



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

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**NOTICE OF OPEN MEETING**

**AGENDA**

**5<sup>th</sup> Meeting**

**DATE:** Tuesday, May 16, 2023

**TIME:** 9:00 a.m.

**PLACE:** Rhode Island Ethics Commission  
Hearing Room - 8<sup>th</sup> Floor  
40 Fountain Street  
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on April 4, 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;
  - e.) Legislative Update (discussion of 2023 – H 5190); and
  - f.) Ethics Administration/Office Update.
4. Advisory Opinions.
  - a.) James M. Callaghan, Esq., the former Solicitor for the Town of Narragansett, who is also an attorney in private practice, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing private clients before the Narragansett Zoning Board of Review and the Narragansett Planning Board

within one year following the end of his tenure with the Town of Narragansett.  
[Staff Attorney Giusti]

- b.) Edward P. Morrone, a member of the Westerly Town Council, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Town Council discussions and decision-making relative to matters pertaining to Fort Road, of which the Watch Hill Fire District claims ownership, given that he previously provided consulting services to the Watch Hill Fire District. [Staff Attorney Popova Papa]
  - c.) Leslie S. Dunn, a member of the Westerly School Committee, who in her private capacity is the founder and a member of the Steering Committee of the Westerly Anti-Racism Coalition (“ARC”), an advocacy group whose mission is to address racism in the Town of Westerly, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in School Committee discussions and/or voting on matters relating to the topics of diversity, equity, multiculturalism, and other similar topics, given that those topics are among those advanced by ARC as part of its mission. [Staff Attorney Popova Papa]
  - d.) Mark Aramli, a member of the Newport City Council, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating as a member of a City Council subcommittee tasked with drafting proposed revisions to the Newport Zoning Code pertaining to historic district overlays, and/or in the City Council’s eventual discussions and voting relative to those proposed revisions, given that he owns properties located within a Newport Historic District. [Staff Attorney Radiches]
  - e.) Stephen A. Lombardi, the Director of Continuing Education for the Rhode Island Municipal Police Training Academy, requests an advisory opinion regarding whether the Code of Ethics prevents him from working in his private capacity and on his own time as an independent contractor and course instructor for KFD Training and Consultation, LLC. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on April 4, 2023, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - b.) In re: Jason K. Messier, Complaint No. 2023-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - c.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on May 16, 2023.
7. Report on actions taken in Executive Session.

8. New Business proposed for future Commission agendas and general comments from the Commission.
9. 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 May 11, 2023*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: May 16, 2023

**Re: James M. Callaghan, Esq.**

### **QUESTION PRESENTED:**

The Petitioner, the former Solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing private clients before the Narragansett Zoning Board of Review and the Narragansett Planning Board within one year following the end of his tenure with the Town of Narragansett.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the former Solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, is prohibited by the Code of Ethics from representing private clients before the Narragansett Zoning Board of Review until the expiration of one year following his last appearance before that board. However, the Code of Ethics does not prohibit the Petitioner from representing private clients before the Narragansett Planning Board, given that he did not provide legal counsel to that board during his tenure as Solicitor.

The Petitioner represents that he served as the Solicitor for the Town of Narragansett (“Town”) from August 2, 2021, through February 24, 2023. He informs that his responsibilities as Solicitor involved advising the Town Council and the Town’s staff on legal issues. The Petitioner states that his official duties as Solicitor did not include advising or working on behalf of the Narragansett Zoning Board of Review (“Zoning Board”) or the Narragansett Planning Board (“Planning Board”). He informs that his employment agreement with the Town specifically excluded planning and zoning matters from those in which he would provide legal advice or representation. The Petitioner represents that the Town Council retains a separate Assistant Town Solicitor to represent the Town before the Zoning Board and the Planning Board in such matters. He explains that the Assistant Town Solicitor is charged with providing legal services to the Zoning Board and the Planning Board relating to planning, zoning, sub-divisions, and developments. The Petitioner represents that he and the Assistant Solicitor do not work for the same law firm and have no professional connection aside from their separate duties to the Town. The Petitioner states that during his tenure as Solicitor, he served on one occasion, on May 19, 2022, as substitute counsel at a Zoning Board meeting at the request of the Assistant Solicitor who could not attend. He further states that he did not provide any advice to the Zoning Board in any matters at that meeting.

Given his prior service as Solicitor, the Petitioner seeks advice as to whether the Code of Ethics' revolving door restrictions prohibit him from representing clients before the Zoning Board and the Planning Board within one year following the end of his tenure with the Town.

