



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

11th Meeting

DATE: Tuesday, December 12, 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/85073329113>

1. Call to Order.
2. Motion to approve minutes of Open Session held on November 14, 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.) General office administration.
4. Advisory Opinions.
 - a.) James Richard, a member of the Pascoag Fire District Board of Fire Commissioners, who in his private capacity owns and operates the Rhode Island Community Training Center, requests an advisory opinion regarding whether he may through the Training Center provide Advanced EMT – Cardiac training to a

Fire District firefighter whose tuition for the training would be paid for by the Fire District following a discussion and vote of the Board of Fire Commissioners from which the Petitioner would recuse. [Staff Attorney Popova Papa]

- b.) The Honorable Michael W. Chippendale, a legislator serving in the Rhode Island House of Representatives, requests an advisory opinion regarding whether the Code of Ethics prohibits him from accepting a gift valued at greater than twenty-five dollars from a person who has no direct financial interest in the Petitioner's official decision-making. [Staff Attorney Popova Papa]
- c.) Gregory A. Mancini, a member of the North Kingstown Town Council, who in his private capacity is employed by BuildRI, a non-profit trade organization that promotes the union construction industry, requests an advisory opinion regarding whether the Code of Ethics permits him to participate in Town Council discussions and decision-making concerning the Town Council's anticipated request of the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot relating to potential municipal construction projects in North Kingstown; participate in the drafting or approval of the draft of any bond question(s) that may result from that authorization; and publicly advocate in his private capacity for the passage of any or all bond questions related to those potential municipal construction projects. [Staff Attorney Radiches]

5. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on November 14, 2023, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Lesley Bunnell, Complaint No. 2023-11, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) In re: Michael Colasante, Complaint No. 2023-12 pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- d.) Motion to return to Open Session.

6. Motion to seal minutes of Executive Session held on December 12, 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 December 7, 2023

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 12, 2023

Re: James Richard

QUESTION PRESENTED:

The Petitioner, a member of the Pascoag Fire District Board of Fire Commissioners, a quasi-municipal elected position, who in his private capacity owns and operates the Rhode Island Community Training Center, requests an advisory opinion regarding whether he may through the Training Center provide Advanced EMT – Cardiac training to a Fire District firefighter whose tuition for the training would be paid for by the Fire District following a discussion and vote of the Board of Fire Commissioners from which the Petitioner would recuse.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Pascoag Fire District Board of Fire Commissioners, a quasi-municipal elected position, who in his private capacity owns and operates the Rhode Island Community Training Center, may provide through the Training Center an Advanced EMT – Cardiac training to a Fire District firefighter whose tuition for the training would be paid for by the Fire District following a discussion and vote of the Board of Fire Commissioners from which the Petitioner would recuse.

The Petitioner is a member of the Board of Fire Commissioners (“Board”) of the Pascoag Fire District (“Fire District”), having served in that position since his initial election in 2017. He explains that the Board manages the Fire District which provides fire protection services for the Village of Pascoag and has two fire stations staffed with paid and volunteer firefighters. The Petitioner states that since 2016 he has owned and operated the Rhode Island Community Training Center (“RICTC”), a private entity that specializes in providing Emergency Medical Services and Cardiopulmonary Resuscitation training programs.¹

The Petitioner represents that a firefighter employed by the Fire District has expressed an interest in attending an Advanced EMT – Cardiac training that will be offered by the RICTC in January 2024. The Petitioner further represents that the RICTC is one of a handful of providers licensed to provide this particular type of training and that the firefighter is required to receive this training in order to be able to work as an Emergency Medical Technician (“EMT”) and treat persons in emergency situations. The Petitioner states that the training is advertised on the RICTC’s website and that he would not teach or lead that training. He explains that the firefighter is free to choose the school he wishes to attend based on the availability and type of training provided, and the class

¹ The Petitioner explains that, prior to becoming its owner, he had been employed by the RICTC since approximately 2008/2009.

schedule that best suits him, without approval by the Board. The Petitioner adds that the Board pays the fees associated with firefighter training, but that he would recuse from the Board's discussion and decision-making relative to the approval of the payment of this training fee.

