



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

10th Meeting

DATE: Tuesday, November 14, 2023

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

LIVESTREAM: The Open Session portions of this meeting will be livestreamed at:
<https://us02web.zoom.us/j/88514852151>

1. Call to Order.
2. Motion to approve minutes of Open Session held on October 17, 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.) Recusal Form and Records Management;
 - e.) General office administration.
4. Advisory Opinions.
 - a.) Joseph Lang, a member of the North Scituate Village Overlay Committee, requests an advisory opinion regarding whether he qualifies for a hardship

exception to the Code of Ethics' prohibition against representing himself before his own agency in order to seek a permit to build an attached addition to his primary residence. [Staff Attorney Popova Papa]

- b.) William J. Connell, a member of the North Smithfield School Committee, seeks an advisory opinion regarding whether, if hired as an Assistant Solicitor for the City of Woonsocket, the Code of Ethics would prohibit him from participating in the North Smithfield School Committee's voting to pay invoices submitted by the City of Woonsocket for the tuition costs associated with North Smithfield students attending Woonsocket Public Schools under the Career and Technical Education program. [Staff Attorney Popova Papa]
 - c.) Joy Cordio, a member of the Westerly Town Council, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to participate in Town Council discussions and decision-making relative to a proposed plan for the reuse of the former Tower Street School, given that the Tower Street School property is located in close proximity to the Petitioner's personal residence. [Staff Attorney Popova Papa]
 - d.) Gordon McNally, who is one of two candidates to become the next Resident Commissioner on the Scituate Housing Authority Board of Commissioners, requests an advisory opinion regarding whether, if appointed, he may continue to clear entrances and sidewalks of snow and ice during snowstorms where he lives at Rockland Oaks, given that he is compensated for that activity by the Scituate Housing Authority, which manages Rockland Oaks. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on October 17, 2023, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on November 14, 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 November 9, 2023

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: November 14, 2023

Re: Joseph Lang

QUESTION PRESENTED:

The Petitioner, a member of the North Scituate Village Overlay Committee, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own agency in order to seek a permit to build an attached addition to his primary residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Scituate Village Overlay Committee, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own agency in order to seek a permit to build an attached addition to his primary residence.

The Petitioner is a member of the North Scituate Village Overlay Committee ("Committee"), having been appointed to that position by the North Scituate Town Council in August 2023. He represents that the Committee's duties are to review and vote on any exterior alterations to homes located in the North Scituate Village Overlay District ("Village Overlay District"). The Petitioner states that he lives in a home that is located in the Village Overlay District. He explains that the home is his primary residence, which he and his spouse purchased in 2011 and in which they have since resided. The Petitioner would like to construct an attached addition to his home. He represents that the construction of the addition would not require him to receive any setback variances; however, because the home is located in the Village Overlay District, he is required to receive a permit from the Committee for the desired exterior changes to his home. The Petitioner states that he has submitted his request for a permit to build the addition and has completed and filed his recusal form relative to his request. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own agency in order to appear, either personally or through a representative, before the Committee to pursue a permit to build the addition to his home.

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf before a state or municipal agency of which he is a member or by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1)(b) Representing Oneself or Others, Defined (36-14-5016). Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship

exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receiving a hardship exception, the public official must also “follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter.” Section 5(e)(1)(iii).

The Petitioner’s proposed conduct falls squarely within the Code of Ethics’ prohibition on representing himself before his own agency. Having determined that section 5(e)’s prohibitions apply to the Petitioner, the Ethics Commission will next consider whether the unique circumstances represented by him herein justify a finding of a hardship to permit him to appear before the Committee.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered the following factors in cases involving real property: whether the subject property involved the official’s principal residence or principal place of business; whether the official’s interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. When deciding whether to apply the hardship exception, the Ethics Commission considers the totality of the circumstances and no single factor is determinative.

