

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-11

Approved: 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"),<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 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.

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

<sup>3</sup> 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.<sup>4</sup> 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 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(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

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<sup>4</sup> 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