The Code of Ethics strictly prohibits public officials and employees from representing themselves or another person before a state or municipal agency of which they are a member or by which they are employed. R.I. Gen. Laws § 36-14-5(e) ("section 5(e)")(1) & (2); Commission Regulation 520-RICR-00-00-1.1.4(A)(2)(a) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4").<sup>1</sup> These prohibitions continue while the official remains in office and for a period of one year thereafter. Section 5(e)(4).

The Ethics Commission has consistently concluded that solicitors may represent private clients before municipal boards, courts, or other entities before which they do not represent their municipality or over which they do not have any official duties. For example, in Advisory Opinion 2015-23, a former Assistant Solicitor for the Town of Burrillville, whose duties consisted of prosecuting criminal complaints in the Providence County District Court and the Town of Burrillville's Municipal Court, was not prohibited from representing clients before the Burrillville Planning Board and Burrillville Zoning Board within one year following the end of his tenure as Assistant Solicitor. The Ethics Commission opined that, based upon the petitioner's representations that he had no duties to any Burrillville agency outside of the Municipal Court, he was not prohibited from representing clients before the Burrillville Planning Board and Burrillville Zoning Board before which he did not represent the Town as Assistant Solicitor and over which he did not exercise any authority or control. See also A.O. 2013-24 (opining that a Providence Assistant City Solicitor, whose duties were limited to acting as legal counsel for the Providence School Board, was not prohibited from representing private clients before other Providence boards, courts, commissions or entities before which he did not represent the City as Assistant City Solicitor and over which he exercised no authority or control, such as the City Council, Zoning Board, Planning Board, Probate Court, Municipal Court and Board of Tax Appeal); see A.O. 2008-66 (opining that the Newport Assistant City Solicitor, whose duties included representing the City in Municipal Court, was prohibited from representing private clients before the Newport Municipal Court but could represent clients before other Newport boards and agencies before which he did not represent the City as Assistant Solicitor and over which he did not exercise authority or control); contra A.O. 99-68 (opining that the Johnston Town Solicitor could not continue to represent an individual in a criminal matter brought by the Johnston Police Department, given that his duties as Town Solicitor included providing legal counsel to the Johnston Police Department and acting as the prosecutor for misdemeanor violations brought by that Department).

Further, in other advisory opinions the Ethics Commission considered circumstances in which municipal solicitors sought guidance on the propriety of serving as substitute legal counsel for other solicitors. In Advisory Opinion 97-71, the Solicitor for the Town of New Shoreham, who also served as legal advisor once or twice a year when the Foster Solicitor had a conflict of interest

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<sup>1</sup> Commission Regulation 1.1.4(A)(2)(a) provides that a person represent[s] any other person before a state or municipal agency if: "(2) he or she is authorized by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person."

in a matter, sought guidance as to whether he could represent private clients before the Foster Zoning Board. The Ethics Commission opined that if the petitioner had an ongoing relationship with the Foster Zoning Board, he was prohibited from representing private clients before that board until one year following the severance of his relationship with the Foster Zoning Board. The Ethics Commission concluded that an ongoing relationship could include one in which an attorney represents a board once or twice per year, particularly if it is reasonably foreseeable that future representation will occur. See A.O. 89-36.

Here, the Petitioner's service as Town Solicitor ended on February 24, 2023. During his tenure with the Town, he appeared on one occasion, on May 19, 2022, to provide legal counsel to the Zoning Board at the request of the Assistant Solicitor who could not attend. The Petitioner did not provide any other representation to the Zoning Board, nor did he ever represent the Planning Board during his tenure as Solicitor. Moreover, given that his service to the Town as Solicitor has ended, he will not have any future occasion to represent it or any of its municipal boards.

Accordingly, based upon the facts as represented, 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 prohibited by the Code of Ethics from representing private clients before the Zoning Board until the expiration of one year following his last appearance before it on May 19, 2022. However, the one-year revolving door restriction does not apply to the Petitioner's representation of private clients before the Planning Board, given that he did not represent the Town in any matters before that board while he was Town Solicitor.

