

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-21

Approved: 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.¹ 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

¹ 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(2)

§ 36-14-2(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