



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

3rd Meeting

DATE: Tuesday, February 27, 2024

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/87662773681>

1. Call to Order.
2. Motion to approve minutes of Open Session held on January 23, 2024.
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.) Legislative Update;
 - e.) General office administration.
4. Advisory Opinions.
 - a.) James Rhodes, Esq., a former committee attorney in the Rhode Island Senate Legal Counsel Office, requests an advisory opinion regarding whether he is

prohibited by the Code of Ethics from representing or lobbying on behalf of his new private employer before the Rhode Island House of Representatives, prior to the expiration of one year after leaving his employment with the Senate. [Staff Attorney Papa]

- b.) Christian J. Lachapelle-Miller, the Chief Implementation Aid to the Director of the Rhode Island Department of Children, Youth & Families, who was recently appointed to serve as a member of the Providence Juvenile Hearing Board, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving in both positions. [Staff Attorney Papa]
- c.) Joshua D. Ferreira, a captain in the Tiverton Fire Department, who has been recommended by the Tiverton Fire Chief to become the Tiverton Deputy Fire Chief, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command would sufficiently insulate the Petitioner from conflicts of interest arising out of his anticipated position, given that the Petitioner's mother is employed by the Tiverton Fire Department as the Fire Chief's administrative assistant. [Staff Attorney Radiches]
- d.) Melanie Reeves, the finance director at the Block Island School, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon her in carrying out her duties as described herein, given that her spouse is expected to submit a bid in response to a request for proposal relating to a project at the school. [Staff Attorney Radiches]
- e.) Mark Aramli, a member of the Newport City Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the City Council has appointing authority, in order to request approval of repairs and renovations he has planned for a home that he recently purchased in Newport. [Staff Attorney Radiches]

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

- a.) Motion to approve minutes of Executive Session held on January 23, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Michael Colasante, Complaint No. 2023-10, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) In re: Richard Nassaney, Complaint No. 2023-9, 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 February 27, 2024.
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 February 22, 2024

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 27, 2024

Re: James Rhodes, Esq.

QUESTION PRESENTED:

The Petitioner, a former committee attorney in the Rhode Island Senate Legal Counsel Office, a state employee position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from representing or lobbying on behalf of his new private employer before the Rhode Island House of Representatives, prior to the expiration of one year after leaving his employment with the Senate.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former committee attorney in the Rhode Island Senate Legal Counsel Office, a state employee position, is prohibited by the Code of Ethics from representing or lobbying on behalf of his new private employer before the entire Rhode Island General Assembly, including the Rhode Island Senate and the Rhode Island House of Representatives, prior to the expiration of one year after leaving his employment with the Senate.

From April 2021 to February 2023, the Petitioner was employed by the Joint Committee on Legislative Services (“JCLS”)¹ as a contract attorney for the Rhode Island Senate in the role of committee attorney to the Environment and Agriculture Committee. From February 2023 to December 2023, he was employed by the JCLS as part-time staff in the Senate Legal Counsel

¹ The JCLS is the hiring authority for the General Assembly. The JCLS was created by statute to have exclusive authority over all administrative and financial matters affecting the operation of the General Assembly. R.I. Gen. Laws §§ 22-11-1 et seq. The JCLS is comprised of five (5) members who are: the Speaker of the House of Representatives serving as the Chairperson; the President of the Senate serving as the Vice Chairperson; the House Majority Leader; the House Minority Leader; and the Senate Minority Leader. The General Assembly’s website describes the work of the JCLS as follows:

Under the direction of the Joint Committee on Legislative Services, the JCLS Administrative Office is responsible for the overall day-to-day operations of the General Assembly. Matters pertaining to personnel, payroll and benefits, operations, purchasing and accounts payable are handled through this office. The JCLS office prepares and submits the annual budget and oversees the finances of the Legislature. The operations staff is responsible for the purchasing function, the upkeep and maintenance of the legislative offices in the State House, the disbursement of supplies to the various offices of the JCLS, and is responsible for repairs to equipment and furnishings of the Legislature. All payables of the Legislature are processed by utilizing the state’s financial system (RI FAN).

<https://www.rilegislature.gov/pages/JCLS.aspx> (last visited Jan. 29, 2024).

Office as a committee attorney to the Senate Judiciary Committee (“SJC”). The Petitioner states that, in his most recent capacity, he drafted legislation at the direction of the SJC Chairperson and the Senate Legal Counsel’s Office, attended all SJC meetings and provided counsel on committee procedures, as needed, and supported the SJC members in reviewing testimony, researching policy and legal issues, and drafting bill amendments. The Petitioner further states that his employment was exclusive to the Senate and did not extend to representation of or working with the House of Representatives on any matter or legislative proposal.

