

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-28

Approved: July 25, 2023

Re: Josh Hyman

QUESTION PRESENTED:

The Petitioner, an Engineering Technician at the Rhode Island Department of Transportation, a state employee position, requests an advisory opinion regarding the application of the revolving door provisions of the Code of Ethics to his impending employment with a private engineering firm.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an Engineering Technician at the Rhode Island Department of Transportation, a state employee position, is prohibited by the Code of Ethics from representing himself or others, including his private employer, and/or from acting as an expert witness, before the Department of Transportation until the expiration of one year following the date of severance from his state employment. The Petitioner is further prohibited by the Code of Ethics from using or disclosing any confidential information that he obtained while working as an Engineering Technician to financially benefit himself or his new private employer.

The Petitioner has been employed by the Rhode Island (“State”) Department of Transportation (“RIDOT”) since 2009 and currently works as an Engineering Technician in RIDOT’s Construction Division. He identifies among his duties the daily documentation of activity on construction projects and the collection of field data from construction and installation sites for purposes of verifying compliance with the plans and specifications identified in performance contracts awarded by RIDOT. The Petitioner explains that the data he collects gets submitted to a Resident Engineer at RIDOT who, after verifying the veracity and formatting of the submitted data, approves it. He states that RIDOT retains the data, which is later referenced to verify the achievement of project milestones that trigger payment to the contractor responsible for their performance.

The Petitioner represents that he was recently offered the position of Senior Inspector by AECOM, a private engineering and consulting firm, after a recruiter found the Petitioner’s information on the social media platform LinkedIn. The Petitioner further represents that he would perform for AECOM essentially the same field data and documentation work that he currently performs for RIDOT. The Petitioner states that AECOM has been hired as a subcontractor by AI Consulting, which is the engineering consultant to one of the contractors (“Contractor”) hired by the State to

perform reconstruction on Route 146 (“146 Project”). He adds that AECOM would like to hire him specifically to work on the 146 Project.

The Petitioner represents that, if hired by AECOM, he will submit for approval to AI Consulting digitally produced daily reports containing data and documentation relative to the 146 Project. This would include narratives and pictures of construction activities, counts of equipment, the assignment and presence of manpower, and information about material deliveries. He states that AI Consulting would then submit the daily reports to the Contractor, who will use it to verify the correct completion of contract milestones before submitting payment requests to RIDOT. The Petitioner states that his name would appear on the daily reports that he submits to AI Consulting and, presumably, would remain on those daily reports as they are transmitted, first to the Contractor and, eventually, to RIDOT. He further states that the daily reports ultimately become the property of RIDOT where they are archived as such.

The Petitioner represents that RIDOT will concurrently collect its own field data and produce its own daily reports relating to the 146 Project in the same format and using the same “Headlight-Fieldbook” system as that which would be used by the Petitioner as an AECOM employee. He further represents that, when preparing its own daily reports, RIDOT would not rely on the reports that will have been originated for AECOM by the Petitioner, but would instead compare its own daily reports to those prepared by AECOM in order to verify consistency between them prior to initiating payments to the Contractor upon the achievement of performance milestones.¹

The Petitioner explains that the design/build contractual architecture of the 146 Project includes assurances by both AECOM and RIDOT that approved plans and specifications are being followed as designed. He represents that the dual analysis by AECOM and RIDOT in the form of their individual daily reports helps ensure a balance between the quality assurance performed by RIDOT and the quality control performed by the Contractor. He adds that a design/build project helps protect the state from liability due to incorrect or incomplete plans or specifications. The Petitioner states that he does not believe that AECOM’s continued involvement in, and compensation for, its work on the 146 Project would be contingent upon the Petitioner’s work for AECOM; nor would RIDOT have any direct impact upon AECOM’s decision to retain and/or compensate the Petitioner as an AECOM employee.

The Petitioner emphasizes that he would not attend any construction meetings and that he would only be responsible for data gathering during construction operations as an hourly employee. He states that AECOM is requesting his presence on the 146 Project as soon as possible after adequate notice is given by the Petitioner to RIDOT. Based on the facts as represented, the Petitioner seeks guidance from the Ethics Commission regarding the application of the revolving door provisions of the Code of Ethics to his impending employment with AECOM.

