

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-30

Approved: July 25, 2023

Re: J. Clement Cicilline, M.S.

QUESTION PRESENTED:

The Petitioner, a member of the Newport Canvassing Authority, a municipal appointed position, who in his private capacity is a member of the Democratic 13th Senatorial District Committee, a private organization, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport Canvassing Authority, a municipal appointed position, who in his private capacity is a member of the Democratic 13th Senatorial District Committee, a private organization, is not prohibited by the Code of Ethics from simultaneously serving in both positions.

The Petitioner is a member of the City of Newport (“City” or “Newport”) Canvassing Authority, having been appointed to that position by the Newport City Council (“City Council”) in May of this year. The Canvassing Authority is comprised of three members and two alternates. According to the City’s website, the Canvassing Authority, “[u]nder the direction of the State Board of Elections, and in cooperation with the Secretary of State, is involved in all phases of the electoral process, from voter registration to tallying the votes after the polls close on election day.”¹ The duties of the Canvassing Authority include, *inter alia*, the following: having and discharging all of the functions, powers, and duties of the City Council concerning nominations, elections, registration of voters and canvassing rights; preparing and correcting of voting lists; making or furnishing all returns or other things required by law to be made or furnished to or by city clerks, boards of canvassers, and district clerks relative to the canvassing authority; and appointing and employing all of the Canvassing Authority’s necessary clerical and technical assistants and fixing the compensation of each such person appointed, within the limits of funds available to it pursuant to law. See R.I. Gen. Laws § 17-8-5(a).

The Petitioner represents that he has been a long-time member of the Democratic 13th Senatorial District Committee (“Committee”). He further represents that the role of the Committee, a private organization, is to endorse a candidate to represent District 13 in the Rhode Island Senate. The

¹ See <https://www.cityofnewport.com/city-hall/boards-commissions/authorities/canvassing-authority> (last visited on July 6, 2023).

Petitioner states that he is not an officer² of the Committee, does not pay membership dues, and that his duties as a member are to vote to elect the Committee's officers and the Senate candidate to be endorsed. The Petitioner adds that the members of the Committee, in their capacities as members of the Committee, do not fundraise or solicit campaign contributions on behalf of the endorsed candidate. The Petitioner represents that the Committee does not have any financial objectives. He further represents that he does not envision any circumstances under which the Committee would have to appear before him in his capacity as a member of the Canvassing Authority. He adds that if that were to occur, he would recuse from participation in such matters. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from continuing to serve as a member of the Committee while simultaneously serving as a member of the Canvassing Authority.

The Code of Ethics does not directly address or regulate political affiliations and alliances and does not bar members of a Board of Canvassers from belonging to political committees or to any other particular organization. See A.O. 2014-3 (opining that a member of the Tiverton Board of Canvassers could serve in that public position notwithstanding his simultaneous service as the Vice Chair of the Tiverton Democratic Town Committee and as a member of the Democratic State Representative District 70 Endorsement Committee); A.O. 2007-45 (opining that a member of the Town of Johnston Board of Canvassers was not prohibited from simultaneous membership on the Johnston Republican Town Committee and the Republican State Central Committee); A.O. 2000-20 (opining that a member of the East Providence Board of Canvassers was not prohibited from simultaneous membership on political committees or other organizations). The Code of Ethics does, however, impose certain restrictions on the official actions that a public official may take in particular matters that involve or financially impact themselves, their family members, businesses by which they are employed, or their business associates.

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 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). The Code of Ethics also prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). Additionally, a public official must recuse from participation when his business associate 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 associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). Finally, section 36-14-5(c) prohibits the use and/or disclosure of confidential information received through one's public employment for the purpose of pecuniary gain.

² The Petitioner represents that the officers of the Committee are the chairperson, the vice chairperson, and the secretary.

The Ethics Commission has previously opined that although candidates that have been successfully elected to office are joined together with those from whom they received an endorsement for a shared *political* objective, they do not share a common *financial* objective. In and of themselves, shared political affiliations and objectives by a public official and a candidate who may appear before the public official do not create an inherent conflict of interest within the meaning of the Code of Ethics. See, e.g., A.O. 2001-72 (opining that Westerly Town Councilors who were members of and/or who received endorsements from the local Democratic Town Committee could participate in the Council's consideration of a matter involving an officer of the Democratic Town Committee, absent any other relationship with that individual that would implicate provisions of the Code of Ethics). Accordingly, the Petitioner would not be a business associate of the candidates endorsed by the Committee and, therefore, would not run afoul of the Code of Ethics, absent any other relationship with those candidates that would implicate provisions of the Code of Ethics, when carrying out his duties as a member of the Canvassing Authority that touch upon the election of those candidates.

Additionally, the Ethics Commission has consistently found that mere membership in an organization as opposed to serving in the position of director, officer, or other position of leadership that could direct and affect the financial objectives of that organization, does not create a business association requiring recusal. See, e.g., A.O. 2013-26 (opining that a Newport City Council member was not prohibited from participating in City Council matters involving the Newport Yacht Club, notwithstanding that her husband was an individual member of the Yacht Club and paid annual dues to the Yacht Club, but was not an officer or member of the Yacht Club's Board of Directors). Here, the Petitioner represents that, not only is he merely a member of the Committee, but that the Committee has no financial objectives. Therefore, the Petitioner is not a business associate of the Committee and would not be required to recuse from matters in his public capacity that involve or financially impact the Committee.

In summary, based on the facts as represented by the Petitioner, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from simultaneously serving as a member of the Newport Canvassing Authority and as a member of the Democratic 13th Senatorial Committee. Additionally, the Petitioner is not a business associate of the Committee, nor would he be a business associate of any candidates endorsed by the Committee. Therefore, he would not run afoul of the Code of Ethics in carrying out any of his duties as a member of the Canvassing Authority that involve the Committee or the election of the candidates endorsed by the Committee, absent any other relationship with those candidates that would implicate provisions of the Code of Ethics. The Petitioner is advised, however, that should his involvement or position on the Committee change, he should seek further guidance from the Ethics Commission.

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)

§ 36-14-5(a)

§ 36-14-5(c)

§ 36-14-5(d)

§ 36-14-7(a)

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

Other Related Authority:

R.I. Gen. Laws § 17-8-5(a)

Related Advisory Opinions:

A.O. 2014-3

A.O. 2013-26

A.O. 2007-45

A.O. 2001-72

A.O. 2000-20

Keywords:

Business Associate

Political Activity