



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

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**NOTICE OF OPEN MEETING**

**AGENDA**

**9<sup>th</sup> Meeting**

**DATE:** Tuesday, October 17, 2023

**TIME:** 9:00 a.m.

**PLACE:** Rhode Island Ethics Commission  
Hearing Room - 8<sup>th</sup> Floor  
40 Fountain Street  
Providence, RI 02903

**LIVESTREAM:** The Open Session portions of this meeting will be livestreamed at:  
<https://us02web.zoom.us/j/84141659272>

1. Call to Order.
2. Motion to approve minutes of Open Session held on September 12, 2023.
3. Director's Report: Status report and updates regarding:
  - a.) Complaints and investigations pending;
  - b.) Advisory opinions pending;
  - c.) Access to Public Records Act requests since last meeting;
  - d.) Financial Disclosure;
  - e.) Ethics Administration/Office Update.
4. Advisory Opinions.
  - a.) Karen D. Pinch, the Town Administrator for the Town of Richmond, requests an advisory opinion regarding whether the Code of Ethics prohibits her from hiring JN Jordan Plumbing to perform the plumbing and mechanical work on a home that she and her spouse are planning to build in the Town of South Kingstown,

given that the owner of JN Jordan Plumbing is employed by the Town of Richmond as the Zoning Official and as the Plumbing and Mechanical Inspector. [Staff Attorney Popova Papa]

- b.) Cynthia A. Coyne, a former member of the Rhode Island Senate, who is currently the Executive Director of the Senior Agenda Coalition of Rhode Island, a non-profit entity, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from serving, prior to the expiration of one year after leaving legislative office, on a special legislative commission recently created by a Resolution of the Rhode Island House of Representatives. [Staff Attorney Popova Papa]
  - c.) David M. D'Agostino, the Scituate Town Moderator, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting, if offered, appointment by the Scituate Town Council to serve the remainder of his late father's term as a member of the Town Council, provided that the Petitioner resigns as the Town Moderator, effective concurrent to that appointment. [Staff Attorney Radiches]
  - d.) Robert Shaw, a member of the Cumberland Town Council, requests an advisory opinion regarding whether his simultaneous service as the Interim President and Registrar for the Cumberland Youth Soccer Association, a nonprofit organization, constitutes an inherent conflict of interest under the Code of Ethics. [Staff Attorney Radiches]
  - e.) Yesenia Rubio, a member of the Pawtucket City Council, who in her private capacity co-owns and operates Notes Coffee Co. in the City of Pawtucket, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from applying for and potentially receiving in her private capacity loan funds from the Pawtucket Business Development Corporation, a private entity, and/or American Rescue Plan Act funds from the City of Pawtucket, given that the Pawtucket Business Development Corporation is funded, at least in part, by Pawtucket Community Development Block Grants and American Recue Plan Act funds are awarded by the City of Pawtucket. [Staff Attorney Radiches]
  - f.) Mark Nimiroski, a member of the Tiverton Wastewater District Board of Directors, requests an advisory opinion regarding whether he may accept an offer of employment by that Board of Directors to become the Executive Director of the Tiverton Wastewater District. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on September 12, 2023, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- b.) In re: David Patten, Complaint No. 2023-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - c.) In re: James E. Thorsen, Complaint No. 2023-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - d.) In re: Daniel McKee, Complaint No. 2023-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - e.) In re: K. Joseph Shekarchi, Complaint No. 2023-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - f.) In re: Frank Brown, Jr., Complaint No. 2023-4, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - g.) In re: Denise Brown, Complaint No. 2023-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - h.) In re: Richard Nassaney, Complaint No. 2023-9, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - i.) In re: Michael Colasante, Complaint No. 2023-10, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - j.) Motion to return to Open Session.
- 6. Motion to seal minutes of Executive Session held on October 17, 2023.
  - 7. Report on actions taken in Executive Session.
  - 8. New Business proposed for future Commission agendas and general comments from the Commission.
  - 9. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

*Posted on October 12, 2023*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: October 17, 2023

**Re: Karen D. Pinch**

### **QUESTION PRESENTED:**

The Petitioner, the Town Administrator for the Town of Richmond, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from hiring JN Jordan Plumbing to perform the plumbing and mechanical work on a home that she and her spouse are planning to build in the Town of South Kingstown, given that the owner of JN Jordan Plumbing is employed by the Town of Richmond as the Zoning Official and as the Plumbing and Mechanical Inspector.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Town Administrator for the Town of Richmond, a municipal appointed position, is not prohibited by the Code of Ethics from hiring JN Jordan Plumbing to perform the plumbing and mechanical work on a home that she and her spouse are planning to build in the Town of South Kingstown, notwithstanding that the owner of JN Jordan Plumbing is employed by the Town of Richmond as the Zoning Official and as the Plumbing and Mechanical Inspector.

The Petitioner is the Town Administrator for the Town of Richmond (“Town”). She represents that she and her spouse are planning to build a home in South Kingstown and would like to seek a price quote from JN Jordan Plumbing (“JN Jordan”) for completing the plumbing and mechanical work on the new home. The Petitioner explains that JN Jordan has a reputation as an outstanding plumbing firm that has performed work on homes that have been featured on the television program “This Old House.” The Petitioner states that JN Jordan is owned by Josh Jordan (“Mr. Jordan”) who is employed by the Town as the Zoning Official and as the Plumbing and Mechanical Inspector. The Petitioner, further states that, as a Town employee, Mr. Jordan is directly supervised by the Town Building Official and that the Petitioner does not direct Mr. Jordan’s daily work. The Petitioner represents that under the Town Charter, the Town Council is required to “[a]ppoint and remove Town employees, including department heads.” She adds that the Town Charter also gives the Town Administrator the authority to “discipline and suspend town employees, including department directors, provided that the Town Administrator should immediately notify the Town Council of such discipline or suspension.” Given this set of facts, the Petitioner seeks guidance regarding whether she and her spouse may retain JN Jordan to perform the plumbing and mechanical work on their new home.

Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) (“Regulation 1.4.4”) prohibits individuals subject to the Code of Ethics from engaging in a

financial transaction, including participating in private employment or consulting, with a subordinate over whom he or she exercises supervisory responsibilities in the course of his or her official duties. A “subordinate” is defined as “an employee, contractor, consultant, or appointed official of the official’s or employee’s agency.” Regulation 1.4.4(C).

