

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-24

Approved: 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.¹ 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

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

Code Citations:

§ 36-14-2(3)
§ 36-14-2(7)
§ 36-14-5(a)
§ 36-14-5(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