On numerous occasions in the past, the Ethics Commission has considered and granted hardship exceptions for public officials wishing to appear before their own boards. In Advisory Opinion 2020-15, for example, the Ethics Commission opined that a member of the Exeter Zoning Board of Review (“Zoning Board”) qualified for a hardship exception, allowing him to appear before the Zoning Board for purposes of seeking a dimensional variance to construct a shed at his personal residence, the ownership of which predated his appointment to the Zoning Board by at least a decade. That petitioner was required to recuse from participation and voting during the Zoning Board’s consideration of his request for relief. See also A.O. 2020-26 (granting a hardship exception to an East Greenwich Historic District Commission (“HDC”) member, allowing him to represent himself before his own commission in order to seek Certificates of Appropriateness to install a new shed and roof-mounted solar array on his property, the ownership of which predated his appointment to the HDC); A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review (“BZB”), allowing him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB’s consideration of his request for relief).

Here, the Petitioner would like to construct an addition to his home, which he has owned since 2011, which predates his very recent appointment to the Committee by more than ten years. Based on the Petitioner’s representations, and consistent with our past advisory opinions addressing this issue, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to section 5(e)’s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the Committee to seek a permit to construct the addition to his home. However, as the Petitioner has properly anticipated, he must recuse from participating in the Committee’s consideration of, and voting on, any matter relative to the addition to his home. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the other Committee members of his receipt of the instant advisory

opinion and of his recusal in accord therewith. Notice of recusal shall be filed with the Ethics Commission consistent with 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:

§ 36-14-5(e)

§ 36-14-6

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

Related Advisory Opinions:

A.O. 2020-26

A.O. 2020-15

A.O. 2014-26

Keywords:

Hardship Exception

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: November 14, 2023

Re: William J. Connell

QUESTION PRESENTED:

The Petitioner, a member of the North Smithfield School Committee, a municipal elected position, seeks an advisory opinion regarding whether, if hired as an Assistant Solicitor for the City of Woonsocket, the Code of Ethics would prohibit him from participating in the North Smithfield School Committee's voting to pay invoices submitted by the City of Woonsocket for the tuition costs associated with North Smithfield students attending Woonsocket Public Schools under the Career and Technical Education program.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Smithfield School Committee, a municipal elected position, would not be prohibited by the Code of Ethics, if hired as an Assistant Solicitor for the City of Woonsocket, from participating in the North Smithfield School Committee's voting to pay invoices submitted by the City of Woonsocket for tuition costs associated with North Smithfield students attending Woonsocket Public Schools under the Career and Technical Education program.

The Petitioner states that he is an elected member and Secretary of the North Smithfield ("North Smithfield" or "Town") School Committee ("School Committee").¹ He further states that, with the exception of a two-year period between 2016 and 2018, he has been a member of the School Committee since 2012. The Petitioner represents that he has the opportunity to serve as an Assistant Solicitor for the City of Woonsocket ("Woonsocket" or "City"). He states that his role in that capacity would be to support the lead solicitor by performing research, drafting, and analysis, with occasional appearances on behalf of the City at City Council meetings or in court. The Petitioner represents that his work as Assistant City Solicitor would be on a part-time basis at night and on weekends, and occasionally during the day.

The Petitioner states that a small percentage of North Smithfield students attend Woonsocket Public Schools under the Career and Technical Education ("CTE") program. The tuition cost associated with a North Smithfield student attending the CTE program is paid by the North Smithfield School District. The Petitioner states that the North Smithfield School Administration approves the eligibility of North Smithfield students to attend the CTE program, that the tuition

¹ Although not relevant to the instant question presented, the Petitioner is also subject to the Code of Ethics through his employment as the Senior Deputy Director of the Office of the Legislative Council at the Rhode Island General Assembly.

costs are set forth by the Rhode Island Department of Education (“RIDE”), and that the invoices submitted by Woonsocket to North Smithfield for the provision of classes to the North Smithfield students under the CTE program are approved and paid by the School Committee. The Petitioner represents that the North Smithfield Finance Department tracks and reviews all invoices prior to submitting them to the School Committee for approval, and that all of the invoices submitted for review by the School Committee, including those from Woonsocket, are listed cumulatively as one line item in the School Committee’s agenda. He explains that each School Committee member receives a list of all the invoices under review and, in turn, the School Committee votes to approve payment of all the invoices in a single vote unless a particular invoice requires further discussion. The Petitioner represents that all checks issued for the payment of invoices are electronically preprinted with the Petitioner’s name on them as the School Committee’s Secretary.