However, Regulation 1.4.4’s prohibition does not apply if the subject financial transaction “is in the normal course of a regular commercial business or occupation[.]” See Regulation 1.4.4(A)(1). In Advisory Opinion 2019-32, the Ethics Commission opined that a member of the Westerly School Committee, who in her private capacity owned and operated a professional design and print business, could fulfill orders placed by individual coaches or staff members of the local public school who were considered her subordinates because such transactions would have been undertaken in the normal course of her company’s regular commercial business.<sup>1</sup>

Here, Mr. Jordan is the Petitioner’s subordinate. The Petitioner and her husband would like to request a price quote from, and potentially hire, Mr. Jordan’s company to provide the plumbing and mechanical work on their new home, services that Mr. Jordan’s company regularly provides in the normal course of business. Accordingly, based on the Petitioner’s representations, 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 by the Code of Ethics from hiring JN Jordan to perform the plumbing and mechanical work on her new home provided, however, that the Petitioner does not receive any special discount or preferential price based on her position as Town Administrator. Further, should the Petitioner hire Mr. Jordan’s company, she and Mr. Jordan will become business associates. Thus, the Petitioner is advised that she will be required to comply with all of the conflict of interest provisions of the Code of Ethics relative to business associates including, but not limited to, recusing from any matter that will financially impact Mr. Jordan or pertain to his employment and supervision, until such time that the business associate relationship between them has concluded. The Ethics Commission is not in a position to opine whether the Petitioner’s recusal from Mr. Jordan’s supervision will be feasible and/or how her recusal would be addressed. The Petitioner is advised to seek further guidance as warranted.

**This Draft 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:

520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011)

Related Advisory Opinions:

A.O. 2019-32

Keywords:

Transactions with Subordinates

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<sup>1</sup> The transactions at issue in Advisory Opinion 2019-32 were also initiated by the petitioner’s subordinates, which is an additional exception found in Regulation 1.4.4(A)(2).

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: October 17, 2023

**Re: Cynthia A. Coyne**

### **QUESTION PRESENTED:**

The Petitioner, a former member of the Rhode Island Senate, who is currently the Executive Director of the Senior Agenda Coalition of Rhode Island, a non-profit entity, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from serving, prior to the expiration of one year after leaving legislative office, on a special legislative commission recently created by a Resolution of the Rhode Island House of Representatives.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former member of the Rhode Island Senate, who is currently the Executive Director of the Senior Agenda Coalition of Rhode Island, a non-profit entity, is not prohibited by the Code of Ethics from serving, prior to the expiration of one year after leaving legislative office, on a special legislative commission recently created by a Resolution of the Rhode Island House of Representatives, because her service on the special legislative commission does not amount to representation of her private employer before the General Assembly.

The Petitioner is a former legislator who served in the Rhode Island Senate (“Senate”) for eight years. She did not run for reelection last November, and her last day of service as a member of the Senate was January 3, 2023. The Petitioner states that in July of 2023, she was hired as the Executive Director of the Senior Agenda Coalition of Rhode Island (“SACRI”). The Petitioner describes SACRI as a non-profit, independent coalition of agency and individual members founded in 2002, the mission of which is to mobilize people to achieve power in order to improve the quality of life of older adult Rhode Islanders. The Petitioner explains that SACRI achieves its mission through community organizing, public education, and legislative advocacy. The Petitioner further explains that SACRI does not directly provide services, but offers education and information relative to services available to older adult Rhode Islanders on the state or municipal level or through private organizations. She adds that SACRI sends out monthly newsletters to its members, coordinates efforts with senior centers around Rhode Island, and advocates for policy changes. The Petitioner states that SACRI does not receive any state or federal funding. The Petitioner represents that, as Executive Director, she assumes primary responsibility for the organization’s overall management and growth within the policies and guidelines established by SACRI’s Board of Directors. She explains that she is SACRI’s only employee and describes her duties as including the recruitment of individual and agency members, strategy development and

implementation of organizing campaigns in concert with the Board of Directors and collaborating groups, and leading fundraising efforts.

The Petitioner represents that on May 11, 2023, the Rhode Island House of Representatives (“House”) passed Resolution 2023 – H 5224 Substitute A, entitled House Resolution Creating A Special Legislative Commission (“Study Commission”) to Study and Provide Recommendations Pertaining to Services and Coordination of State Programs Relating to Older Adult Rhode Islanders (“Resolution”). The Petitioner further represents that the Study Commission is comprised of 16 members, including the Director of SACRI or his or her designee.<sup>1</sup> The Petitioner states that the first meeting of the Study Commission was on September 12, 2023, which she did not attend. She further states that the Chairman of the SACRI’s Board of Directors is currently acting as her designee. According to the Resolution, the purpose of the Study Commission would be to make a comprehensive study of key statistics and information about services available for older adult Rhode Islanders and provide recommendations for services and the coordination of state programs for those Rhode Islanders in order to improve their well-being. Specifically, the Resolution lists the following responsibilities of the Study Commission:

1. Examine strengths, vulnerabilities, and demographic and financial statistics of older adult Rhode Islanders;
2. Assess the current State, Federal and local services currently available to older adult Rhode Islanders;
3. Examine any duplication of elderly services within the State;
4. Provide recommendations to institute, integrate, collaborate, and implement initiatives that eliminate red tape, coordinate services within agencies, and focus on better delivery of services and programs related to older adult Rhode Islanders, including older adult housing options and various living arrangements, health status and healthcare resources;
5. Provide recommendations for the creation of a portal to provide and coordinate aging programs and services in the areas of employment, education, independent living, accessibility and advocacy, as well as local older adult centers and services;
6. Provide recommendations on mental health, transportation, food access, and healthcare;
7. Review and provide recommendations for the funding of services through State, Federal, and private grants and provide recommendations for more efficient distribution and use of these dollars; and

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<sup>1</sup> The other members of the Study Commission include the following: three members of the House; two Rhode Island residents over the age of sixty-five; the Director of the Rhode Island Department of Health, or designee; the Director of the Rhode Island Office of Healthy Aging; three Directors from RI Senior Centers Directors Association; the Community Action Program Director from the Rhode Island Association of Community Action Agencies; the Director of the AARP Rhode Island, or designee; a member of the RI Long Term Care Coordinating Council; the Executive Director of Age-Friendly RI, or designee; and a member of a Rhode Island organization representing adults with disabilities.

8. Explore and provide recommendations for more regionalization of services.

H.R. Res. 2023 – H 5224 Sub. A, Jan. Sess. (R.I. 2023). The Resolution further provides that the Study Commission will report back to the House by no later than May 7, 2024, and that it will cease operations on August 7, 2024, unless, according to the Petitioner, that period is extended. The Petitioner states that although she would be part of the Study Commission because of her role as Executive Director of SACRI, she would not be representing the interests of, or lobbying on behalf of, SACRI. Rather, she would be sharing knowledge and information that she has acquired through her employment with SACRI relative to the needs of and services provided to older adult Rhode Islanders. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may serve on the Study Commission prior to the expiration of one year after her leaving legislative office.

