

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-10

Approved: 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 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:

§ 36-14-2(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