

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-32

Approved: September 12, 2023

**Re: Catherine Lynn**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Smithfield Planning Board, a municipal appointed position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in Planning Board discussions and decision-making relative to matters in which Timothy Kane appears or presents evidence or arguments, given that Mr. Kane served as the closing attorney for the buyer of a house recently sold by the Petitioner.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Smithfield Planning Board, a municipal appointed position, is not prohibited by the Code of Ethics from participating in Planning Board discussions and decision-making relative to matters in which Timothy Kane appears or presents evidence or arguments, notwithstanding that Mr. Kane served as the closing attorney for the buyer of a house recently sold by the Petitioner.

The Petitioner is a member of the Smithfield Planning Board (“Planning Board”), having been appointed to that position by the Smithfield Town Council on July 11, 2023. She states that she recently sold her beach house in Narragansett and that the closing took place on August 9, 2023. The Petitioner further states that the closing attorney representing the buyer of her beach house was Timothy Kane. The Petitioner represents that she did not hire an attorney to represent her interests in the sale and that Mr. Kane handled all of the paperwork associated with the closing, although the Petitioner was required to contribute \$275 toward Mr. Kane’s legal fees in her capacity as the seller. The Petitioner explains that the sale of her house has been completed and that all of the funds associated with the sale have been distributed. The Petitioner further explains that she has no plans to hire Mr. Kane to provide legal services to her in the future. The Petitioner represents that Mr. Kane periodically serves as legal counsel to developers who are involved in matters that go before the Smithfield Planning Board. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from participating in Planning Board discussions and decision-making in matters where Mr. Kane appears or presents evidence or arguments.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her 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 the proper discharge of her duties if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of that public official's activity, to the public official, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-7(a). A public official is further prohibited from using her public office, or confidential information received through her public office, to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). Finally, a public official must recuse from participation when her business associate or employer appears or presents evidence or arguments before her 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).

The Ethics Commission has consistently recognized an attorney-client relationship as a business association for purposes of the Code of Ethics and has, on multiple occasions, required a public official to recuse from consideration of a matter if that public official had an ongoing attorney-client relationship with the individual appearing before his or her public body. See, e.g., A.O. 2010-47 (opining that the Middletown Solicitor was prohibited from participating in the consideration by the Zoning Board and Planning Board of a petition for a special use permit, given that one of the petitioner's private law clients had been retained to provide information and testimony in support of the permit application); A.O. 2007-54 (opining that a member of the Smithfield Zoning Board of Review was prohibited from participating in a zoning matter in which the Zoning Board of Review would be sitting as the Smithfield Board of Appeals, given that he had an ongoing attorney-client relationship with one of the attorneys representing the appellants in the matter).

However, while the Code of Ethics clearly prohibits a public official from participating in matters directly affecting his or her current business associate, the Ethics Commission has permitted a public official to participate in matters involving or impacting a *former* business associate, assuming no other conflicts were present. In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, or whether there exists an anticipated future relationship between the parties. For example, in Advisory Opinion 2021-11, a member of the State Housing Appeals Board was not prohibited by the Code of Ethics from participating in a matter before the Board in which the appellant was represented by legal counsel who had once provided legal services to the petitioner. There, the petitioner represented that the attorney-client relationship between her and the subject attorney had ended five years prior, that the attorney had been paid in full for the services he had provided to her, and that she did not anticipate any occasion for which she might require that attorney's services in the future. See also A.O. 2013-21 (opining that a member of the State Labor Relations Board, a private 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 that there was no reasonable likelihood of reestablishing an attorney-client relationship in the foreseeable future); A.O. 2007-5 (opining that a Smithfield Town Council member's prior attorney-client relationship with an individual who had sought legal advice from the petitioner related to the individual's property that abutted the Slacks Reservoir dam did not

prohibit the petitioner from participating in the Town Council's consideration of a matter related to the release of funds to repair the Slacks Reservoir dam, given that the attorney-client relationship, during which the client had not been charged, had ended more than a year prior with no plans for future representation).

Here, the Ethics Commission need not address whether the Petitioner's contribution to Mr. Kane's fee in his capacity as the buyer's closing attorney constituted a business associate relationship between the Petitioner and Mr. Kane because, even if that had been the case, that business associate relationship has ended for purposes of the Code of Ethics. The Petitioner states that the closing has already taken place, that all of the proceeds from the closing have been distributed, that there are no ongoing business transactions between herself and Mr. Kane, and that she does not anticipate engaging Mr. Kane for legal services in the future. Accordingly, based on the facts as represented, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in Planning Board discussions and decision-making relative to matters in which Mr. Kane appears or presents evidence.

**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(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2021-11

A.O. 2013-21

A.O. 2010-47

A.O. 2007-54

A.O. 2007-5

Keywords:

Business Associate