

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-13

Approved: 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 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)

§ 36-14-6

§ 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