**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(e)

520-RICR-00-00-1.1.4(A)(2)(a) Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2015-23

A.O. 2013-24

A.O. 2008-66

A.O. 99-68

A.O. 97-71

A.O. 89-36

Keywords:

Private Employment

Revolving Door

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: May 16, 2023

**Re: Edward P. Morrone**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Westerly Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Town Council discussions and decision-making relative to matters pertaining to Fort Road, of which the Watch Hill Fire District claims ownership, given that he previously provided consulting services to the Watch Hill Fire District.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Westerly Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to matters pertaining to Fort Road, of which the Watch Hill Fire District claims ownership, notwithstanding that he previously provided consulting services to the Watch Hill Fire District.

The Petitioner is a member of the Westerly Town Council (“Town Council”), having been elected in November 2022. He represents that the Town Council is reviewing the ownership status of Fort Road, located in the Watch Hill neighborhood of the Town of Westerly (“Town”). The Petitioner states that the Watch Hill Fire District (“Fire District”) claims ownership of Fort Road and that the Town claims that Fort Road is a public right-of-way to the shoreline at Napatree Point. The Petitioner represents that the Town Council has authorized a survey in order to determine the boundaries of Fort Road.<sup>1</sup> The Petitioner informs that matters involving the ownership of Fort Road are contentious, such that the Fire District recently filed a lawsuit in the Rhode Island Superior Court against the Town to invalidate the Town’s designation of Fort Road as a public right-of-way to Napatree Point.

The Petitioner identifies the Fire District as a quasi-public entity that was created by an Act of the General Assembly, and that the Fire District is unaffiliated with, and separate from, Town government. He states that from June 1, 2019, to May 31, 2022, prior to his election to the Town Council, he was retained by the Fire District as a paid consultant to monitor Planning Board, Zoning Board, and Town Council meetings, as well as state legislative hearings. The Petitioner

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<sup>1</sup> The Petitioner represents that he lives in the Watch Hill neighborhood, but is not an abutter to Fort Road. He adds that he lives three-quarters of a mile from Fort Road, that he cannot see it from his residence, and that he would not receive an abutter’s notice for any matter pertaining to Fort Road.

represents that he was not a lobbyist and never appeared before the aforementioned public bodies on behalf of the Fire District. He further represents that he does not have an ongoing business relationship with the Fire District. The Petitioner clarifies that he performed the work for which he was hired, that he was compensated by the Fire District for his services, that there are no outstanding balances due or owing between them, and that he does not anticipate any future business relationship with the Fire District. Given this set of facts, the Petitioner requests an advisory opinion regarding whether he may participate in Town Council discussions and decision-making relative to matters pertaining to Fort Road, including its use and ownership.

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 or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with his official duties if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of the public official's activity, to the public official, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-7(a). A public official is further prohibited from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). Finally, a public official must recuse from participation when his business associate or employer 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 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). 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 consistently concluded that the Code of Ethics does not consider public entities to be "businesses" or the relationship between a public official and a public body, such as a state or municipal agency, to be that of "business associates." See, e.g., A.O. 2018-40 (opining that neither the Rhode Island Scenic Roadways Board ("SRB"), a public entity, nor the East Providence Waterfront Special Development District Commission ("Waterfront Commission"), a quasi-public state agency, was considered a "business" under the Code of Ethics and, therefore, the petitioner's relationships with the SRB and the Waterfront Commission did not constitute business associations with those entities). Accordingly, the Fire District, a quasi-public entity created by an Act of the General Assembly, is not considered a "business" under the Code of Ethics and was neither the Petitioner's business associate nor a business by which he was employed. Therefore, the above-cited prohibitions are inapplicable to the Petitioner's participation in Town Council discussions and decision-making relative to matters pertaining to Fort Road, including those involving its use and ownership and those in which the Fire District appears to present evidence or arguments, and/or that may involve or directly financially impact the Fire District.

Additionally, while the Code of Ethics clearly prohibits a public official from participating in matters directly affecting his current business associate or a business by which he is employed, the Ethics Commission has permitted a public official to participate in matters involving or impacting a public official's *former* business associate or *former* employer, provided that the business relationship between them had ended and there was no specific future business relationship anticipated between them. See A.O. 2013-21 (opining that a member of the State Labor Relations Board, who in his private capacity was a practicing attorney, was not required to recuse from matters involving his former law client provided that the representation had concluded, that all outstanding legal fees had been paid in full, and there was no reasonable likelihood of reestablishing an attorney/client relationship in the foreseeable future). Here, the Petitioner represents that the consulting services he performed for the Fire District concluded in May 2022, that he does not anticipate having any future business relationship with the Fire District, and that there are no outstanding obligations or payments between them. Therefore, even if the Petitioner had been considered a business associate of the Fire District, or if the Fire District was considered a business by which the Petitioner was employed, the Petitioner would still not be prohibited from participating in discussions and decision-making relative to Town Council matters involving the Fire District.

