

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-25

Approved: June 27, 2023

Re: Jonathan Womer

QUESTION PRESENTED:

The Petitioner, who has been nominated by the Governor for appointment to the position of Director of the Rhode Island Department of Administration, requests an advisory opinion regarding whether the proposed supervisory chain of command is sufficient to insulate him from conflicts of interest arising out of his anticipated position, given that his spouse is employed by the same state agency as an analyst in the Office of Regulatory Reform.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the proposed supervisory chain of command is sufficient to insulate the Petitioner from conflicts of interest arising out of his anticipated appointment to the position of Director of the Rhode Island Department of Administration, given that his spouse is employed by the same state agency as an analyst in the Office of Regulatory Reform.

The Petitioner has been nominated by the Governor for appointment to the position of Director of the Rhode Island Department of Administration (“DOA”). The DOA provides supportive services to all state departments and agencies.¹ Its principal responsibilities “include developing and administering the state budget; determining and maintaining standard specifications for purchases, contracts, bids, and awards for state purchases; maintaining and procuring state facilities; administering the statewide planning program; and managing the personnel of state departments and agencies.”² The DOA is comprised of a number of separate divisions and offices including the Office of Accounts and Control; the Office of Management and Budget which includes the Budget Office, the Office of Performance and Management, the Office of Internal Audit, and the Office of Regulatory Reform; the Division of Capital Asset Management and Maintenance; the Office of Employee Benefits; the Division of Human Resources; the Division of Information Technology; Legal Services; the Office of Library & Information Services; the Division of Equity, Diversity and Inclusion; the Office of Public Affairs; the Division of Purchases; State Employees Workers’ Compensation; and the Division of Statewide Planning.³

The Petitioner represents that his spouse is employed by the DOA as an analyst in the Office of Regulatory Reform (“ORR”). The Petitioner states that there are numerous layers of supervision

¹ See <https://admin.ri.gov/about-us> (last accessed on May 24, 2023).

² *Id.*

³ See <https://admin.ri.gov/divisions> (last accessed on May 24, 2023).

between the DOA Director and the ORR analyst. The Petitioner further states that, in the normal supervisory chain of command, an ORR analyst reports to the Chief of Strategic Planning, Monitoring and Evaluation in the Office of Economic and Regulatory Reform, who reports to the Deputy Director of the Office of Management and Budget (“OMB”), who in turn reports to the Director of OMB. The Director of the OMB reports to the Director of the DOA.

Cognizant of the nepotism provisions of the Code of Ethics, desirous of acting in conformity therewith, and to avoid any potential conflicts of interest regarding his spouse, the Petitioner proposes an alternate supervisory chain of command whereby, rather than reporting to the Director of the DOA on any matter involving the Petitioner’s spouse, the Director of the OMB would instead report to the Senior Advisor to the Governor. The Petitioner represents that the Senior Advisor to the Governor is a full-time employee of the Office of the Governor and is closely familiar with the functions of the DOA and the ORR, given that the DOA is a significant part of the portfolio of agencies for which the Senior Advisor serves as an intermediary between those agencies and the Governor. The Petitioner further represents that, as DOA Director, he would not have any authority or supervision over the Governor’s Senior Advisor. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the proposed supervisory chain of command outlined herein is sufficient to insulate him from conflicts of interest arising out of his anticipated new position as the Director of the DOA, given his spouse’s employment by the DOA.

The Code of Ethics provides that a public official or employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if the public official or employee has reason to believe or expect that he or any person within his family, among others, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). A public official or employee also may not use his public position to obtain financial gain, other than that provided by law, for himself or any person within his family, among others. Section 36-14-5(d).

Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) (“Regulation 1.3.1”) contains specific provisions aimed at curbing nepotism. Pursuant to Regulation 1.3.1(B)(1), a public official or employee may not participate in any matter as part of his public duties if “any person within his [] family” is a participant or party, or if there is reason to believe that a family member will be financially impacted or will obtain an employment advantage. Additionally, Regulation 1.3.1(B)(2) prohibits a public official or employee from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of any person within his family, or from delegating such tasks to a subordinate. The phrase “any person within his [] family” expressly includes “spouse.” Regulation 1.3.1(A)(2).