The Petitioner states that he did not advertise or offer the training to the firefighter but, rather, the firefighter had done his own research and then inquired regarding whether he could attend the training offered by the Petitioner's training center. The Petitioner represents that the Board does not oversee the day-to-day duties of the firefighters and that the Board only gets involved if the Fire Chief suspends or terminates the employment of a firefighter. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may, through the RICTC, provide training to the firefighter.

The Code of Ethics provides that a public official shall not have any interest, financial or otherwise, direct or indirect, or engage in any employment, transaction, or professional activity which 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 the public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of the public official's official activity. Section 36-14-7(a). Also, a public official may not use his public position to obtain financial gain, other than that provided by law, for himself any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). Finally, an individual subject to the Code of Ethics may not engage in a financial transaction, including participating in private employment or consulting, with a subordinate over whom he exercises supervisory responsibilities in the course of his official duties. Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) ("Regulation 1.4.4"). 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" or if the subordinate initiates the financial transaction. See Regulation 1.4.4(A)(1). In Advisory Opinion 2019-32, for example, the Ethics Commission applied Regulation 1.4.4(A)(1) and 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 both initiated by the subordinates and undertaken in the normal course of the petitioner's regular commercial business. See also A.O. 2023-36 (opining that the Town Administrator for the Town of Richmond was 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 were planning to build in the Town of South Kingstown, notwithstanding that the owner of JN Jordan Plumbing was employed by the Town of Richmond as the Zoning Official and as the Plumbing and Mechanical Inspector, and a subordinate of the petitioner, because Mr. Jordan's company regularly provided the aforementioned services in the normal course of a regular commercial business).

Here, the Petitioner owns and operates a private entity that offers Advanced EMT-Cardiac training in the normal course of its regular commercial business. Also, the Petitioner did not advertise or

offer the training to his subordinate directly but, rather, the firefighter, having done his own research, inquired whether he could take the training offered by the Petitioner's company, thereby initiating the potential transaction between them. 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 may, through the RICTC, provide Advanced EMT – Cardiac training to the Fire District firefighter because such transaction is both initiated by the subordinate and undertaken in the normal course of the Petitioner's regular commercial business. The Petitioner is required, however, as he correctly anticipated, to recuse from any Board discussions and decision-making relative to the payment of the firefighter's tuition. All recusals shall be filed 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:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2023-36

A.O. 2019-32

Keywords:

Transactions with Subordinates

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 12, 2023

Re: The Honorable Michael W. Chippendale

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from accepting a gift valued at greater than twenty-five dollars from a person who has no direct financial interest in the Petitioner's official decision-making.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, is not prohibited by the Code of Ethics from accepting a gift valued at greater than twenty-five dollars from a person who has no direct financial interest in the Petitioner's official decision-making.

The Petitioner is a legislator serving in the Rhode Island House of Representatives representing District 40. He states that he is physically disabled with mobility issues and that he has been offered the gift of a used mobility scooter by a personal friend of his ("the donor") who is a disabled veteran. The Petitioner explains that the donor has received a new mobility scooter from the United States Department of Veterans Affairs and has offered his old one, valued at \$2,000, as a gift to the Petitioner for the Petitioner's personal use. The Petitioner states that the donor is the chairperson of the Rhode Island chapter of Disabled American Veterans ("DAV"), a non-profit organization "dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity" through "ensuring that veterans and their families can access the full range of benefits available to them; fighting for the interests of America's injured heroes on Capitol Hill; and educating the public about the great sacrifices and needs of veterans transitioning back to civilian life."¹ The Petitioner represents that DAV does not lobby the General Assembly and that neither the donor nor DAV is registered as a lobbyist before any Rhode Island government body. The Petitioner further represents that although the General Assembly may, at times, review legislation impacting veterans, there is currently no such legislation pending before it, nor is there a pending matter in which the donor or DAV has a financial interest. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may accept the mobility scooter as a gift.

¹ See <https://www.dav.org/about-dav/> (last visited Dec. 1, 2023).

The Code of Ethics contains a “gift regulation” which provides that a public official shall not accept or receive any gift(s) or other thing(s) having either a fair market value or actual cost greater than \$25 but in no case having an aggregate fair market value or aggregate actual cost greater than \$75 in any calendar year, including but not limited to gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, without the interested person receiving lawful consideration of equal or greater value in return. Commission Regulation 520-RICR-00-00-1.4.2(B) Gifts (36-14-5009) (“Regulation 1.4.2”). An “interested person” is defined as a person or a representative of a person or business “that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or participate in the making of, as part of his or her official duties.” Regulation 1.4.2(C).