Under the Code of Ethics, a public official or public employee 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 or public employee will have an interest that is in substantial conflict with the discharge of her duties in the public interest if it is reasonably foreseeable that a “direct monetary gain” or a “direct monetary loss” will accrue, by virtue of the 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). Further, the Code of Ethics prohibits a public official or public employee from representing herself or any other person before a state agency of which she is a member or by which she is employed. Section 36-14-5(e)(1) & (2) (“section 5(e)”). This prohibition extends for a period of one year after the public official has officially severed her 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 member may have over her former agency and colleagues by reason of her past position 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 herself or another person before a state agency if she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in her own favor or in favor of another person. See Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). A person is defined as “an individual or a business entity.” Section 36-14-2(7).

The Ethics Commission has issued numerous advisory opinions interpreting section 5(e)(4)’s requirement with respect to former public officials and public employees, including former members and employees of the General Assembly, relative to their proposed interactions with their former agencies during the one-year period following the date of severance from their state employment or service. For example, in Advisory Opinion 2004-4, a former Special Assistant to the House Majority Leader of the House of Representatives sought advice regarding whether, upon leaving his public employment, he could represent private businesses as a lobbyist before the Rhode Island Senate and certain executive branch agencies. Applying section 5(e), the Ethics Commission opined that, although the petitioner would be permitted to lobby the executive branch immediately upon his severance from his position with the House Majority Leader, he was required to wait one year before lobbying either chamber of the General Assembly. See also A.O. 2017-19 (opining that a former President of the Senate was prohibited by the Code of Ethics from lobbying



or otherwise representing her new employer before the Rhode Island General Assembly for a period of one year after leaving public office).

Here, the person holding the position of Executive Director of SACRI is one of the specifically enumerated members of the Study Commission. As a member of the Study Commission, the Petitioner's role will not be to represent SACRI or its interests, but, rather, to use knowledge and information acquired in her capacity as SACRI's Executive Director to support the mission of the Study Commission, which is to offer advice and recommendations to the General Assembly to improve the well-being of older adult Rhode Islanders. The intent of the Study Commission is to complete a comprehensive study of key statistics and information about services available for such Rhode Islanders and provide recommendations for the improvement of those services. Based on all of the facts represented herein, the relevant provisions of the Code of Ethics, and prior advisory opinion issued, it is the opinion of the Ethics Commission that the Petitioner's participation on the Study Commission would not constitute representation of SACRI as that term is defined in the Code of Ethics. Therefore, she is not prohibited from being part of the Study Commission prior to the expiration of one year following her severance from legislative service. The Petitioner is advised, however, to remain vigilant about recognizing any discussion that could constitute the representation of SACRI before the Study Commission, or matters that could directly financially impact SACRI during the remainder of the one year following her severance from legislative service, and recuse from participation consistent with the provisions of section 36-14-6.

**This Draft 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(a)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2017-19

A.O. 2004-4

Keywords:

Revolving Door

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: October 17, 2023

**Re: David M. D'Agostino**

### **QUESTION PRESENTED:**

The Petitioner, the Scituate Town Moderator, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting, if offered, appointment by the Scituate Town Council to serve the remainder of his late father's term as a member of the Town Council, provided that the Petitioner resigns as the Town Moderator, effective concurrent to that appointment.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Scituate Town Moderator, a municipal elected position, is not prohibited by the Code of Ethics from accepting, if offered, appointment by the Scituate Town Council to serve the remainder of his late father's term as a member of the Town Council, provided that the Petitioner resigns as the Town Moderator, effective concurrent to that appointment.

The Petitioner has held the position of Town Moderator ("Moderator") for the Town of Scituate ("Town" or "Scituate") continuously since January of 1999. Having first been appointed to fill the vacancy created by the departure of the previously elected Town Moderator, he has since been elected every two years. His current term expires in November 2024. The Petitioner states that the Town Moderator is responsible for maintaining order during Scituate's Annual and Special Financial Town Meetings.<sup>1</sup> The Petitioner is paid a stipend of \$100 per meeting.

The Petitioner's father ("Mr. D'Agostino") served continuously as a member of the Scituate Town Council ("Town Council") from 2006 until his passing in July of this year. Mr. D'Agostino was last elected in November 2022, and his unexpired two-year term runs through December 31, 2024. The Petitioner states that he was recently asked by a current member of the Town Council whether the Petitioner would be interested in serving the remainder of his late father's term. The Petitioner further states that his response was that it would be his honor to do so, provided that his appointment be specifically conditioned on the Town Council's acceptance of the Petitioner's resignation as the Town Moderator, effective concurrent with his appointment to the Town Council. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner requests an advisory opinion regarding whether he is prohibited by the Code of Ethics

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<sup>1</sup> The Petitioner explains that Special Financial Town Meetings are seldom held. He states that the last one took place in 2017 and, prior to that, two or three were held in 2007.

from accepting, if offered, appointment by the Town Council to serve the remainder of his late father's term as a member of the Town Council.

Under Commission Regulation 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014) ("Regulation 1.5.4"), no municipal elected official, while holding office and for a period of one (1) year after leaving municipal office, shall seek or accept employment with any municipal agency in the municipality in which the official serves. The Code of Ethics specifically includes as "employment" service by an individual "in any appointed state or municipal position." R.I. Gen. Laws § 36-14-2(4) ("section 2(4)"). Regulation 1.5.4(C) allows the Ethics Commission to authorize exceptions under circumstances where doing so would not create an appearance of impropriety.

Here, an initial issue is whether the Petitioner's service on the Town Council for the remainder of his late father's term constitutes "employment" under the Code of Ethics. If it does, Regulation 1.5.4 would prohibit the Petitioner's acceptance of the appointment, absent the authorization of an exception by the Ethics Commission. Section 2(4) specifically includes the service by an individual in any *appointed* municipal position as employment. Here, in this unusual situation, the Petitioner would be *appointed* by the Town Council to what is normally an *elected* position. To the extent that the Petitioner would then be considered an appointed official, the Municipal Official Revolving Door regulation would apply; but, to the extent that he would be considered an elected official, it would not apply. Ultimately, we do not need to decide whether to treat the Petitioner's potential Town Council seat as an appointed or elected position, because the facts as represented support the authorization of an exception under Regulation 1.5.4(C).