The Petitioner states that, if he is hired as a Woonsocket Assistant Solicitor, he would not participate in any matter that involves direct contact or exchange with North Smithfield. He further states that there is a separate City attorney who handles matters for the Woonsocket School Committee and, therefore, he will not be handling Woonsocket School Committee matters. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether, if hired as a Woonsocket Assistant Solicitor, the Code of Ethics would prohibit him from participating in School Committee voting to pay Woonsocket for the tuition costs associated with North Smithfield students attending Woonsocket Public Schools under the CTE program and whether the Code of Ethics prohibits his name from being preprinted on the checks issued for the payment of those tuition invoices.

A person subject to the Code of Ethics 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 or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A person subject to the Code of Ethics will have an interest that is in substantial conflict with the proper discharge of his 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, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-7(a). A person is defined as “an individual or a business entity.” Section 36-14-2(7). Additionally, pursuant to section 36-14-5(b), a person subject to the Code of Ethics may not accept other employment which would impair his independence of judgment as to his official duties, or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. Finally, a person subject to the Code of Ethics is prohibited from using his public position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, his family member, his business associate, or any business by which he is employed. Section 36-14-5(d)

The Ethics Commission has consistently concluded that the Code of Ethics does not consider public entities to be “businesses” or the relationship between a public official and a public body, such as a state or municipal agency, to be that of “business associates.” See, e.g., A.O. 2018-40 (opining that a member of the Rhode Island Scenic Roadways Board (“SRB”), who also served as the Executive Director of the East Providence Waterfront Special Development District Commission (“Waterfront Commission”), was not prohibited from participating in the SRB’s discussions and voting to approve aesthetic development along Veterans Memorial Parkway,

notwithstanding that the Waterfront Commission was responsible for approving structural developments in areas that abut Veterans Memorial Parkway, because neither the SRB nor the Waterfront Commission were considered to be “businesses” or “business associates” of the petitioner); A.O. 2014-23 (opining that neither the Rhode Island Board of Education Council on Elementary and Secondary Education (“CESE”) nor Trinity Academy for the Performing Arts Charter School (“TAPA”) was considered a “business” under the Code of Ethics and, therefore, the petitioner’s membership on the Boards of Directors for CESE and TAPA did not constitute business associations with those bodies); A.O. 2007-13 (opining that the Director of the Quonset Development Corporation (“QDC”), who was also a member of the North Kingstown Town Council, could participate in the QDC’s decisions and vote on a development proposal within North Kingstown pending before the QDC because the Town was not considered under the Code of Ethics to be a “business” or a “business associate” of the petitioner).

Here, because neither the School Committee, the Town of North Smithfield, nor the City of Woonsocket, all municipal agencies, are considered businesses under the Code of Ethics, the Petitioner’s relationship with each of those public entities is not one of business associates. Accordingly, any financial impact associated with the Petitioner’s participation in the School Committee’s vote to approve invoices submitted by Woonsocket for services provided to students from North Smithfield participating in the CTE program, or the appearance of his signature on the checks issued to the City for those services, would not be a financial impact upon the Petitioner’s business associate.

