48

A.O. 2010-40

A.O. 2009-26

A.O. 2005-19

Keywords:

Family: Public Employment

Family: Supervision

Nepotism

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 7, 2023

Re: John Preiss

QUESTION PRESENTED:

The Petitioner, a member of the Coventry Planning Commission, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, given that: 1) the development would be located on land that is in close proximity to the Petitioner's personal residence; and 2) representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Coventry Planning Commission, a municipal appointed position, is not prohibited by the Code of Ethics from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, notwithstanding that: 1) the development would be located on land that is in close proximity to the Petitioner's personal residence; and 2) representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development.

The Petitioner is a member of the Coventry Planning Commission ("Planning Commission"), having been appointed to that position by the Coventry Town Council in July 2022.¹ He states that several months ago the Planning Commission engaged in a Preliminary Review Hearing relative to an applicant's petition for approval of the construction of residential condominium units with an affordable housing component ("development"). The Petitioner explains that the purpose of the Preliminary Review Hearing was to introduce the proposed development to the residents of the Town of Coventry. He adds that abutters to the land on which the development would be built were sent letters notifying them of the Preliminary Review Hearing. The Petitioner states that his residence is located approximately a half-mile from the land on which the development would be located, that he is not an abutter, and that he did not receive a letter. He further states that he will not otherwise be financially impacted by the proposed development, explaining that its access road would be a state main road and that the development's fire access would not be a registered road

¹ In his private capacity, the Petitioner is employed by the Rhode Island Department of Transportation as a State Bridge Engineer.

or one that is anywhere in close proximity to his residence. The Petitioner represents that he has no financial interest in the proposed development and has no business, financial, or familial relationship with any of the abutters.

The Petitioner informs that the applicant seeking to construct the development has petitioned the Coventry Zoning Board for a variance that would allow for a commercial/residential mixed-use of the subject property, which is currently zoned for commercial/special use. He states that, regardless of the outcome before the Zoning Board, the applicant will likely soon petition the Planning Commission relative to the proposed development.²

The Petitioner represents that he is a member of the Wood Estates Residents Association (“WERA”), a private neighborhood organization which the Petitioner describes as a vocal opponent of the proposed development. He further represents that WERA was formerly a Homeowners Association, but now is a volunteer organization for the neighborhood of people who own property on Lake Tiogue. The Petitioner states that he is a dues-paying member of WERA, but does not attend its meetings. He adds that his membership dues entitle him to use of a local dock, boat launch, beach and outing area, and access to events such as barbeques, hayrides, and a Fourth of July parade and fireworks. The Petitioner states that WERA does have officers, but that he is not one of them. The Petitioner further states that, because he is a member of WERA, he recently received an email invitation from that organization to participate in a virtual meeting at which the applicant for the proposed development would be present to discuss the proposed development. He represents that, prior to the official start of the virtual meeting, he advised the organizers of the meeting that he would not be taking part because he wants to limit his participation in the matter to his role as a member of the Planning Commission. He adds that he then asked the organizers not to contact him again regarding this matter. It is in the context of these representations that the Petitioner seeks advice from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in Planning Commission discussions and decision-making relative to the proposed development.

Under the Code of Ethics, a public official 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 conflict of interest exists if a public official has reason to believe or expect that he, his family member, his business associate, or his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also 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). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”), a public official must recuse from participation in any matter if his business associate appears or presents evidence or arguments before the public official’s state or municipal agency.

² The Petitioner states that, because the proposed development includes a plan for low-income housing, in the event that the Zoning Board does not issue a favorable decision to the applicant, the applicant would likely appeal to the Planning Commission. Alternatively, if the applicant’s petition for commercial/residential mixed-use zoning is approved by the Zoning Board, the applicant would then have to appear before the Planning Commission to ensure that the applicant’s plans meet all zoning regulations.

A business associate is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3). A person is defined as “an individual or a business entity.” Section 36-14-2(7).