The Petitioner represents that on December 22, 2023, he resigned from his employment with the Senate to begin a position as a Senior Attorney with the Conservation Law Foundation (“CLF”), an environmental advocacy organization whose goal is to “create comprehensive long-term solutions to environmental challenges” and is a “critical mover in building a new energy infrastructure, restoring the health of our oceans, countering climate change, and safeguarding the health, quality of life, and economic prosperity of our families and neighbors for generations to come.”² The Petitioner explains that CLF often works directly with legislators to better align the laws to achieve the law’s purpose relative to the resolution of environmental challenges. The Petitioner states that his duties at CLF include the development of legislation and working with elected officials on policy proposals related to climate change and clean energy. The Petitioner acknowledges that he is prohibited by the Code of Ethics from representing his new employer before the Senate prior to the expiration of one year after leaving his employment with the Senate; however, he seeks guidance regarding whether he would be allowed to represent his new employer before the House of Representatives, which the Petitioner considers separate and independent from the Senate.

The Code of Ethics prohibits a public employee from representing himself or any other person before any state agency by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1) & (2) (“section 5(e)”). A “person” is defined as an individual or business entity. Section 36-14-2(7). This prohibition extends for a period of one year after the public employee has officially severed his 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 employee may have over his former agency and colleagues by reason of his past employment 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 himself or another person before a state agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his 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).

In previous advisory opinions, the Ethics Commission has applied section 5(e) to both members and employees of the General Assembly and has consistently prohibited them from representing themselves or other persons before either chamber of the General Assembly during the one-year period following the severance of their state service with the General Assembly. For example, in Advisory Opinion 2018-17 the Ethics Commission opined that a former legal counsel to the Majority Leader of the Rhode Island House of Representatives was prohibited by the Code of Ethics from lobbying or representing himself or others before the entire General Assembly for a

² See <https://www.clf.org/about/> (last visited Jan. 24, 2024).

period of one year following his official date of severance from state employment. That petitioner was not prohibited from being employed by, or having a contractual relationship with, organizations that lobbied the General Assembly within the one-year period following his official date of severance from state employment, provided that he neither participated in the lobbying activities before the General Assembly nor had an equity or ownership interest in the organization or its lobbying-related profits or income.

Similarly, in Advisory Opinion 2004-4, a former Special Assistant to the House Majority Leader of the House of Representatives was prohibited from lobbying either chamber of the General Assembly prior to the expiration of one year following his departure from that position. See also A.O. 2017-19 (opining that a former Senate President 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); A.O. 2017-9 (opining that a former legislative fiscal analyst for the Senate, who was privately employed as Director of Policy for the Rhode Island Public Expenditure Council, was prohibited by the Code of Ethics from appearing before either chamber of the Rhode Island General Assembly for a period of one year after the date of severance from her position in the Senate); A.O. 2003-2 (opining that a State Representative who was privately employed by the American Lung Association was prohibited by section 5(e) from lobbying or otherwise representing his employer before either chamber of the General Assembly for a period of one year after leaving his public office); A.O. 2002-24 (opining that a State Senator could accept employment as legal counsel to a municipal housing authority, but was prohibited from representing the municipal housing authority or its interests before the General Assembly, including any committee thereof, for a period of one year after the expiration of his term of office as an elected member of the legislature).

Considering the Petitioner's above representations, and consistent with prior advisory opinions issued to similarly situated petitioners, it is the opinion of the Ethics Commission that the Petitioner must refrain from appearing before the entire General Assembly, including the House of Representatives and the Senate, and, further including but not limited to, all of their departments, committees, and commissions, for a period of one year following the date of severance from his position with the Senate Legal Counsel Office.

The Code of Ethics does not prohibit the Petitioner from having purely personal or ministerial interactions with General Assembly members or staff, provided that such interactions do not involve General Assembly decision-making over matters involving or financially impacting the Petitioner or his new private employer. However, the Petitioner is cautioned to be mindful of section 5(e)'s limitations during all interactions with General Assembly members or staff until the expiration of one year following the date he ended his employment with the Senate. Prohibited interactions could occur at a restaurant, on the phone, in an email or in any social or political gathering where the Petitioner interacts with a General Assembly member or employee to advance his or his employer's interests or legislative agenda. It is the content of a discussion, rather than its venue, that is most relevant in applying the Code of Ethics' revolving door/post-employment restrictions.