Additionally, the Petitioner explains that the tuition fees under the CTE program are established by RIDE, not by the School Committee, and that his name, in his capacity as School Committee secretary, is electronically preprinted on the checks issued by the School Committee. Under these circumstances, the inclusion of the Petitioner’s signature on the issued check is ministerial in nature. See A.O. 2008-17 (opining that the Finance Director for the Town of Lincoln did not violate the Code of Ethics by processing payments for the Town’s legal notices that were carried in a newspaper owned by his brother, given that the petitioner’s duties did not involve selecting the newspaper, but only required him to process the payment vouchers that had been approved by the Town Administrator and the Town Council and, as such, the Finance Director’s actions were ministerial in nature and did not involve the exercise of any discretionary authority that could affect the financial interests of his brother). Finally, it does not appear that the Petitioner’s independence of judgment would be impaired or that there would be a substantial conflict with respect to the exercise of his public duties in either role.

Accordingly, based on the facts represented by the Petitioner, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner, if hired as a Woonsocket Assistant Solicitor, would not violate the Code of Ethics by participating in the School Committee’s vote on the invoices submitted by Woonsocket relative to the CTE program, or by his name being electronically preprinted on the checks issued for the payments of those invoices. However, the Petitioner is advised to remain vigilant about his obligations under the Code of Ethics in the event that a particular matter arises that may either financially impact him, impair his independence of judgment, or create an interest that is in substantial conflict with his public duties in either role. In those circumstances, the Petitioner

should either recuse from participation in any such matter consistent with the provisions of section 36-14-6, and/or request further guidance from the Ethics Commission.

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)
§ 36-14-5(a)
§ 36-14-5(b)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2018-40
A.O. 2014-23
A.O. 2008-17
A.O. 2007-13

Keywords:

Business Associate
Conflict of Interest
Dual Public Roles

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: November 14, 2023

Re: Joy Cordio

QUESTION PRESENTED:

The Petitioner, a member of the Westerly Town Council, a municipal elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to participate in Town Council discussions and decision-making relative to a proposed plan for the reuse of the former Tower Street School, given that the Tower Street School property is located in close proximity to the Petitioner's personal residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Westerly Town Council, a municipal elected position, is not prohibited by the Code of Ethics from continuing to participate in Town Council discussions and decision-making relative to a proposed plan for the reuse of the former Tower Street School, notwithstanding that the Tower Street School property is located in close proximity to the Petitioner's personal residence.

The Petitioner is a member of the Town of Westerly ("Town" or "Westerly") Town Council ("Town Council"), having served in that position since her election in November of 2022. The Petitioner represents that the Town Council is currently reviewing plans for the reuse of the former Tower Street School property ("Tower Street School" or "Property") proposed by the Royce Family Fund ("Fund").¹ According to "The Tower Street School Reuse Study 2021-2022 Summary Report" ("Report")² submitted by the Fund to the Town Council on February 23, 2023, the Tower Street School building was constructed in 1955 as an elementary school which is currently 45,000 square feet in size and situated on 11.28 acres of land. The Report indicates that in 2010, because of a decrease in demographics, the Town consolidated schools and a school of such size was no longer needed. The Report further indicates that, although no longer used as a school, the Town continued to maintain the building for public use as a community center managed by the Westerly School Department. Further, according to the Report, the community center combined educational, recreational, health and wellness, and social and emotional services; it was

¹ On the Rhode Island Secretary of State's website, the Fund's functions are described as follows: "exclusively religious charitable scientific literacy and educational purposes [sic] within the meaning of section 501c3 of the internal revenue code of 1986 making grants and providing financial assistance." <https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001664018> (last accessed on November 1, 2023).

² See <https://westerlyri.gov/816/Tower-Street-School-Reuse-Study> (last accessed on October 31, 2023).

opened seven days per week; and welcomed upwards of 2,000 people per day. The Report indicates that in 2020 the facility shut down because of the COVID-19 pandemic and has remained vacant since. The Report further indicates that in 2021 the Property was slated to be sold to a private developer but, because the Town Council was interested in exploring more community-based options for the facility, the Town Council President contacted a representative of the Fund to discuss alternatives to the sale. As a result, in December of 2021, the Fund entered into a Lease Purchase Agreement with the Town whereby the Fund agreed to, “coordinate a community-wide assessment of possible future use(s) of the [P]roperty and evaluation of said uses,” for a period of one to two years.³ The Report states that the Fund established an *ad hoc* committee and launched the 2022 Tower Street School Reuse Study, which was comprised of two major parts: the Technical Evaluation of the building and the Community Needs Assessment.