The Ethics Commission has consistently acknowledged that in circumstances in which a public official or employee sits atop a chain of command, a complete and effective recusal can be difficult or impossible to achieve. This is because upon the public official or employee’s recusal from matters involving a person within his family, his duties must still be carried out by one of the public official or employee’s subordinates, which could be a violation of the above-cited nepotism

provisions of the Code of Ethics. In such cases, when feasible, the Ethics Commission has approved alternate chain of command structures where the resulting decision-making is not delegated to a subordinate but, rather, rises up the chain of command or transfers laterally to a person who is not under the supervision or authority of the public official.

For example, in Advisory Opinion 2011-19, the Ethics Commission approved an alternate chain of command for the Director of the Department of Labor and Training (“DLT”), who sought guidance regarding the appropriate measures to avoid conflicts of interest, given that his first-cousin’s husband was a long-time employee of the DLT, then serving as an Assistant Director of its Division of Workers’ Compensation. In that matter, Assistant Directors reported to the Deputy Director who, in turn, reported to the petitioner. The fact that the petitioner’s cousin-in-law had been employed by the DLT for a number of years prior to the petitioner’s appointment as Director compelled the approval by the Ethics Commission of a reasonable and achievable alternate chain of command wherein the petitioner was required to recuse from any decision-making relative to the employment of his family member. Upon recusal by the petitioner, such matters were to be handled by the DLT’s Deputy Director without any input from the petitioner or, if necessary, by appropriate personnel administrators within the Department of Administration who were not under the petitioner’s authority or supervision. See also A.O. 2023-13 (approving an alternate chain of command whereby the newly appointed Chief of the Johnston Police Department was required to recuse from any matters involving his spouse, who was also employed by the Johnston Police Department, and such matters were to be ultimately reviewed by the Mayor’s Chief of Staff, whose responsibilities already included the supervision of all Department Heads); A.O. 2010-1 (approving an alternate chain of command whereby the General Treasurer of the State of Rhode Island was required to recuse from decision-making in matters impacting his family member, and his duties were transferred to and handled outside of the Office of the General Treasurer by a hearing officer employed by the Department of Administration); A.O. 2007-7 (opining that the Newport City Solicitor could act as the appointing authority, in place of the City Manager, of seven candidates for employment with the Newport Police Department, notwithstanding that the City Manager’s son was one of those candidates, provided that certain procedures were followed so that the City Manager was completely removed from all personnel decisions or matters that particularly affected his son financially). Contrast A.O. 2008-54 (opining that the son of the Saylesville Fire Chief was prohibited from being employed by the Saylesville Fire District, notwithstanding that the Fire Chief would not take part in the selection process, since no alternate chain of command was proposed to insulate the Fire Chief from apparent conflicts of interest).

Here, the Petitioner, if appointed to the position of Director of the DOA, would sit atop of the chain of command of that agency without a supervisory authority within the agency to whom he could transfer any decision-making authority over matters involving his spouse. However, it is notable that the organizational structure of the DOA is such that there are already three levels of supervision separating the Petitioner from his spouse. The Petitioner’s proposed alternate chain of command removes him from any decision-making relative to his spouse and transfers such responsibilities to the Governor’s Senior Advisor who is not a subordinate or otherwise under the supervision or authority of the Petitioner, and who is closely familiar with the functions of the DOA and the ORR.

Accordingly, in consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and past advisory opinions issued, it is the opinion of the Ethics Commission that the proposed supervisory chain of command described by the Petitioner is reasonable and sufficient to insulate him from apparent conflicts of interest regarding matters involving his spouse's employment, such as those related to her salary, benefits, or other terms of employment, and/or such tasks relating to the supervision, evaluation, appointment, classification, promotion, transfer or discipline of the Petitioner's spouse. The Petitioner is advised, however, to remain vigilant in identifying and avoiding any conflicts of interest that might arise given his position of authority over his spouse that are not addressed herein, and is encouraged to seek further guidance from the Ethics Commission as needed.

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-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2023-13

A.O. 2011-19

A.O. 2010-1

A.O. 2008-54

A.O. 2007-7

Keywords:

Alternate Chain of Command

Family: Public Employment

Family: Supervision

Nepotism