Because the Petitioner is being offered an item that is valued well in excess of \$25, the key issue in applying the gift regulation to determine whether the Petitioner may accept the mobility scooter is whether the donor is considered an “interested person.” If the donor is an interested person, the Petitioner will be prohibited from accepting the gift. If not, the Petitioner is free to decide whether to accept it.

The Ethics Commission has, in prior advisory opinions, identified registered lobbyists, persons with financial interests in pending legislation, and vendors and businesses doing business with public officials who possess decision-making authority over them as interested persons. See, e.g., A.O. 2017-7 (opining that a non-profit organization that had a financial interest in legislation introduced by a State Senator was an “interested person” as to that Senator); A.O. 2013-4 (opining that ProvPort, a non-profit corporation that operated the Port of Providence (“Port”) pursuant to an agreement with the City of Providence (“City”) was an “interested person” as to the Director of Economic Development for the City because he was personally involved in renegotiating ProvPort’s lease with the City, and he supervised the agency which had the authority to approve or reject ProvPort’s budget); A.O. 2012-3 (opining that vendors and businesses that did business with the City of Pawtucket were “interested persons” as to the various City officials who may have made decisions regarding those businesses, including the Director of Administration and the Economic Development Director); A.O. 2006-15 (opining that AstraZeneca, an international pharmaceutical company that was registered to lobby the General Assembly, was considered an “interested person” as to a member of the Rhode Island Senate).

In contrast, in Advisory Opinion 2015-13, the Ethics Commission opined that a member of the Cranston City Council could accept a gift of cuff links, with a presumed value of more than \$25, which belonged to a former Cranston City Council member and were given by that former Council member’s daughter, because the donor, a resident of Warwick who had no business relationships with the City of Cranston, was not an “interested person” as to the petitioner. See also A.O. 2015-29 (opining that the University of New Haven was not an “interested person” as to the Commissioner of the Department of Public Safety and Superintendent of the Rhode Island State Police, because the University did not have an interest in any decision that the petitioner was authorized to make in his public capacity and it did not have any current business relationships with the Department of Public Safety).

Here, neither the donor nor the non-profit organization, DAV, of which the donor is the chairperson, lobbies the General Assembly, and neither has a direct financial interest in a decision

that the Petitioner is authorized to make as a legislator. Thus, absent some indication that the House of Representatives would be taking official action on a matter in which the donor or DAV has a direct financial interest, the donor is not considered an “interested person” as to the Petitioner and the gift of the mobility scooter to the Petitioner would not implicate the prohibitions contained in the gift regulation, Regulation 1.4.2. Accordingly, based on the facts as represented, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from accepting the mobility scooter as a gift.

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-00-00-1.4.2 Gifts (36-14-5009)

Related Advisory Opinions:

A.O. 2017-7
A.O. 2015-29
A.O. 2015-13
A.O. 2013-4
A.O. 2012-3
A.O. 2006-15

Keywords:

Gifts

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: December 12, 2023

Re: Gregory A. Mancini

QUESTION PRESENTED:

The Petitioner, a member of the North Kingstown Town Council, a municipal elected position, who in his private capacity is employed by BuildRI, a non-profit trade organization that promotes the union construction industry, requests an advisory opinion regarding whether the Code of Ethics permits him to participate in Town Council discussions and decision-making concerning the Town Council's anticipated request of the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot relating to potential municipal construction projects in North Kingstown; participate in the drafting or approval of the draft of any bond question(s) that may result from that authorization; and publicly advocate in his private capacity for the passage of any or all bond questions related to those potential municipal construction projects.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Kingstown Town Council, a municipal elected position, who in his private capacity is employed by BuildRI, a non-profit trade organization that promotes the union construction industry, is permitted by the Code of Ethics to participate in Town Council discussions and decision-making concerning the Town Council's anticipated request of the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot relating to potential municipal construction projects in North Kingstown; participate in the drafting or approval of the draft of any bond question(s) that may result from that authorization; and publicly advocate in his private capacity for the passage of any or all bond questions related to those potential municipal construction projects.