The Ethics Commission has granted exceptions under Regulation 1.5.4(C) on a number of occasions during the past decade upon a finding that public employment would not create an appearance of impropriety. For example, in Advisory Opinion 2015-43, the Ethics Commission allowed a North Kingstown School Committee ("NKSC") member to apply for and accept, if offered, the position of North Kingstown Town Manager. The circumstances were such that the petitioner had not run for election to the NKSC but, rather, had volunteered to be appointed to the NKSC to fill an unexpected vacancy. The petitioner represented that she did not intend to seek election to the NKSC once her appointed term expired and that, if hired as the Town Manager, she would resign from the NKSC. In that case, the NKSC had no role or authority relative to the hiring process for the Town Manager position. Also, the Town Manager was not a subordinate position to the NKSC and operated separate and apart from the School Department. See also A.O. 2015-22 (permitting a former Charlestown Town Council member to apply for the position of Charlestown Director of Parks & Recreation, a position which she previously held for twenty-two years until she was terminated, given that she immediately challenged her termination as wrongful, filed a lawsuit and favorably settled the case, but at the time of settlement reinstatement was problematic because the position had already been filled by another person); A.O. 2014-5 (permitting a former New Shoreham Town Council member to bid on new contracts through an open and public bidding process for services that his business then performed, given that his business had been providing those municipal services for at least ten years and the business was his primary source of income, his representation that he would not have sought election to the Town Council had he anticipated this problem, and his immediate resignation when he learned of the conflict).

Here, the Petitioner's current elective position is not on the Town Council or School Committee, which are the common elective positions to which the Municipal Official Revolving Door applies, but is as the Town Moderator, a position with narrow duties that are limited to maintaining order during infrequent Town meetings. Further, the Petitioner plans to resign from his position as the Town Moderator if selected to fill the vacancy on the Town Council. Also, the Petitioner has no role or authority in the selection of someone to fulfill the remainder of his late father's term on the Town Council. Finally, the members of the Scituate Town Council are not subordinates of the Town Moderator and their duties are separate and apart from those of the Town Moderator. Under these unique circumstances, we find that it would not create an appearance of impropriety to authorize an exception to this particular revolving door regulation.

In summary, it is the opinion of the Rhode Island Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from accepting, if offered, appointment by the Scituate Town Council to serve the remainder of his late father's term as a member of the Town Council, provided that the Petitioner resigns as Town Moderator, effective concurrent to that appointment.

**This Draft 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(4)

520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014)

Related Advisory Opinions:

A.O. 2015-43

A.O. 2015-22

A.O. 2014-5

Keywords:

Revolving Door

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: October 17, 2023

**Re: Robert Shaw**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Cumberland Town Council, a municipal elected position, requests an advisory opinion regarding whether his simultaneous service as the Interim President and Registrar for the Cumberland Youth Soccer Association, a nonprofit organization, constitutes an inherent conflict of interest under the Code of Ethics.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner's simultaneous service as a member of the Cumberland Town Council, a municipal elected position, and as the Interim President and Registrar for the Cumberland Youth Soccer Association, a nonprofit organization, does not constitute an inherent conflict of interest under the Code of Ethics.

The Petitioner is a member of the Cumberland Town Council ("Town Council"). He was first elected in 2014 and has served continuously since. His current term expires in 2026. The Petitioner states that in his private capacity he is the Interim President and Registrar of the Cumberland Youth Soccer Association ("CYSA"), an independent nonprofit organization. As described on its website, the CYSA dedicates itself to "the best interests of youth soccer, with emphasis on the organization, promotion, regulation, and development of youth soccer" in the Town of Cumberland ("Town" or "Cumberland").<sup>1</sup> The Petitioner represents that the CYSA Board of Directors has 18 members, 14 of which, including himself, are voting members. He further represents that the CYSA has an Executive Board consisting of the following five positions: President, Vice President, Secretary, Treasurer, and Registrar. He adds that elections for the Executive Board are scheduled to take place in November 2023. The Petitioner states that he receives no stipend or other financial compensation for his service as a member of the CYSA's Executive Board.

The Petitioner emphasizes that the CYSA is not affiliated with the Town and does not receive any funding from the Town. He explains that the CYSA is funded solely through its membership fees and private fundraising efforts. The Petitioner represents that the CYSA's Field Director does schedule soccer games through the Town's Recreation Department, adding that availability of Town fields is subject to the ranking within the Town Charter of organizations by category. The Petitioner further represents that the Recreation Department also collects the fees associated with

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<sup>1</sup> <https://cysa-ri.org/cysa-by-laws/> (last visited 09-19-23).

the use of the Town fields, adding that those fees are also regulated by the Town Charter. The Petitioner states that the Recreation Department is staffed by the Recreation Director and a clerk and that, although the Recreation Director is hired by the mayor with the advice and consent of the Town Council, the Town Council exercises no supervision over the Recreation Director. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks advice from the Ethics Commission regarding whether his simultaneous service as a member of the Town Council and as Interim President and Registrar for the CYSA constitutes an inherent conflict of interest.

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 his employer 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 further prohibits a public official from willfully and knowingly disclosing for pecuniary gain, to any other person, confidential information acquired by the public official in the course of and by reason of his official duties or using any such information for the purpose of pecuniary gain. Section 36-14-5(c). Additionally, a public official may not use 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). A “business associate” is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3). A “person” is defined as “an individual or a business entity.” Section 36-14-2(7).

The Code of Ethics also prohibits a public official from representing himself or any other person before a municipal agency of which he is a member or for which he is the appointing authority. Section 36-14-5(e)(1)&(2); Commission Regulation 520-RICR-00-00-1.1.4(A)(1)(c)&(2)(c) Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). A person represents himself or another person before an agency when he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in his favor or in favor of another person. Section 36-14-2(12)&(13); Regulation 1.1.4(A)(1)&(2). Under the Code of Ethics, a public official must also recuse from participation in a matter when his business associate, or a person authorized by his business associate, appears or presents evidence or arguments before his municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2)&(3) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”). Notices of recusal shall be filed consistent with the provisions of section 36-14-6.

The Ethics Commission has previously determined that persons are “business associates” of the entities for which they serve as either officers or members of the Board of Directors, or in some other leadership position that permits them to affect the financial objectives of the entities. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“RIDEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any RIDEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s

interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance as requested by the TYC).