In summary, based on Petitioner's representations and for all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner's prior work for the Fire District does not prohibit him from participating in Town Council discussions and decision-making relative to the review of matters pertaining to Fort Road, including those involving its use and ownership and those in which the Fire District appears to present evidence or arguments, and/or that may involve or directly financially impact the Fire District.

**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(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. 2018-40

A.O. 2013-21

Keywords:

Business Associate

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: May 16, 2023

**Re: Leslie S. Dunn**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Westerly School Committee, a municipal elected position, who in her private capacity is the founder and a member of the Steering Committee of the Westerly Anti-Racism Coalition (“ARC”), an advocacy group whose mission is to address racism in the Town of Westerly, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in School Committee discussions and/or voting on matters relating to the topics of diversity, equity, multiculturalism, and other similar topics, given that those topics are among those advanced by ARC as part of its mission.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Westerly School Committee, a municipal elected position, who in her private capacity is the founder and a member of the Steering Committee of the Westerly Anti-Racism Coalition (“ARC”), an advocacy group whose mission is to address racism in the Town of Westerly, is generally not prohibited by the Code of Ethics from participating in School Committee discussions and/or voting on matters relating to the topics of diversity, equity, multiculturalism, and other similar topics, notwithstanding that those topics are among those advanced by ARC as part of its mission, provided, however, that there are otherwise no grounds for recusal.

The Petitioner is a member of the Westerly School Committee (“School Committee”) and has served in that position since her election in November of 2022. She represents that, in her private capacity, she is the founder of the Westerly Anti-Racism Coalition (“ARC”) and a member of its Steering Committee/leadership team. The Petitioner states that ARC is an advocacy group that was formed in 2021, the mission of which is to embrace multiculturalism and address racism through education and empowerment. The Petitioner explains that ARC hosts weekly gatherings or events that are open to the public and include educational presentations pertaining to matters that correspond with a monthly theme or the desire for more information on a given issue. The Petitioner further explains that ARC covers a variety of topics such as racial and gender equality, diversity, stereotypes, human rights, community engagement, and more. The Petitioner states that, in addition to the weekly gatherings, there are also book discussions, community conversations, movie screenings, and events that support ARC’s mission. She further states that the topics discussed by the School Committee and those advanced by ARC could overlap. The Petitioner represents that neither ARC nor she stands to benefit personally from any advancement in the areas of equity, diversity, inclusion, and multiculturalism. Rather, such advancements would benefit the

community as a whole. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in School Committee discussions and/or voting on matters relating to the topics of diversity, equity, multiculturalism, and other similar topics, given that those topics are among those advanced by ARC as part of its mission.

Under the Code of Ethics, a public official 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 exists if a public official has reason to believe or expect that she, any person within her family, her business associate, or a business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using her public office or confidential information received through her public office to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter if her business associate appears or presents evidence or arguments or authorizes another person, on his or her behalf, to appear or to present evidence or arguments before the public official's state or municipal agency. 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 previously reviewed an almost identical situation in Advisory Opinion 2021-57. There, the Ethics Commission opined that a member of the North Kingstown School Committee, who in her private capacity was the founder and co-president of Towards an Anti-Racist North Kingstown ("TANK"), a non-profit organization dedicated to advancing discussions of anti-racist policies in the Town of North Kingstown, was not generally required by the Code of Ethics to recuse from participating in School Committee and/or Subcommittee discussions and/or voting on matters relating to the topics of diversity, equity, and inclusion, notwithstanding that those topics are among those advanced by TANK as part of its mission provided, however, that otherwise there were no grounds for recusal. See also A.O. 2005-20 (opining that the Chairman of the North Smithfield Planning Board, who had written a letter to the Providence Journal in regard to a potential development, was not prohibited from participating in matters coming before the Planning Board regarding that development); A.O. 98-3 (opining that an Exeter Planning Board member was not prohibited from participating in subsequent discussions and votes on a proposed zone change and amendment to the Exeter Comprehensive Plan relating to "Bald Hill Nursery," notwithstanding that he had previously voted against the zoning change and amendment and had given public testimony against the proposal before the Town Council in his capacity as a resident).