The Petitioner states that the Fund proposes that the existing school building be demolished and replaced with a new building with the same basic footprint and similar square footage. It is also proposed that the Town remain the owner of the land and that the building be again used as a community center with various tenants offering a wide array of services. The Petitioner states that the Tower Street School is located a quarter mile from her home⁴ which she has owned and occupied for the last 25 years. The Petitioner further states that she is not an abutter to the Property and that she has not received an abutter’s notice relative to the proposed project. She represents that the Property borders Tower Street and Narragansett Avenue and that she cannot see the Property from her home. The Petitioner further represents that she does not have any familial, financial, or business relationship with any of the abutters of the Property, nor with any of the principals or employees of the Fund.

The Petitioner explains that the current plan proposes that the Property’s parking lot be accessed through Narragansett Avenue and not through Tower Street. The Petitioner does not expect her property to be financially impacted, given that the use of the Tower Street School building will remain the same as its prior use. The Petitioner states that a question was recently raised regarding whether the Petitioner’s continued participation in discussions and decision-making relative to the reuse of the Tower Street School violates the Code of Ethics, given that the Petitioner’s primary residence is located in close proximity to the Property. Therefore, given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from continuing to participate in Town Council discussions and decision-making relative to the proposed plan for the reuse of the Tower Street School.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her 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 she, her family member, her business associate, or her employer will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using her public office, or confidential information received through her public office,

³ See <https://westerlyri.gov/816/Tower-Street-School-Reuse-Study> (last accessed on October 31, 2023).

⁴ The Petitioner informs that her home is located on 36 Tower Street in Westerly.

to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d).

In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in discussions or votes concerning properties abutting their own properties, absent reliable evidence that their official actions would not affect the financial interests of the public officials, either positively or negatively.

Just as the Ethics Commission has presumed that a property owner will be financially impacted by official action concerning abutting property, the Ethics Commission has also presumed that a property owner will not be financially impacted by official action concerning property that is near, but not abutting a subject property. See A.O. 2023-14 (opining that a member of the Coventry Planning Commission was not prohibited by the Code of Ethics from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property located a half-mile from the petitioner's personal residence); A.O. 2003-44 (opining that a member of the Cranston City Council could participate in the Safety Services and Licensing Committee's consideration of a proposed license for the Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, absent evidence indicating a reasonable foreseeability of financial impact); A.O. 2002-30 (opining that a Jamestown Town Council member could participate in the determination of the location for a highway garage, notwithstanding that two of the location options were 1000 and 900 feet away from her land).

Here, the Petitioner states that the property on which her personal residence is situated is located a quarter mile from the Tower Street School. Additionally, the Petitioner represents that the new building that will replace the existing former school building will continue to be used as a community center consistent with its use prior to being closed because of the COVID-19 pandemic; therefore, she does not expect to be financially impacted by the proposed development. The Petitioner further represents that she has no financial interest in the proposed development, and has no business, financial, or familial relationship with any of the abutters to the Property, nor with any of the principals or employees of the Fund. Accordingly, based on the foregoing analysis, it is the opinion of the Ethics Commission that the Petitioner may participate in Town Council discussions and decision-making concerning the proposed reuse of the Tower Street School.