Here, the Petitioner is a business associate of the CYSA. However, the existence of that business associate relationship, in and of itself, does not constitute a violation of the Code of Ethics. Notably, the CYSA’s request to use the Town fields, as well as the payment of fees associated with that use, is made by the CYSA’s Field Director to the Recreation Department, not the Town Council. Accordingly, it is the opinion of the Ethics Commission that the simultaneous service by the Petitioner as a member of the Cumberland Town Council and as the Interim President and Registrar for the Cumberland Youth Soccer Association does not constitute an inherent conflict of interest under the Code of Ethics.

The Petitioner is advised that he may not participate in any Town Council matter that will directly financially impact the CYSA. Also, the Petitioner may not represent himself or the CYSA before the Town Council, or the Recreation Director over which the Town Council has appointing authority, and must recuse from participation in any Town Council matter when the CYSA or its representative appears to present evidence or arguments. Based on the facts as represented, specifically the absence of any affiliation between the CYSA and the Town, and in particular the Town Council, coupled with the representation that the CYSA’s Field Director is the CYSA representative who communicates with the Recreation Director, none of the aforementioned scenarios seems likely. Nonetheless, the Petitioner is advised to remain vigilant about recognizing any potential conflicts of interest given his dual roles and to seek further guidance from the Ethics Commission as warranted.

**This Draft 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)

§ 36-14-2(7)

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-13-5(c)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2014-14

A.O. 2012-28

Keywords:

Business Associate

Conflict of Interest

DRAFT



# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: October 17, 2023

**Re: Yesenia Rubio**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Pawtucket City Council, a municipal elected position, who in her private capacity co-owns and operates Notes Coffee Co. in the City of Pawtucket, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from applying for and potentially receiving in her private capacity loan funds from the Pawtucket Business Development Corporation, a private entity, and/or American Rescue Plan Act funds from the City of Pawtucket, given that the Pawtucket Business Development Corporation is funded, at least in part, by Pawtucket Community Development Block Grants and American Recue Plan Act funds are awarded by the City of Pawtucket.

### **RESPONSE:**

It is the opinion of the Ethics Commission that the Petitioner, a member of the Pawtucket City Council, a municipal elected position, who in her private capacity co-owns Notes Coffee Co. in the City of Pawtucket, is not prohibited by the Code of Ethics from applying for and potentially receiving in her private capacity loan funds from the Pawtucket Business Development Corporation, a private entity, and/or American Rescue Plan Act funds from the City of Pawtucket, notwithstanding that the Pawtucket Business Development Corporation is funded, at least in part, by Pawtucket Community Development Block Grants and American Rescue Plan Act funds are awarded by the City of Pawtucket.

The Petitioner was elected to the Pawtucket City Council (“City Council”) in November 2022. She states that in her private capacity she is the co-owner of Notes Coffee Co. (“Notes”), a coffee shop located in the City of Pawtucket (“City” or “Pawtucket”) that offers assorted coffees and breakfast, lunch, and bakery items. The Petitioner further states that Notes, which opened in 2020, has been her main source of income since 2021. She adds that she and the other co-owner of Notes secured loans from a small business lender and from the Pawtucket Business Development Corporation (“PBDC”) prior to the Petitioner’s election to the City Council. The Petitioner describes the PBDC as an independent domestic nonprofit corporation that provides funding to Pawtucket businesses. She adds that the PBDC is funded, at least in part, by Community Development Block Grant (“CDBG”) money which is awarded by the City to the PBDC on an annual basis. The Petitioner states that she is unaware of the specific source of the CDBG funds that are acquired annually by the City. She emphasizes that both the application process for obtaining CDBG funds for the City, and the distribution of all CDBG funds awarded to the City, are handled exclusively by the Mayor of Pawtucket and his staff (collectively, “the

Administration”) and that the City Council has no role in either process. The Petitioner adds that, although the Administration provides notice and information to the City Council regarding the receipt and distribution of CDBG funds by the Administration, the City Council does not approve or otherwise ratify the allocation and use of those CDBG funds.

The Petitioner represents that the City is currently in possession of additional grant money pursuant to the American Rescue Plan Act (“ARPA”). She further represents that the Administration is vested with the authority to expend ARPA grant funds at its discretion consistent with the purposes stated within the ARPA, without the need for appropriation by or permission from the City Council. The Petitioner adds that, the day before the ARPA programs were launched in the City, the Pawtucket Planning Board informed the City Council about them.

The Petitioner states that, due to the impact of the COVID-19 pandemic, coupled with inflated ingredient costs, increased employee wages, and the like, Notes has experienced financial hardships and continues to struggle. She adds that Notes would like to consolidate its debt and explore new revenue opportunities. The Petitioner explains that she would like to apply for additional business loans from the PBDC, potentially modify her existing business loan from the PBDC, and also apply for ARPA funds from the City. The Petitioner represents that applications for ARPA funds are directed to the City’s Director of Commerce, who is hired and supervised by the City’s mayor without participation by the City Council. She further represents that applications for ARPA funds are considered on a first come, first served basis, and that the program was launched on September 18, 2023.<sup>1</sup> The Petitioner states that the City Council had no role in establishing the criteria, application, or guidelines for the award of CDBG or ARPA funds. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks advice from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from applying for and/or modifying loans for her business through the PBDC, and/or from seeking ARPA funds from the City for her business.

A person subject to the Code of Ethics may not use in any way her public office, or confidential information received through her holding any public office, to obtain financial gain, other than as provided by law, for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. R.I. Gen. Laws § 36-14-5(d) (“section 5(d”). The Code of Ethics also prohibits a public official from representing herself or any other person before any state or municipal agency of which she is a member or for which she is the appointing authority. Section 36-14-5(e)(1)&(2) (“Section 5(e)”; Commission Regulation 520-RICR-00-00-1.1.4 (A)(1)(c)&(2)(c) Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). A person represents herself or another person before a state or municipal agency if she participates in the presentation of evidence or arguments before that agency for the purpose of

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<sup>1</sup> The Petitioner’s request for this advisory opinion was received on September 21, 2023. Because it was not feasible to provide the Petitioner with an advisory opinion before October 17, 2023, the Petitioner was advised by Ethics Commission Staff that she would not be prohibited from applying for ARPA funds on the condition that, should the Ethics Commission ultimately issue an advisory opinion deeming her ineligible to apply for and receive ARPA funds, she would either withdraw her application or, if she had been awarded ARPA funds before the Ethics Commission considers her request, she would condition her acceptance of ARPA funds on the issuance of a formal advisory opinion from the Ethics Commission that applying for and accepting ARPA funds does not violate the Code of Ethics. The Petitioner agreed to these conditions.

influencing the judgment of the agency in her own favor or in favor of another person. Section 36-14-2(12)&(13); Regulation 1.1.4(A)(1)(a)&(2)(a).

