

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-40

Approved: 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 Rescue 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, 2023.¹ 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

¹ 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 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(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