Similar to the above-cited advisory opinions, the views expressed by the instant Petitioner as the founder of ARC and a member of its Steering Committee may indicate an existing, personal inclination toward matters relative to the topics of diversity, equity, multiculturalism, and other similar topics discussed or voted on by the School Committee; however, such preference alone does not support mandatory recusal under the Code of Ethics. Thus, based on the Petitioner's

representations, the applicable provisions of the Code of Ethics, and consistent with the prior advisory opinions cited above, it is the opinion of the Ethics Commission that the Petitioner is not generally required to recuse from participating in School Committee discussions and voting on matters relating to the topics of diversity, equity, multiculturalism, and other similar topics, notwithstanding that those topics are among those advanced by ARC as part of its mission, provided that there are otherwise no grounds for recusal under the Code of Ethics.

This advisory opinion only addresses whether the Petitioner may participate in School Committee discussions and decision-making generally relating to topics that are advanced by or of interest to ARC. The Ethics Commission cannot anticipate every possible situation in which a conflict of interest might arise,<sup>1</sup> thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is advised to remain vigilant about identifying potential conflicts of interest and to either recuse or seek further guidance from the Ethics Commission in the future as warranted. Notice of recusal shall be filed with the Ethics Commission 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:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2021-57

A.O. 2005-20

A.O. 98-3

Keywords:

Recusal

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<sup>1</sup> The Ethics Commission cannot at this time identify whether ARC, other members of its Steering Committee, and/or other persons affiliated with ARC are the Petitioner's business associates.

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: May 16, 2023

**Re: Mark Aramli**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Newport City Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating as a member of a City Council subcommittee tasked with drafting proposed revisions to the Newport Zoning Code pertaining to historic district overlays, and/or in the City Council's eventual discussions and voting relative to those proposed revisions, given that he owns properties located within a Newport Historic District.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport City Council, a municipal elected position, is prohibited by the Code of Ethics from participating as a member of a City Council subcommittee tasked with drafting proposed revisions to the Newport Zoning Code pertaining to historic district overlays, given that it is unclear from the outset whether and how he might be directly financially impacted by that participation. The Ethics Commission cannot opine at this time whether the Petitioner may participate in the City Council's discussions and voting on the proposed revisions which have yet to be drafted and submitted by the subcommittee.

On November 8, 2022, the Petitioner was elected to serve a two-year term on the Newport City Council ("City Council"). He identifies among his City Council duties the exercise of voting authority over proposed modifications to the City of Newport ("City" or "Newport") Zoning Code. He adds that embedded within the Zoning Code are the rules governing the Newport Historic District zoning overlays ("zoning overlays").<sup>1</sup> The Petitioner represents that on February 8, 2023, the City Council approved a resolution ("HDC Resolution") to begin the process of improving and modernizing the Zoning Code as it relates to zoning overlays. The Petitioner explains that the HDC Resolution is intended to encourage new and affordable housing units in Newport and to provide some relaxation of regulations such that projects will be more affordable for Newport homeowners and allow for a broader range of approval. The Petitioner represents that the HDC Resolution provides the City Council with the option of creating a subcommittee consisting of individual City Councilors and community stakeholders to assist with improving and modernizing the Zoning Code as it relates to zoning overlays.

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<sup>1</sup> The Petitioner states that, according to the City's website, more than 40% of Newport's geographical area and more than 50% of the City's 9,753 parcels are contained within historic district overlay zones.

The Petitioner states that he currently resides in a Newport Historic District and plans to construct a new residence in a Newport Historic District.<sup>2</sup> He further states that he would like to participate as a member of the City Council subcommittee authorized by the HDC Resolution tasked with drafting proposed Zoning Code revisions for consideration by the City Council. He adds that he would then like to participate in the City Council's discussions and voting relative to those proposed revisions. The Petitioner represents that the revisions may or may not carry with them financial impact upon historic district property owners, and suggests that they may merely improve the efficiency of the Historic District Commission ("HDC") application process. He cites by way of example the possible allowance of a more administrative, rather than full, HDC review of minor projects and applications. The Petitioner explains that the potential for, and extent of, direct economic impact upon residents within a Newport historic district as a result of any new revisions to the Zoning Code by the City Council is impossible to determine at this time because they have yet to be drafted. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks guidance regarding whether the official activity in which he wishes to engage is prohibited by the Code of Ethics.