In order to determine whether section 5(d) of the Code of Ethics is implicated, the Ethics Commission must ascertain whether the Petitioner is contemplating use of her public office in any way to obtain financial gain. If there is no such contemplated use of her public office, then the Petitioner is not restricted by this provision of the Code of Ethics. Similarly, if the Petitioner is not seeking to represent herself or anyone else before her own municipal agency, section 5(e) will neither apply nor prohibit the Petitioner from her proposed conduct.

In past advisory opinions, the Ethics Commission has concluded that a Town Council member could participate in grant and/or loan programs administered by the particular town in which that person served, provided that the Town Council member had not participated in the process. See, e.g., A.O. 2001-57 (opining that a member of the Central Falls City Council could receive a Storefront Improvement Loan administered by the Town's Planning Department, provided that he received funds that had been allocated prior to his election and, further provided, that he recused from participating in matters involving the members of the Planning Department who had processed and approved the individual loan applications); A.O. 2000-28 (opining that a member of the West Warwick Town Council, who was also a business owner in that municipality, could participate in a Community Development Block Grant Business Assistance Loan Program administered by the Town, provided that he did not receive a loan allocated from grant funds upon which he voted).

Here, the Petitioner's proposed conduct would be in her private capacity as a local business owner, not in her official capacity as a member of the City Council. For this reason, based on the facts as represented, the provisions of section 5(d) do not apply. Further, the Petitioner's desire to apply for additional funding from the PBDC and/or to modify her current business loan with the PBDC also constitutes conduct in her private capacity with a private entity. That the PBDC's funding includes CDBG money awarded by the City is not prohibitive because the City Council on which the Petitioner serves is not involved with the application process for or distribution of CDBG funds, as those tasks are handled by the Administration. The Petitioner is likewise not prohibited from pursuing ARPA funds in her private capacity because the application for ARPA funds, which gets submitted to the City's Director of Commerce, over whom the City Council exercises no authority or supervision, does not constitute an appearance before her own agency or an agency over which she has appointing authority. Additionally, the Petitioner represents that applications for ARPA funds are considered by the Administration with no input from the City Council. Nor does the City Council have any role in establishing the criteria, application, or guidelines for the award of CDBG or ARPA funds.

Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from applying for and potentially receiving in her private capacity loan funding from the Pawtucket Business Development Corporation, and/or American Rescue Plan Act grant funding from the City of Pawtucket.

**This Draft 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(12)

§ 36-14-2(13)

§ 36-14-5(d)

§ 36-14-5(e)

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

Related Advisory Opinions:

A.O. 2001-57

A.O. 2000-28

Keywords:

Conflict of Interest

DRAFT

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: October 17, 2023

**Re: Mark Nimiroski**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Tiverton Wastewater District Board of Directors, a quasi-municipal appointed position, requests an advisory opinion regarding whether he may accept an offer of employment by that Board of Directors to become the Executive Director of the Tiverton Wastewater District.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Tiverton Wastewater District Board of Directors, a quasi-municipal appointed position, may accept an offer of employment by that Board of Directors to become the Executive Director of the Tiverton Wastewater District, provided that he resigns from the Board of Directors upon accepting the position. This opinion is based upon a finding by the Ethics Commission that the facts as represented indicate that the denial of such employment would create a substantial hardship for the Tiverton Wastewater District.

The Petitioner states that he is a member of the Board of Directors (“Board”) of the Tiverton Wastewater District (“District”), having been appointed to that position in March of 2022 by the other Board members. He informs that the District’s mission is to safeguard public health and protect and improve ground and service water resources by implementing efficient and effective wastewater management within the District territory.

The Petitioner represents that the District’s staff consists of the following four positions: full-time Executive Director; part-time bookkeeper, of which there are now two; part-time engineer who oversees operations; and part-time engineering technical consultant, which is a contract position. He further represents that, since it was assembled in 2014, the Board has hired six Executive Directors. The Petitioner explains that, following the hiring and departure of three Executive Directors between 2014 and 2019, a fourth Executive Director was hired and worked for the District from June 3, 2019 – August 8, 2022.<sup>1</sup> The Petitioner adds that the District’s fifth Executive

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<sup>1</sup> The Petitioner and the Board’s Chair, who sent a letter to the Executive Director of the Ethics Commission in support of the Petitioner’s candidacy for the position of Executive Director, represent that this particular Executive Director’s preference for at-home or hybrid model working arrangements coming out of the COVID-19 pandemic was not conducive to the level of leadership required for the position, which led to her abrupt departure.

Director served from August 25, 2022 – May 5, 2023.<sup>2</sup> The sixth and most recent Executive Director served from May 25, 2023 – July 20, 2023.<sup>3</sup>

The Petitioner states that the Board began its search for its sixth and most recent Executive Director in August of 2022, which is when the Board's fifth Executive Director accepted the position on what was intended to be a short-term basis. The Board Chair represents that, of the 28 candidates who applied for the Executive Director position when it was advertised beginning in August of 2022, only three met the minimum qualifications for the position, two of whom were interviewed.<sup>4</sup> An offer was made to the Executive Director who started the position on May 25, 2023, and left the position on July 20, 2023.

The Board Chair states that following the departure of the last Executive Director on July 20, 2023, the Board contacted the program coordinator of the Rhode Island Department of Environmental Management's Wastewater Leadership Boot Camp ("Boot Camp") and asked him to distribute notice of the Executive Director vacancy to all Boot Camp graduates. This produced only one candidate, who was interviewed by the Board Chair, two other Board members (which did not include the Petitioner), and two District employees. An offer was extended on August 18, 2023; however, the applicant rejected the offer in consideration of the lengthy commute it would entail, notwithstanding a proposal by the Board of a hybrid work schedule. The Board Chair represents that immediately following that candidate's rejection of the Board's offer of employment, the Board advertised the position with the Providence Journal, on Indeed.com, and on the District's website. The Board Chair represents that these job postings resulted in the submission of 15 applications. The Board Chair further represents that, of the 15 applicants, only one candidate warranted a conversation. The Board Chair states that he interviewed that candidate with the assistance of Board members Bill Vanora and Bill Lopes on September 15, 2023. He further states that it appeared that the candidate had done very little to prepare for the interview, was not familiar with the District, and responded with general answers to specific questions. The Board Chair explains that this candidate was deemed by all three of the interviewers as unqualified for the role of Executive Director, adding that the Board would continue to review resumes as they are received.<sup>5</sup>

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<sup>2</sup> The Petitioner represents that this Executive Director had been a long-time municipal government employee who came out of retirement to assist the District with the understanding that his engagement would be short-term.