Location of Proposed Development in Proximity to Petitioner’s Personal Residence

First, the Ethics Commission must ascertain whether the Petitioner will be financially impacted by the official action that is under consideration. In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussion or vote on decisions concerning abutting property, absent reliable evidence that their official action would not affect the financial interests of the public official, either positively or negatively.

Just as the Ethics Commission has presumed a financial impact for abutting property, the Ethics Commission has applied the opposite presumption of no financial impact relative to property that is near, but not abutting, a subject property. See A.O. 2003-44 (opining that a member of the Cranston City Council could participate in the Safety Services and Licensing Committee’s consideration of a proposed license for the Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, in the absence of evidence indicating a reasonable foreseeability of financial impact); A.O. 2002-30 (opining that a Jamestown Town Council member could participate in the determination of the location for a highway garage, notwithstanding that two of the location options were 1000 and 900 feet away from her land).

Here, the Petitioner states that the property on which his personal residence is situated is located a half-mile from the property on which the proposed development would be constructed. Additionally, the Petitioner represents that he will not be financially impacted by the proposed development, has no financial interest in the proposed development, and has no business, financial, or familial relationship with any of the abutters to the proposed development. Accordingly, it is the opinion of the Ethics Commission that because the Petitioner is not an abutter and, therefore, there is no presumption of financial impact upon the Petitioner were he to participate in Planning Commission discussions and decision-making concerning the proposed development, and because the Petitioner represents that he will not otherwise be financially impacted, he may so participate.

Appearance Before the Planning Commission by Representatives of Private Organization of Which Petitioner is a Member

Next, the Ethics Commission must determine whether the anticipated appearance before the Planning Commission by representatives of a private neighborhood association to which the Petitioner belongs who wish to provide public comment about the proposed development would constitute a conflict of interest for the Petitioner, thereby requiring his recusal.

The Ethics Commission has consistently opined that persons are “business associates” of the entities for which they serve as either officers or members of the Board of Directors, or in some

other leadership position that permits them to affect the financial objectives of the organization. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“DEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC).

In contrast, however, the Ethics Commission has generally held that mere membership in an organization, as opposed to the holding of a position as a director, officer, or other position of leadership, does not create a business association requiring recusal. See, e.g., A.O. 2013-26 (opining that a Newport City Council member was not prohibited from participating in City Council matters involving the Newport Yacht Club, notwithstanding that her husband was an individual member of the Yacht Club and paid annual dues to the Yacht Club, but was not an officer or member of the Yacht Club’s Board of Directors); A.O. 2009-39 (opining that a Barrington Town Planner’s general membership in the Bayside Family YMCA, where he did not serve in any leadership position, did not constitute a business associate relationship with the YMCA and, thus, he was permitted to participate in Barrington’s review of the YMCA’s development proposal and plans).

In the present matter, the Petitioner states that he is a dues-paying member of WERA, which entitles him to use of a local dock, boat launch, beach and outing area, and access to events such as barbecues, hayrides, and a Fourth of July parade and fireworks. The Petitioner further states, however, that he is not an officer of WERA. Accordingly, the Petitioner’s mere membership in WERA does not constitute a business associate relationship between the Petitioner and that organization or any of its officers under the Code of Ethics and, for that reason, the Petitioner is not prohibited from participating in Planning Commission discussions and decision-making when WERA representatives appear before the Planning Commission to provide public comment about the development.

In summary, and for all of the foregoing reasons, it is the opinion of the Ethics Commission that Petitioner is not prohibited by the Code of Ethics from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, notwithstanding that the development would be located on land that is in close proximity to the Petitioner’s personal residence and representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development.

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 1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2014-14

A.O. 2013-26

A.O. 2012-28

A.O. 2012-4

A.O. 2009-39

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

A.O. 2003-44

A.O. 2002-30

Keywords:

Business Associate

Conflict of Interest

DRAFT