The Petitioner is the President of the North Kingstown Town Council ("Town Council"). He has served continuously in that capacity since his initial election to the Town Council in 2018. The Petitioner represents that the Town Council is expected to ask the General Assembly to pass legislation authorizing the Town Council to place one or more bond questions on a ballot that, if approved by the citizens of the Town of North Kingstown ("Town" or "North Kingstown"), could result in the construction of one or more of the following: a new Public Safety Complex, a new Recreation Center, and one or two new middle schools (or the renovation of at least one middle school). The Petitioner further represents that, if and when the General Assembly passes the requested legislation, the Town Council would be tasked with assisting bond counsel with the

drafting of the bond questions and/or approving any drafts of those bond questions for placement on the ballot.

In his private capacity, the Petitioner has been employed since 2000 as the Executive Director and General Counsel for BuildRI. He describes BuildRI as a trade organization composed of four contractor associations and nine trade unions which promotes the union construction industry to the public and to private and public construction users. He states that members of contractor associations and trade unions affiliated with BuildRI would likely be among those to work on construction projects in North Kingstown that were approved by the citizens of that town.

It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in the Town Council's anticipated request of the General Assembly to pass legislation authorizing the placement of one or more bond questions on the ballot and in the drafting or approval of the draft of those bond question(s). The Petitioner also seeks guidance regarding whether he may, in his private capacity, publicly advocate for the passage of any or all of the bond questions related to the potential municipal construction projects.¹

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 with the proper discharge of his duties exists if a public official has reason to believe or expect that he, his family member, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Additionally, the Code of Ethics prohibits a public official from using 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).

The Ethics Commission has previously opined that a public official was not prohibited from participating in discussions and decision-making concerning construction projects in which there would be no direct financial impact upon himself or any family member, his business associate, or his employer. See, eg., A.O. 2011-1 (opining that a member of the Block Island Housing Board could participate in general Housing Board discussions and voting concerning construction projects which would not directly financially impact his business associate). Contra A.O. 2007-24 (opining that the Chair of the Cranston School Committee was required to continue to recuse from participating and voting on matters which came before the School Committee where it was reasonably foreseeable that his private employer, the New England Laborers' Union, would be financially impacted by such matters).

¹ In his letter to the Ethics Commission requesting this advisory opinion, the Petitioner also asked whether the Code of Ethics would permit him to participate in Town Council discussions and decision-making relative to the award of any construction contracts resulting from the approval of a particular ballot question by North Kingstown voters, and whether he could participate in the approval of bond expenditures related to those contracts. The Ethics Commission deems both of those questions to be hypothetical at this time and, thus, not yet ripe for analysis. The Petitioner is encouraged to seek guidance on these matters if and when the subject bond questions are eventually placed on a ballot and approved by the citizens of North Kingstown.

The Ethics Commission has also previously opined that the Code of Ethics did not prohibit a public official from participating in activities in a private capacity relating to local issues of public interest. For example, in Advisory Opinion 2022-8, a member of the Bristol Zoning Board was not prohibited from, among other things, co-signing letters in her private capacity to the Planning Board and Town Council relative to a redevelopment in town, or from writing letters in her private capacity as a Bristol resident and business owner to the editor of the local newspaper regarding that redevelopment. See also A.O. 2008-1 (opining that a member of the Johnston Board of Canvassers was not prohibited in his private capacity as a citizen from participating in political fundraising, soliciting political party memberships, making political contributions, or writing letters to the editor and editorials concerning political issues).

In the instant matter, neither the Petitioner's participation in the Town Council's request of the General Assembly to pass legislation authorizing the Town Council to place one or more questions on a ballot, nor the Petitioner's participation in the drafting or approval of the draft of any ballot question(s) that may result, would directly financially impact BuildRI, his employer. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in those activities. Regarding the Petitioner's other inquiry, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit him from advocating in his private capacity for the passage of any or all of bond questions related to the potential construction projects that are the subject of this advisory opinion.

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. 2022-8
A.O. 2011-1
A.O. 2008-1
A.O. 2007-24

Keywords:

Conflict of Interest
Financial Interest
Private Employment