<sup>3</sup> The Petitioner and the Board Chair represent that this Executive Director was hastily chosen from a limited pool of qualified candidates given the direness of the situation. They add that, after less than two months on the job, issues surfaced concerning her ability to effectively manage District staff and maintain a positive office environment. After a discussion with the Board members, she resigned on July 17, 2023, and left her position four days later on July 20, 2023.

<sup>4</sup> The Board Chair explains that the third candidate declined the Board's invitation to interview.

<sup>5</sup> The Board Chair states that the Board has investigated, but since abandoned, the prospect of using the services of an executive search firm to fill the vacant Executive Director position, describing that option as extremely prohibitive in cost and timeline. He adds that it could take four to six months to complete the search efforts for a new Executive Director, that the quoted prices for this service ranged from \$30,000 to \$50,000, and that the District's net operating income for the current fiscal year is budgeted at less than \$5,000.

The Board's attorney informs Ethics Commission Staff that in September 2023, the Board also reached out to the following organizations to request assistance with publicizing the Executive Director vacancy: the Rhode Island League of Cities and Towns ("League of Cities and Towns"); the New England Water Environment Association ("NEWEA"); the Rhode Island Clean Water Association ("RICWA"); and the New England Interstate Water Pollution Control Commission ("NEIWPCC"). He explains that these efforts produced no applications.

In his letter requesting that the Petitioner be allowed to accept the position of Executive Director, the Board Chair identifies the responsibilities of that position as follows: (1) Manage the day-to-day operations, providing overall direction, supervision, and leadership to the support staff; (2) Prepare and manage the financial budgets and operational plans in accordance with the strategic direction approved by the Board of Directors;<sup>6</sup> (3) Establish a collaborative relationship with the District's customers, community groups, contractors, and funding agencies in order to achieve operational and strategic goals; and (4) In conjunction with the District Engineer, provide the leadership, financial management, and technical direction for the operation, maintenance, repair, and expansion of the District's infrastructure.<sup>7</sup> The Petitioner states that the current salary for the Executive Director position is \$95,000 per year, which he admits is probably lower than that of similarly employed Executive Directors in larger Rhode Island wastewater districts. He explains that larger wastewater districts in Rhode Island have an infrastructure component that Tiverton currently does not, because Tiverton sends its wastewater to Fall River for treatment at its facility.

The Petitioner represents that he has, in his current role as a Board member, recently assisted with a number of activities which would ordinarily have been exercised by the Executive Director. He cites as one example his discovery through a conversation with the District's part-time bookkeeper of the District's additional staffing needs. The Petitioner further represents that, upon determining that the situation could be addressed by the hiring of an additional part-time bookkeeper, the Petitioner helped select candidates, conduct interviews, and eventually fill that position. Additionally, the Petitioner states that he has fielded a number of questions from the Board Chair and staff engineer relative to RIDOT permitting procedures with which the Petitioner is familiar because of his current employment as a scientist with that agency. By way of a third example of how the Petitioner has assisted with an activity which ordinarily would have been exercised by the Executive Director, he states that he met with multiple subcontractors relative to the District's latest sewer expansion project ("Riverside Drive Project") which is being funded by a grant from the United States Department of Agriculture. He adds that, following several extensions, the final sewer connections related to the Riverside Drive Project are now scheduled for this November.

The Petitioner states that, at a recent meeting where Board members were discussing how to fill the position of Executive Director, he expressed an interest in the position. The Petitioner, who has been employed full-time by the State of Rhode Island as a scientist with the RIDOT for the last seven years, added that he would resign from the Board if he became Executive Director. The

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<sup>6</sup> The Board Chair adds that the District's operational budget currently exceeds \$1 million annually, and is growing with on-going expansion projects having a scope of several million dollars.

<sup>7</sup> The Board Chair explains that the District is in the final stages of its first major infrastructure buildout project to expand sewer access and use in the more densely populated areas of Tiverton.

Chair describes the Petitioner's interest in the Executive Director role as unexpected. He explains that he and the other members of the Board have since explored the Petitioner's interest and qualifications, resulting in a determination that the Petitioner is an excellent candidate for the position of Executive Director. In support of this determination, the Board Chair cites the Petitioner's background as a water quality scientist, his program and budget management experience, and his successful grant writing ability. The Chair also references the institutional knowledge amassed by the Petitioner during his tenure as a member of the Board and the respect that the Petitioner has garnered from the District staff in support of the Petitioner's candidacy. The Chair states that without an experienced executive managing the District's on-going operations and its expansion projects, the risk of business failure has become acute. It is in the context of all of the foregoing representations that the Petitioner seeks an opinion from the Ethics Commission regarding whether he is prohibited by the Code of Ethics from accepting the position of Executive Director of the District, provided that he resigns from the Board of Directors.<sup>8</sup>

The Code of Ethics prohibits an elected or appointed official from accepting any appointment or election that requires approval by the body of which he is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one year following the termination of that person's membership in or on that body. Commission Regulation 520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006) ("Regulation 1.5.1"). Under Regulation 1.5.1, the Ethics Commission may approve an exception to the prohibitions outlined therein, provided that the Ethics Commission is satisfied that denial of such appointment or election would create a substantial hardship for the body, board, or municipality.

The legislative aim of the "revolving door" provisions of the Code of Ethics is to ensure that public officials and employees "adhere to the highest standard of ethical conduct, \* \* \* avoid the appearance of impropriety and not use their position for private gain or advantage." See R.I. Const., art. III, sec. 7. "The integrity of our government officials is quintessential to our system of representation." In re Advisory Opinion From the Governor, 633 A.2d 664, 671 (R.I. 1993). In general, "the purpose of revolving-door provisions is to prevent 'government employees from unfairly profiting from or otherwise trading upon the contacts, associations and special knowledge that they acquired'" during their tenure as public servants. Id. (quoting Forti v. New York State Ethics Commission, 75 N.Y.2d 596, 605, 554 N.E.2d 876, 878, 555 N.Y.S.2d 235, 237 (1990).