¹ The Petitioner informs that, because both AECOM and RIDOT are collecting data from the same construction sites for the same purposes, any misalignment of the data collected would be the result of a miscalculation or misunderstood fact by one party. He states that any adjustment would be the result of an agreement between RIDOT and AECOM regarding an error involved. He adds that original reports likely will not be changed to reflect an adjustment, but that an addendum would be recorded and cross-referenced.

The Code of Ethics prohibits a public employee from representing himself or any other person before any state agency by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1) & (2) (“section 5(e)”). A “person” is defined as an individual or business entity. Section 36-14-2(7). This prohibition extends for a period of one year after the public employee has officially severed his position with the state agency. Section 5(e)(4). The “revolving door” language of section 5(e) is designed to minimize any undue influence that a former employee may have over his former agency and colleagues by reason of his past employment there. This prohibition is absolute and applies to the entire agency, including all of its offices, sections, programs or divisions. Under the Code of Ethics, a person represents himself or another person before a state agency if “he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] own favor or in favor of [another] person.” Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Additionally, section 36-14-5(c) prohibits the use and/or disclosure of confidential information received through one’s public employment for pecuniary gain.

The Ethics Commission has issued numerous advisory opinions interpreting section 5(e)(4)’s requirement with respect to former state employees interacting with their former agencies during the one-year period following the date of severance from their state employment. Two such advisory opinions were issued to former RIDOT employees. In Advisory Opinion 2020-27, the Ethics Commission opined that the former Administrator of Project Management for the RIDOT was prohibited from representing himself or others, including his private employer, or from acting as an expert witness, before the RIDOT until the expiration of one year following the date of severance from his state employment. The Ethics Commission further opined that the petitioner was prohibited from using any confidential information he obtained while working as the Administrator of Project Management to financially benefit himself or his employer. Similarly, in Advisory Opinion 2017-34, the Ethics Commission opined that a former Principal Civil Engineer in the Bridge Design section of the RIDOT, while not prohibited from working for a private engineering firm upon his retirement, was prohibited from representing himself or others, including his new private employer, or from acting as an expert witness, before the RIDOT for a period of one year following the date of severance from his state employment, and from using any confidential information he obtained while working for the RIDOT for financial gain. See also A.O. 2020-6 (opining that the Vice President of Business Development at the Rhode Island Commerce Corporation was prohibited from representing himself or his private employer before the Commerce Corporation until the expiration of one year after he had officially severed his position with that agency, and further opining that the petitioner was prohibited from using any confidential information he obtained while working as the Vice President of Business Development to financially benefit himself or his employer).

Here, the Petitioner’s proposed conduct would not constitute the representation of himself or AECOM before RIDOT. Nor would the Petitioner’s collection of field data and production of daily reports relative to the 146 Project as an AECOM employee constitute his participation in the presentation of evidence or arguments before RIDOT for the purpose of influencing RIDOT’s judgment in favor of either himself or AECOM. The Petitioner states that RIDOT will concurrently collect its own field data and produce its own daily reports relating to the 146 Project, and not rely on the reports that will have been originated for AECOM by the Petitioner. The comparison by RIDOT of its own daily reports to those prepared by AECOM will be undertaken

merely to verify the anticipated consistency between them. Also, the Petitioner represents that the performance of his duties as an AECOM employee receiving an hourly wage would have no impact on AECOM's continued involvement in, and compensation for, its work on the 146 Project; nor would RIDOT have any direct impact upon the Petitioner's status as an AECOM employee.

Accordingly, and for all of the foregoing reasons, it is the opinion of the Rhode Island Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing himself or others, including his private employer, and/or from acting as an expert witness, before the Department of Transportation, including all of its offices, sections, programs or divisions, until the expiration of one year following the date of severance from his state employment. Based on the facts as represented, there is nothing to suggest that the Petitioner, in his capacity as an AECOM employee, would be representing himself or his new employer before his former state agency or in a position to exercise any undue influence over his former colleagues and/or over RIDOT by reason of his past employment there. The Petitioner is further prohibited by the Code of Ethics from using or disclosing any confidential information that he obtained while working as an Engineering Technician to financially benefit himself or his new private employer.

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(7)

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(c)

§ 36-14-5(e)

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

Related Advisory Opinions:

A.O. 2020-27

A.O. 2020-6

A.O. 2017-34

Keywords:

Revolving Door