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 or employment 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). 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 his office for pecuniary gain, other than as provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Ethics Commission will first ascertain whether it is reasonably foreseeable that the Petitioner will be directly financially impacted by his participation on the subcommittee in the drafting of proposed revisions to the Zoning Code. Because the Petitioner owns and currently resides in a home in a Newport Historic District, has plans to construct a new residence in a Newport Historic District, and is currently appealing a decision by the HDC enforcing the current Zoning Code as it relates to construction in an historic district, it is our opinion that it is reasonably foreseeable that

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<sup>2</sup> The Petitioner informs that the property on which he plans to construct a new residence is the subject of a pending appeal before the Newport Zoning Board of Review ("ZBR") from a decision by the HDC denying his application to construct the new home. It is the Petitioner's belief, based on conversations with the City Solicitor, that his appeal will be decided on the Zoning Code in place at the time of his HDC application and, therefore, any newly adopted Zoning Code provisions would not impact his pending appeal.

the Petitioner will be directly financially impacted by proposed revisions to the Zoning Code pertaining to historic district overlays.

Notwithstanding the reasonably foreseeable direct financial impact upon the Petitioner were he to participate in the drafting of proposed revisions to the Zoning Code, section 36-14-7(b) of the Code of Ethics, referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, or any person within his family, or any business associate, or any business by which he is employed or which he represents, “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 the significant and definable class of persons within the business, profession, occupation or group.” When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors 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 public officials. See, e.g., A.O. 2005-22 (applying the class exception and opining that an Exeter Town Council member could participate in a proposed tax freeze ordinance for all property owners aged 65 and over, notwithstanding that his spouse was over age 65 and could benefit from the tax freeze, because 250 to 300 other property owners would be similarly impacted by the ordinance).

However, in prior advisory opinions issued by the Ethics Commission involving situations where it was unclear from the outset whether and how a petitioner or his family member might be impacted by certain matters in which the petitioner sought to participate, the class exception was not applied. For example, in Advisory Opinion 2018-23, the Ethics Commission opined that a member of the Portsmouth Town Council (“Town Council”) was prohibited from participating in discussions and decision-making relative to mitigating the negative side effects caused by the operation of a town-supported wind turbine on neighboring homes. Because the Town Council was likely to consider various options, including restriction on the wind turbine’s hours of operation and/or the possibility of offering financial compensation to the affected property owners, it was unclear at the outset how any resolution would impact that petitioner. That petitioner’s participation in the discussions would have placed him in a position in which he would have provided input in defining the groups to be impacted, the extent of the impact, and ways to mitigate the impact. Therefore, the Ethics Commission deemed the class exception inapplicable. See also A.O. 2021-14 (opining that the Middletown Solicitor was prohibited from participating in Middletown Town Council discussions regarding the proposed revision of an ordinance relating to short-term residential leases, given that the petitioner and his spouse owned property regulated by said ordinance and it was unclear at the outset whether and how the actions of the Middletown Town Council, in response to the advice of the petitioner in his capacity as Middletown Solicitor, might financially impact the petitioner and his spouse).

The Ethics Commission has previously noted the general difficulty of applying the class exception to matters involving actions that impact real property, given the unique nature of each discrete piece of real estate and the fact that actions affecting real property and its value will likely create a dissimilar impact on each property owner. See, e.g., A.O. 2012-13 (opining that the class exception was inapplicable and, thus, a member of the Westerly Town Council was prohibited from participating in the consideration of a resolution to fund a sewer expansion to the Misquamicut Beach area, given that three members of the Board of Directors of the Misquamicut Beach Association (“MBA”), the petitioner’s employer, as well as 90% of the MBA’s business members and 12 of the MBA’s homeowner members would incur dissimilar financial impacts resulting from the Town Council’s approval or disapproval of the sewer expansion); A.O. 2008-63 (opining that the class exception was inapplicable and, thus, a member of the Narragansett Town Council was prohibited from participating in the hearings and vote on an amendment to the Narragansett Zoning Ordinance, given that he owned two of approximately seventy properties located within the district that was the subject of the amendment, and given that actions affecting real property and its value were likely to create a dissimilar impact on each property owner). Contra A.O. 2015-4 (applying the class exception and permitting a Charlestown Town Council member to participate in the Town Council’s discussions and decision-making relative to remediating ground water pollution, given that it was reasonably foreseeable that the financial impact upon the entire class would be substantially similar in the form of equal or proportional assessments to connect to community water and/or wastewater systems, or a Town-wide tax increase to subsidize improvements to the water and sewer infrastructure to prevent pollution and salt water intrusion).