There is no definition of "substantial hardship" in the Code of Ethics. Therefore, the Ethics Commission will determine whether a substantial hardship exists on a case-by-case basis considering the totality of the circumstances presented. The Ethics Commission has previously

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<sup>8</sup> The Petitioner was last before the Ethics Commission on September 12, 2023, at which time he sought an advisory opinion on this issue. The Staff's recommendation at that time was that the Petitioner be prohibited from accepting the Executive Director position for a period of one year following his departure from the Board. This was based in large part on the fact that, following the extension and rejection of an offer of employment to one candidate, the advertisement which ultimately yielded 15 candidates and resulted in one interview had only been running for about two weeks. Following a split vote of 3-3 by the Ethics Commission that day, no advisory opinion issued. The decision was made to allow the Petitioner to return on October 17, 2023, without submitting a new request for an advisory opinion, so that his request could be reconsidered in anticipation of additional facts regarding the Board's continued efforts to search for a new Executive Director, and any other developments which might assist the Ethics Commission with its determination.



considered the following factors in determining whether a substantial hardship existed: whether, after publicly advertising the position, there was a complete absence of applicants or a lack of qualified candidates to fill the position; whether the position required very specific and unique skills and qualifications; whether the board member had been involved in the hiring process or in the drafting of the request for proposals; whether the position had been vacant for a substantial period of time; and whether the employment was a temporary measure or was intended to be permanent. The key issue, however, in determining whether a hardship to a government body exists is not whether the subject candidate is the most qualified candidate among all applicants but, rather, whether other qualified candidates are currently available or may become available through additional advertisement of the posting.

In Advisory Opinion 2014-18, the Ethics Commission opined that a member of the Rhode Island Fire Safety Code Board of Appeal and Review (“Fire Safety Code Board”) was not prohibited by the Code of Ethics from accepting an appointment to serve as the Executive Director of the Fire Safety Code Board, based upon a finding of substantial hardship to the Fire Safety Code Board, because: (1) the petitioner was the only qualified candidate<sup>9</sup>; (2) the Fire Safety Code Board had a three-person staff and the Executive Director position had been vacant for six months and the Deputy Director position would have been vacant by the end of the month; (3) the petitioner was uniquely familiar with the responsibilities of the Executive Director which would ensure the continued functioning of the Fire Safety Code Board given the timing of the vacancies; (4) the petitioner had no involvement in the hiring process, which was conducted through an open and public process; (5) the petitioner would resign from his position on the Fire Safety Code Board; (6) the Fire Safety Code Board was required to hire someone who met the qualifications set forth in the job specification for the classified position of Executive Director; and (7) the Fire Code was a particularly complex and voluminous set of statutes, rules and regulations that since 2003 had been expanded to apply to both new construction and pre-existing structures.

Also, in Advisory Opinion 2012-31, the Ethics Commission opined that a South Kingstown Historic District Commission (“HDC”) member could be hired by the Town of South Kingstown (“Town”) to create a guide-book for homeowners in the Town’s historic districts, based upon a finding of substantial hardship to the Town and the HDC, because: (1) the Town had publicly advertised the position through its normal public bid procedures, in addition to specifically contacting five local qualified historic preservation planners identified by the Rhode Island Historical Preservation and Heritage Commission; (2) the petitioner was the only applicant; (3) only a small number of firms and individuals in the region possessed the qualifications required to complete this project; (4) the contract was limited to a six-month duration; and (5) the project was funded by grant money, which was only available until August 2013, leaving no time to re-issue the request for proposals.

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<sup>9</sup> The job specifications for this classified position required the Executive Director to possess the following qualifications: a thorough knowledge of the pertinent provisions of the State Fire Safety Code and the ability to interpret those provisions; a thorough knowledge of the Administrative Procedures Act; a working knowledge of state and local legislative matters pertaining to codes and ordinances; the ability to represent the Fire Safety Code Board before various courts; the ability to moderate administrative hearings and to examine and cross-examine witnesses within appropriate legal boundaries; related capacities and abilities; and membership in the Rhode Island Bar.

There have also been occasions where the Ethics Commission determined that circumstances were such that a hardship was not justified. For example, in Advisory Opinion 2016-43, the Ethics Commission opined that a member of the North Smithfield Planning Board was prohibited from accepting, if offered, employment as the Town Planner while he sat on the North Smithfield Planning Board, and for one year thereafter. There, the petitioner presented no evidence that the Town of North Smithfield would suffer a substantial hardship if unable to hire the petitioner for the position of Town Planner. See also A.O. 2010-24 (opining that a member of the Coventry Housing Authority Board of Commissioners was prohibited from accepting employment from the Housing Authority as its Maintenance Director while serving on the Housing Authority Board of Commissioners and for one year thereafter); A.O. 2004-36 (opining that, absent some evidence of a dearth of other qualified individuals interested in the position, a state employee sitting on the Water Resources Board as the designee of the Director of Administration was prohibited from accepting employment with the Water Resources Board while he sat on the Board and for one year thereafter).

The facts as represented by the instant Petitioner, the Board Chair, and the Board's attorney clearly implicate the provisions of Regulation 1.5.1. At issue is whether prohibiting the Petitioner from accepting the position of Executive Director of the TWWD following his resignation from the Board would result in a substantial hardship to the District. Since the departure of the last Executive Director on July 20, 2023, and the subsequent rejection of an offer of employment in mid-August by the sole candidate produced after the Board's outreach to the Boot Camp program coordinator at the RIDEM, the Board's advertisement of the Executive Director position with the Providence Journal, on Indeed.com, and on the District's website has produced fifteen applicants, only one of whom met the minimum requirements for an interview. Following that interview, the three interviewers unanimously concluded that the candidate was unqualified for the role of Executive Director. Additionally, the Board's efforts to fill the Executive Director position with the assistance of the League of Cities and Towns, the NEWEA, the RICWA, and the NEIWPCC produced not a single applicant. The Executive Director position has now been vacant for three months which, in consideration of the looming November deadline for the completion of the Riverside Drive Project, is substantial. Also, following a three-month search, the Petitioner is the only qualified candidate for the Executive Director position and, by necessity, has become uniquely familiar with the responsibilities of the Executive Director, having stepped in on a number of occasions to exercise those responsibilities.

Accordingly, based on the facts as represented, the applicable provisions of the Code of Ethics, related authorities, and prior advisory opinions issued, it is the opinion of the Rhode Island Ethics Commission that the Petitioner may accept an offer of employment by the Board of Directors to become the Executive Director of the Tiverton Wastewater District, provided that he resigns from the Board of Directors upon accepting the position. This opinion is based upon a finding by the Ethics Commission that the facts as represented indicate that the denial of such employment would create a substantial hardship for the Tiverton Wastewater District.

**This Draft 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:

520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006)

Constitutional Authority:

R.I. Const., art III, sec. 7

Other Related Authorities:

In re Advisory Opinion From the Governor, 633 A.2d 664 (R.I. 1993)

Related Advisory Opinions:

A.O. 2016-43

A.O. 2014-18

A.O. 2012-31

A.O. 2010-24

A.O. 2004-36

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