

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-18

Approved: April 4, 2023

Re: The Honorable Carol Hagan McEntee

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Bonnet Shores Fire District to hold an election whereby eligible voters would decide whether to approve or reject amendments to the Fire District Charter proposed by the Fire District Charter Commission, given that the Petitioner is an eligible voter in the Fire District.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, is not prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Bonnet Shores Fire District to hold an election whereby qualified voters would decide whether to approve or reject amendments to the Fire District Charter proposed by the Fire District Charter Commission, notwithstanding that the Petitioner is an eligible voter in the Fire District.

The Petitioner is an elected member of the Rhode Island House of Representatives and has served continuously in that capacity since 2015. She represents District 33, which includes the Towns of Narragansett and South Kingstown. The Petitioner states that her primary residence is located within District 33 in South Kingstown, where she is registered to vote. The Petitioner represents that the Bonnet Shores Fire District (“Fire District”) is part of her constituency and that she is an eligible voter in the Fire District in accordance with the current Fire District Charter (“Charter”) through her property ownership within the Fire District since 1988. She explains that she owns a second home in Narragansett that is located in the Fire District and which, while not her primary residence, is a vacation home used frequently by her and members of her family. She further explains that she is also a member of the Bonnet Shores Beach Club (“Beach Club”) in Narragansett and owns a bathhouse condominium unit (“bathhouse”) at the Beach Club. The Petitioner represents that both her vacation home and her bathhouse are located within the Fire District and that she pays real estate taxes to the Fire District on both properties. She further represents that her ownership of either property currently entitles her to vote in Fire District elections, although she is only permitted to cast a single vote.

The Petitioner represents that she was recently contacted by the Chair of the Fire District Charter Commission (“Charter Commission”) and asked to introduce legislation that would enable the Fire District, which is within her district as a State Representative, to present for consideration to Fire District voters Charter amendments proposed by the Charter Commission concerning who is eligible to vote at Fire District annual meetings and special elections. The Petitioner clarifies that the establishment of a Charter Commission for the purpose of proposing amendments to the Charter was part of a Consent Judgment entered in the Providence Superior Court on May 26, 2022, in the matter of Mary Burke Patterson, et als. v. The Bonnet Shores Fire District, C.A. No. WC-2020-0130. The Consent Judgment states that the amendments proposed by the Charter Commission are to be presented for approval first to the Rhode Island General Assembly and then to the voters of the Fire District at an annual or special meeting.

The Petitioner states that the subject legislation would enable the Fire District to hold an election that could potentially eliminate the voting rights of certain non-resident individuals and entities that own real estate valued at \$400 or more within the Fire District, such as owners of bathhouse condominium units at the Beach Club. The Petitioner further states that, pursuant to the Consent Judgment, voting rights are to be granted to all persons who reside in the Fire District and who are duly registered to vote in Narragansett.

The Petitioner explains that, following the General Assembly’s consideration of the enabling legislation containing the proposed Charter amendments, including any changes to those amendments which could occur during the legislative process, the amendments contained within the enabling legislation, if passed by the General Assembly, would take effect only if the eligible voters of the Fire District vote to approve them. The Petitioner further explains that the current voting rights of homeowners in the Fire District who have resided in those homes for at least 60 days immediately prior to an election and who have registered to vote at least 30 days before an election will not be impacted. The Petitioner represents that she falls within this category of homeowners.

The Petitioner states that, since this request for legislation concerns who is eligible to vote at the Fire District annual meetings and special elections, it could conceivably eventually affect her current voting rights in the Fire District as a homeowner within the Fire District and as a Beach Club bathhouse owner. Specifically, in the event that a vote by eligible Fire District voters on whether to approve or reject the proposed Charter amendments were to occur during a special election rather than at the annual meeting held in June, it is conceivable, though highly unlikely, that the special election could be held outside of the summer and neighboring months, in which case the Petitioner might not meet the eligibility requirement of residing in her home for at least 60 days prior to the election. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from participating in the legislative activities outlined herein concerning the subject enabling legislation.

A person subject to the Code of Ethics may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs

if the Petitioner has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed, will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is “reasonably foreseeable,” that is, when the probability is greater than “conceivably,” but the conflict of interest is not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). A public official also may not use her office for pecuniary gain, other than as provided by law, for herself, any person within her family, her employer, her business associate, or any business that she represents. Section 36-14-5(d).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner will be financially impacted by the official action that is under consideration. If a financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in legislative activities and decision-making relative to the issue. For example, in Advisory Opinion 2005-40, a legislator serving in the Rhode Island House of Representatives was allowed to participate in House deliberations and voting on legislation that authorized family child care providers to engage in collective negotiations with certain state agencies, notwithstanding that the petitioner was a licensed family child care provider. There, the petitioner’s status as a family child care provider was inactive. Because she did not utilize her license, did not participate in the Starting Right Child Care Assistance Program administered by the Rhode Island Department of Human Services that provided financial assistance for authorized child care services rendered to eligible children by approved child care providers, and had no plans to do so in the reasonably foreseeable future, it did not appear that the petitioner stood to be financially impacted by the legislation at issue, notwithstanding her licensure. See also A.O. 2001-20 (opining that a legislator serving in the Rhode Island House of Representatives who was employed as a police officer for the City of Cranston was not prohibited from sponsoring and/or advocating for the passage of legislation that would allow the City of Cranston to finance the unfunded liability in its police and fire pension system because although the petitioner, upon retirement, would be a pensioner receiving payments from the system, the proposed legislation would not affect whether and to what extent he would receive future pension benefits from the system, and any benefit that would accrue to him as a result of the proposed legislation was at best speculative and remote).

Here, the official legislative activity contemplated by the Petitioner will not impact her voting rights in the Fire District. Based upon the facts as represented, although it is conceivable that the Petitioner’s voting rights in the Fire District could be at stake, that scenario is not reasonably foreseeable. She owns a home within the Fire District and, based upon the Petitioner’s representation that annual elections in the Fire District are held in June and all special elections are held during the summer and neighboring months, it is not reasonably foreseeable that the Petitioner will not meet the residency requirements that would allow her to vote in a Fire District election.¹ Also, even if it were reasonably foreseeable that the official legislative activity contemplated by the Petitioner could impact her voting rights in the Fire District, there is no

¹ The Petitioner states that she is already a registered Fire District voter.

financial impact attached to her right to vote.² Finally, even if there were a financial impact attached to the Petitioner's right to vote, in this case such a financial impact would be indirect, as opposed to direct, given the intervening activity of the eligible Fire District voters who will decide whether to approve or reject the proposed amendments.

Accordingly, for all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in legislative activities concerning legislation that would enable the Fire District to hold an annual meeting or special election whereby eligible voters would decide whether to approve or reject amendments to the Charter. The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that she, or a member of her family, her business associate, or any business by which she is employed or which she represents could be directly financially impacted by her participation in the aforementioned legislative activities, she must recuse from further participation consistent with section 36-14-6, or seek further guidance from the Ethics Commission.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2005-40

A.O. 2001-20

Keywords:

Financial Interest

² The Ethics Commission recognizes that the exercise of one's right to vote could result in a direct or indirect financial impact upon that person and/or others.