As with these prior advisory opinions, in the context of the instant matter, given the uncertainty at this time as to the nature and scope of the proposed revisions to the Zoning Code, coupled with the general difficulty of applying the class exception to matters involving actions that impact real property, the class exception is not applicable, and the Petitioner is prohibited from participating in the drafting of the subcommittee’s proposed revisions.

Regarding the Petitioner’s inquiry into whether he would be allowed to participate in the City Council’s discussions and voting relative to the proposed Zoning Code revisions, it is our opinion that because those proposed revisions have yet to be drafted and presented to the City Council for consideration, it is unclear whether and how the Petitioner might be impacted by them. For that reason, the Ethics Commission is unable to determine at this time whether the class exception might apply to allow the Petitioner’s participation in the City Council’s review of the proposed revisions.

In summary, based upon the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Code of Ethics prohibits the Petitioner’s participation as a member of the City Council subcommittee tasked with drafting proposed revisions to the Zoning Code. Once the proposed revisions are finalized and presented to the City Council, the Petitioner is encouraged to seek further advice from the Ethics Commission prior to participating in any discussions and/or decision-making relative to the City Council’s consideration of the proposed Zoning Code revisions.

**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)

§ 36-14-7(b)

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

Related Advisory Opinions:

A.O. 2021-14

A.O. 2018-23

A.O. 2015-4

A.O. 2012-13

A.O. 2008-63

A.O. 2005-22

Keywords:

Class Exception

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: May 16, 2023

**Re: Stephen A. Lombardi**

### **QUESTION PRESENTED:**

The Petitioner, the Director of Continuing Education for the Rhode Island Municipal Police Training Academy, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prevents him from working in his private capacity and on his own time as an independent contractor and course instructor for KFD Training and Consultation, LLC, given that KFD is a vendor for the State of Rhode Island who provides services to the Training Academy.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Director of Continuing Education for the Rhode Island Municipal Police Training Academy, a state employee position, is not prohibited by the Code of Ethics from working in his private capacity and on his own time as an independent contractor and course instructor for KFD Training and Consultation, LLC, consistent with the provisions herein, notwithstanding that KFD is a vendor for the State of Rhode Island who provides services to the Training Academy.

The Petitioner is employed as the Director of Continuing Education for the Rhode Island Municipal Police Training Academy (“Training Academy”), a division of the Rhode Island Department of Public Safety.<sup>1</sup> He states that he started in that position in June of 2021, following his retirement as a Sergeant from the Warwick Police Department in 2017. The Petitioner informs that his duties at the Training Academy include working with municipal agencies and the Rhode Island State Police to provide continuing education and instructor certification that will assist members of Rhode Island’s law enforcement community in the ever-changing roles and responsibilities they must assume in order to protect lives and property. The Petitioner states that his normal working hours at the Training Academy are Monday through Friday between the hours of 8:00 am and 3:00 pm. He further states that he reports directly to Lieutenant Christopher Zarrella and has no supervisory duties over anyone at the Training Academy.

The Petitioner represents that he has an opportunity to work approximately ten business days per year, for a total of 80 hours, as an independent contractor and course instructor for KFD Training

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<sup>1</sup> The Petitioner states that Colonel Darnell S. Weaver, Superintendent of the Rhode Island State Police, who serves as the Director of the Department of Public Safety, requested that the Petitioner seek an advisory opinion from the Ethics Commission before Colonel Weaver renders his decision in response to the Petitioner’s request for his permission to seek the secondary employment described herein.

and Consulting, LLC (“KFD”), which is located in Connecticut and owned and operated by Kevin F. Dillon (“Mr. Dillon”). The Petitioner further represents that his employment duties for KFD would include instructing non-Rhode Island law enforcement officers and/or security personnel in courses which focus on topics such as arrest and control tactics, de-escalation techniques, use of police baton, pepper spray, handcuffing techniques, among others. The Petitioner specifies that he would perform these duties in Connecticut and in states other than Rhode Island, that he would complete this work outside his normal working hours and without the use of public resources, and that he would not use his public position at the Training Academy to solicit business or customers for KFD.