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:
§ 36-14-5(a)

§ 36-14-5(d)
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2023-14
A.O. 2012-4
A.O. 2007-18
A.O. 2006-37
A.O. 2005-16
A.O. 2003-44
A.O. 2002-30

Keywords:

Abutter
Property Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: November 14, 2023

Re: Gordon McNally

QUESTION PRESENTED:

The Petitioner, who is one of two candidates to become the next Resident Commissioner on the Scituate Housing Authority Board of Commissioners, a municipal appointed position, requests an advisory opinion regarding whether, if appointed, he may continue to clear entrances and sidewalks of snow and ice during snowstorms where he lives at Rockland Oaks, given that he is compensated for that activity by the Scituate Housing Authority, which owns Rockland Oaks.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, who is one of two candidates to become the Resident Commissioner on the Scituate Housing Authority Board of Commissioners, a municipal appointed position may, if appointed, continue to clear entrances and sidewalks of snow and ice during snowstorms where he lives at Rockland Oaks, notwithstanding that he is compensated for that activity by the Scituate Housing Authority, which owns Rockland Oaks, consistent with the provisions herein.

The Petitioner states that for the last eight years he has resided at Rockland Oaks, a 24-unit housing complex located in Scituate that is owned by the Scituate Housing Authority (“Housing Authority”) and subsidized by the U.S. Department of Housing and Urban Development (“HUD”). He represents that he has recently been asked by a number of other tenants at Rockland Oaks to run for the position of Resident Commissioner on the Housing Authority Board of Commissioners (“Board of Commissioners”), for which he would receive no financial compensation. The Petitioner explains that the next election for Resident Commissioner will be held in mid-November 2023, and the name of the person who gets the most votes by the Rockland Oaks tenants will then be submitted to the Scituate Town Council for appointment to a five-year term as Resident Commissioner. The Petitioner represents that the term of the current Resident Commissioner will expire on December 31, 2023, and the current Resident Commissioner and the Petitioner are the only two candidates running for appointment to the position. He adds that the term of the new Resident Commissioner will begin on January 1, 2024.

The Petitioner states that, for the past five years, he has removed snow and ice from the sidewalks and entrances to Rockland Oaks during snowstorms. He further states that there are four entrances to the building: one at both the front and back that are at street level, and one on either side of the building to which four stairs lead up. The Petitioner informs that, when there is a snowstorm, he

begins clearing the sidewalks and building entrances as early as 4:00 a.m., explaining that he does this as a safety precaution for the other residents, all of whom are either elderly, disabled, or both. The Petitioner states that he is paid \$150 per snowstorm for these services and that, over the last five years, there have been approximately three to four snowstorms per year between the months of January and April. The Executive Director for Rockland Oaks, who telephoned and spoke to Ethics Commission staff with the knowledge and permission of the Petitioner, clarifies that the stipend paid to the Petitioner falls under the category of maintenance for the Housing Authority and is capped at \$200 per month by the federal government.

The Executive Director requests that the Petitioner be allowed to continue providing snow cleanup services at Rockland Oaks during snowstorms for compensation, citing the importance of maintaining clear paths on sidewalks and at doorways for both the tenants and rescue vehicles. The Executive Director explains that the Town of Scituate arranges for the general plowing and cleanup of just the parking lot at Rockland Oaks. She further explains that, about a year ago, when she arranged for a young man who lived only a mile away from Rockland Oaks to clear the sidewalks and walkways during snowstorms, that person would either arrive well after the cleanup was required, or not at all. The Executive Director adds that similar attempts by the Chair of the Board of Commissioners to secure someone to perform these duties failed due to the early hour at which the work needs to be performed. The Executive Director highlights the importance of having someone on site perform this important service, especially because many residents will not wait until someone has arrived to clear the snow and ice before venturing out at a risk to their own safety. The Executive Director added that the Petitioner is one of four male residents at Rockland Oaks, and that the other three are elderly and/or otherwise physically disabled.

The Executive Director advises that she is starting the second year of a five-year employment contract with the Housing Authority and that, while her contract renewal and/or any disciplinary issues that may arise involving her would be within the purview of the Housing Authority, her salary is regulated by HUD. The Petitioner represents that, if he is appointed by the Town Council to become the Resident Commissioner following his election to that position by his fellow residents at Rockland Oaks, he would recuse from any and all matters in that capacity in which the Executive Director appears other than in an official capacity and/or in which the Executive Director has a personal financial interest. Based on these facts, the Petitioner seeks advice from the Ethics Commission regarding whether he may continue to clear entrances and sidewalks at Rockland Oaks as necessary during snowstorms and be compensated by the Housing Authority to do so.

