

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-33

Approved: September 12, 2023

Re: Wayne Zina

QUESTION PRESENTED:

The Petitioner, a Correctional Officer for the Rhode Island Department of Corrections, a state employee position, who in his private capacity owns and operates WSZ Plowing LLC, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from bidding in his private capacity on a winter vendor contract to provide snow plowing services to the State of Rhode Island.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Correctional Officer for the Rhode Island Department of Corrections, a state employee position, who in his private capacity owns and operates WSZ Plowing LLC, is not prohibited by the Code of Ethics from bidding in his private capacity on a winter vendor contract to provide snow plowing services to the State of Rhode Island, provided that the contract is awarded through an open and public bidding process.

The Petitioner is employed full-time as a Correctional Officer at the Rhode Island Department of Corrections (“DOC”) and has served continuously in that capacity since March 2013. He states that he performs most of his duties at the Adult Correctional Institutions, but that he is occasionally tasked with the transportation of prisoners. The Petitioner further states that his current work schedule is Tuesday through Saturday, from 11:00 p.m. to 7:00 a.m., with Sundays and Mondays off. He adds that he expects his hours to change sometime this December to the day shift, which is 7:00 a.m. to 3:00 p.m. The Petitioner represents that, in his private capacity, he has been the sole owner and operator of WSZ Plowing LLC (“WSZ Plowing”) for the past ten years. The Petitioner further represents that he provides snow plowing services to the owners of private commercial lots and to residents who need their driveways cleared of snow. He adds that his snow removal work has never interfered with his state employment.

The Petitioner states that he would like to expand his snow plowing business by applying to become a winter vendor for the State of Rhode Island (“State”). He explains that, in order to qualify for consideration, he will be required to complete an online application that has been posted by the State Department of Transportation (“RIDOT”) on its website, and that the vehicle that he uses to plow snow would need to be inspected by a representative from the State. The Petitioner informs that the application period to become a winter vendor starts in September and runs through

November and that, if selected, his contract with the State would be for a period of one year. He represents that the State is usually short on snow plow drivers and that most applicants have an excellent chance of receiving a contract. The Petitioner states that he has no role in the bidding or selection process for the State's winter vendors.

The Petitioner represents that, if selected to become a winter vendor for the State, it would not impair his independence of judgment with respect to his official duties as a Correctional Officer. He adds that he would perform all snow plowing work on his own time and without the use of state resources and keep confidential all information obtained in connection with his state employment by the DOC. The Petitioner states that, if selected to become a winter vendor, he intends to hire a driver to cover for the Petitioner in instances where he might be unavailable to plow snow. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited by the Code of Ethics from bidding in his private capacity on a winter vendor contract to provide snow plowing services to the State.

Section 36-14-5(h) ("section 5(h)") of the Code of Ethics provides that no person subject to the Code of Ethics, or any business entity in which the person has a ten percent (10%) or greater equity interest or five thousand dollar (\$5,000) or greater cash value interest, shall enter into a contract with a state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded.¹ Section 36-14-5(b) ("section 5(b)") of the Code of Ethics prohibits a public employee from accepting other employment that would impair his independence of judgment as to his official duties or employment or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties.²

The Ethics Commission has previously, and with certain conditions attached, allowed public officials to enter into service contracts with the State and/or with the municipalities in which they served. For example, in Advisory Opinion 2011-48, the Chief Rider Coach Trainer for the Motorcycle Safety Program at the Community College of Rhode Island ("CCRI"), who in his private capacity owned and operated a local driving school, was not prohibited by the Code of Ethics from seeking, accepting, and performing a driver retraining contract for CCRI. There, the circumstances were such that the petitioner had responded to a bid posted by CCRI through an open and competitive bidding process. Also, that petitioner had not participated in the bid development process and had no advance knowledge that the Request for Qualifications had been

¹ Contracts for certain professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details. Section 36-14-(h). The snow plowing services that the Petitioner seeks to provide to the State of Rhode Island as a winter vendor do not fall within the category of such professional services.

² The Ethics Commission examines several factors when considering potential conflicts of interest 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 or her normal working hours and without the use of public resources; whether the employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.

posted until he inadvertently found it on the State’s website. See also A.O. 2022-5 (opining that the New Shoreham Town Clerk, who in her private capacity owned and operated Ballard’s Oil Company, was not prohibited from bidding in her private capacity on a contract, through an open and public bidding process, to provide heating and oil services to the Town of New Shoreham, a private activity which would neither impair her independence of judgment nor create an interest in substantial conflict with her public duties); A.O. 2003-3 (opining that a Principal Sanitary Engineer employed by the Department of Environmental Management (“DEM”) in the Office of Water Resources, who in her private capacity owned Narragansett Research, could provide information and technology services to various offices of DEM other than Water Resources, provided that the contract offered was subject to an open and public bidding process and, further provided, that she performed all of the work on her own time and without the use of public resources).

Here, the Petitioner represents that he would like to apply to become a winter vendor for the State by completing an application that was posted by the RIDOT on its website and for which the Petitioner has no role in the bidding or selection process. Accordingly, based on the facts as represented herein, the relevant 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 from bidding in his private capacity on a winter vendor contract to provide snow plowing services to the State. If the Petitioner is offered such a contract through an open and public bidding process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded, the Code of Ethics will not inherently prohibit him from accepting it, provided that the proposed activity would neither impair his independence of judgment nor create an interest in substantial conflict with his public duties. Given that the Petitioner’s provision of snow plowing services to the State would be separate and distinct from his official duties as a Correctional Officer, his work as a winter vendor would not appear to risk impairing his independence of judgment with regard to his official duties as prohibited by section 5(b). The Petitioner is reminded, however, that his bid, and all of his snow plowing work for the State, must be performed on his own time and without the use of public resources or confidential information obtained as part of his state employment as a Correctional Officer. Finally, the Petitioner may not use his public position as a Correctional Officer to promote or advertise his snow plowing business.

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(b)

§ 36-14-5(h)

Related Advisory Opinions:

A.O. 2022-5

A.O. 2011-48

A.O. 2003-3
G.C.A. 2009-4

Keywords:

Conflict of Interest

Contracts

Secondary Employment