The Petitioner states that the Rhode Island Department of Administration, through its Purchasing Department, selected Mr. Dillon to become a vendor of the State of Rhode Island more than a decade ago and, in that capacity, Mr. Dillon conducts courses on an annual basis at the Training Academy on the following subjects: Law Enforcement Active Diffusion Strategies, Arrest and Control Tactics, Triple Certification (Handcuffing, Police Baton, and Oleoresin Capsicum Spray), Use of Force Coaching for Field Training Officers, and Use of Force Analysis for Police Leaders. The Petitioner further states that the decision to use Mr. Dillon’s services was made by the Training Academy administration prior to the Petitioner’s employment there, and that the Petitioner plays no role in the Training Academy’s decision each year about whether or not to continue using Mr. Dillon’s services as a vendor. The Petitioner emphasizes that he exercises no supervisory, discretionary, or decision-making authority over Mr. Dillon. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prevents him from working in his private capacity and on his own time as an independent contractor and course instructor for KFD.

No person subject to the Code of Ethics shall engage in any business, employment, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official or employee 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). Also, no person subject to the Code of Ethics shall accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. Section 36-14-5(b). Further, no person subject to the Code of Ethics shall use his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). 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 examines several factors when considering potential conflicts regarding secondary employment. These factors include, but are not limited to, the nexus between the official’s public duties and private employment; whether the employee completes such work outside his normal working hours and without the use of public resources; that the employee does not appear before his own agency; that such work be conducted outside of the areas over which

the person has decision-making jurisdiction; and that the employee does not use his position to solicit business or customers. See General Commission Advisory No. 2009-4.

In the past, the Ethics Commission has consistently opined that public officials and employees are not inherently prohibited by the Code of Ethics from holding employment that is secondary to their primary public employment or position subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment with regard to their public duties nor create an interest in substantial conflict with those duties.

The Ethics Commission has specifically permitted public officials and employees to engage in secondary employment that was outside of their official public jurisdiction. For example, in Advisory Opinion 2021-51, the Ethics Commission opined that the Supervising Forensic Scientist for the Rhode Island Department of Health (“RIDOH”) was not prohibited by the Code of Ethics from working as a private consultant on matters outside of and with no relation to the State of Rhode Island, provided that all of the work was performed on his own time and without the use of public resources or confidential information obtained as part of his employment at the RIDOH. Also, that petitioner could not use his public employment to recruit or obtain potential clients or use his public employment to advertise or promote his private work. See also A.O. 2015-36 (opining that an Assistant Medical Examiner for the State of Rhode Island was not prohibited from working as a private consultant medical examiner and/or expert witness on cases outside of Rhode Island, provided that, among other things, she performed all private consulting work on her own time and without the use of state resources or equipment, and that she did not work on cases that were subject to the jurisdiction of any state or federal court in Rhode Island or involved decedents who were residents of Rhode Island at the time of their death); A.O. 2009-31 (opining that the Chief Plumbing Investigator for the Rhode Island Department of Labor and Training, who was also licensed as a master plumber and pipefitter, was prohibited from working as a plumber and pipefitter in the State of Rhode Island, but was not prohibited from performing such work outside of the State of Rhode Island, provided that such work was performed on his own time and without the use of public resources and that he did not use his state position to recruit potential clients); A.O. 2001-46 (opining that a Bristol Police Officer assigned to the Detective Division could assist a private investigator in reviewing a criminal matter under the jurisdiction of the Massachusetts District Attorney’s Office, provided that the petitioner had no involvement with matters subject to the Bristol Police Department’s official jurisdiction).

Here, based on the Petitioner’s representations, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that there is no evidence that the Petitioner’s work as an instructor for KFD would either impair his independence of judgement or create an interest in substantial conflict with his public duties at the Training Academy. Accordingly, the Code of Ethics does not prohibit the Petitioner from working in his private capacity and on his own time as an independent contractor and course instructor for KFD, provided that all the work is also performed without the use of public resources or confidential information obtained as part of his state employment at the Training Academy. Further, the Petitioner may not use his public employment to recruit or obtain potential clients for KFD, or to advertise or promote his private work. The Petitioner is advised that, should he engage in secondary employment with KFD, he and Mr. Dillon will become business associates under the Code of Ethics, in which case the Petitioner would be prohibited from taking official action in his

public capacity as the Director of Education for the Training Academy that would directly financially impact Mr. Dillon or KFD. The Petitioner is encouraged to seek further guidance from the Ethics Commission if any changes occur within his Training Academy employment that could present a conflict of interest under the Code of Ethics that is not anticipated within this advisory opinion.

**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(b)  
§ 36-13-5(d)  
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-51  
A.O. 2015-36  
A.O. 2009-31  
A.O. 2001-46  
General Commission Advisory No. 2009-4

Keywords:

Secondary Employment