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 determines whether a substantial hardship exists on a case-by-case basis by considering the totality of the circumstances presented. The Ethics Commission has previously 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.

Last month, in Advisory Opinion 2023-41, the Ethics Commission opined that a member of the Tiverton Wastewater District Board of Directors could 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. That opinion was based upon a finding by the Ethics Commission that the denial of such employment would have created a substantial hardship for the Tiverton Wastewater District. There, the Executive Director position had been vacant for three months which, in consideration of a looming deadline for the completion of an important local project, was substantial. Also, following a three-month search, the petitioner was the only qualified candidate for the Executive Director position and, by necessity, had become uniquely familiar with the responsibilities of the Executive Director, having stepped in on a number of occasions to exercise those responsibilities.

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 2010-24, the Ethics Commission opined 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.

The facts as represented by the instant Petitioner and the Housing Authority’s Executive Director implicate the provisions of Regulation 1.5.1. At issue is whether prohibiting the Petitioner from being allowed to continue to remove snow and ice from sidewalks and entrances at Rockland Oaks

during snowstorms, if appointed to the position of Resident Commissioner, would result in a substantial hardship to the Board of Commissioners.

Most of the usual factors considered when determining whether a hardship exists are not particularly applicable here. For example, one would not expect a publicly advertised request for a person to be consistently available to clear snow and ice from a sidewalk in Scituate for a nominal amount prior to dawn if and when there is a snowstorm. The Executive Director states that, about a year ago, when she arranged for a young man who lived only a mile away from Rockland Oaks to clear the sidewalks and walkways during snowstorms, that person would either arrive well after the cleanup was required, or not at all. The Executive Director adds that similar attempts by the Chair of the Board of Commissioners to secure someone to perform these duties failed due to the early hour at which the work needs to be performed. Based on the Executive Director's statement about the importance of having someone on site perform these duties, coupled with the limited availability of people to do so and the safety risks resulting from residents who are not inclined to let the delay of snow and ice removal deter their decision to try and leave the premises, that the Petitioner is a resident who is willing to continue to do this work appears to make him uniquely qualified to perform this service. Further, the service provided by the Petitioner is not so much even temporary as it is weather-dependent. Additionally, the stipend for performance of this service is set by the federal government and capped at \$200 per month. It is unlikely that the Petitioner, who has been performing this service for the Housing Authority during snowstorms for the last five years for a nominal fee set by the federal government because there has been no one else willing or able to do so, would be seeking an appointment as Resident Commissioner so that he could continue to do so.¹

Accordingly, based on the totality of circumstances presented, including the Petitioner's representation that he will recuse as Resident Commissioner from any and all matters involving the Housing Authority's Executive Director in which the Executive Director appears other than in an official capacity and/or in which the Executive Director has a personal financial interest, it is the opinion of the Rhode Island Ethics Commission that the Petitioner may, if appointed Resident Commissioner, continue to clear entrances and sidewalks where he lives at Rockland Oaks as necessary during snowstorms. All recusals shall be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6. This opinion is based upon a finding by the Ethics Commission that the facts as represented indicate that the denial of the Petitioner's would create a substantial hardship for the Housing Authority.

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

¹ The Code of Ethics provides that municipal elected officials and school committee members, whether elected or appointed, are not required to leave employment with a municipal agency in the municipality in which the official serves if that employment was held at the time of the official's election or appointment to office. Commission Regulation 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014) ("Regulation 1.5.4"). While the instant Petitioner would not be a municipal elected official if appointed to become the Resident Commissioner, the recognition of Regulation 1.5.4 is appropriate under the circumstances.

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:

§ 36-14-6

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

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

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. 2023-41

A.O. 2010-24

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