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(e)

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

Related Advisory Opinions:

A.O. 2018-17

A.O. 2017-19

A.O. 2017-9

A.O. 2004-4

A.O. 2003-2

A.O. 2002-24

Keywords:

Lobbying

Post-Employment

Private Employment

Revolving Door

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 27, 2024

Re: Christian J. Lachapelle-Miller

QUESTION PRESENTED:

The Petitioner, the Chief Implementation Aid to the Director of the Rhode Island Department of Children, Youth & Families, a state employee position, who was recently appointed to serve as a member of the Providence Juvenile Hearing Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from simultaneously serving in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chief Implementation Aid to the Director of the Rhode Island Department of Children, Youth & Families, a state employee position, who was recently appointed to serve as a member of the Providence Juvenile Hearing Board, a municipal appointed position, is not prohibited by the Code of Ethics from simultaneously serving in both positions.

The Petitioner is employed as the Chief Implementation Aide to the Director of the Rhode Island Department of Children, Youth & Families (“DCYF” or “department”). The DCYF is “the state child welfare, children’s mental health and juvenile corrections services agency which promotes safety, permanence, and well-being of children,” and supports “children and their families involved in child protection, behavioral health, and juvenile justice.”¹ The Petitioner represents that he has served in this position since August 2023 and that his role is to provide support to the DCYF’s Executive Director relative to the implementation and administration of the department’s special projects and programs. The Petitioner adds that this support includes, but is not limited to, serving as a liaison between the DCYF Director and external stakeholders; acting as the Director’s proxy during meetings and events across the state; analyzing data, reports, and relevant information in support of executive level decision-making; monitoring the progress of special projects; identifying potential challenges, and proposing solutions and ways to improve the process efficiency in the administration of projects and programs throughout the department. The Petitioner represents that his normal working hours are 8:30 a.m. to 4:00 p.m., Monday through Friday, although work hours may sometimes vary.

The Petitioner states that he was recently appointed by the President of the Providence City Council to the Providence Juvenile Hearing Board (“JHB”). The Petitioner explains that the JHB

¹ <https://dcyf.ri.gov/our-office> (last visited Feb. 5, 2024).

presides over cases brought by the Providence Police Department against first-time, non-violent juvenile offenders who reside in the City of Providence. As stated in the Providence Code of Ordinances, the JHB consists of fifteen members who shall meet no less than once each month and who receive no remuneration for their service.² The Petitioner represents that his duties as a JHB member include the following: attending board meetings to review cases; collaborating on resolutions and support services; conducting thorough case reviews and interviews; ensuring fairness and confidentiality; promoting community awareness; serving as a positive role model; and working collaboratively with the Providence Police Department. The Petitioner adds that the JHB normally conducts its hearings in the evenings; thus, he will be performing his JHB duties outside of his normal working hours at the DCYF.

The Petitioner represents that the JHB ordinarily does not hear cases involving a juvenile who is under the active supervision of the DCYF, as such cases are typically heard by the Rhode Island Family Court. The Petitioner states that in the unlikely event that such a case does come before the JHB, he will recuse himself from JHB discussions and decision-making relative to it. He further states that it is outside of the scope of the JHB's jurisdiction to refer cases to the DCYF directly and that, if neglect or abuse is suspected in a case, the juvenile detective assigned to the case would refer it to the DCYF rather than to the JHB. The Petitioner adds that as part of his duties with the DCYF, he interacts with DCYF caseworkers, supervisors, and administrators on administrative matters, but does not interact with children who are under DCYF supervision; nor does he oversee or have knowledge of their case files.³ Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits his simultaneous service in both positions.

Under the Code of Ethics, a public official shall not have any interest, financial or otherwise, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which 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 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 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). A public official or employee is also prohibited from accepting other employment that 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 his official duties. Section 36-14-5(b). 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).

² Providence, R.I., Code of Ordinances, ch. 2, art. XXIV, https://library.municode.com/ri/providence/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTXXIVJU_HEBO_S2-371ES (last visited Feb. 2, 2024).

³ The Petitioner clarifies that he does have access to the electronic system containing all open DCYF cases, but that he would not access that information relative to matters pending before the JHB.

A business is defined as “a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted.” Section 36-14-2(2). 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 neither the Rhode Island Scenic Roadways Board (“SRB”), a public entity, nor the East Providence Waterfront Special Development District Commission (“Waterfront Commission”), a quasi-public state agency, was considered a “business” under the Code of Ethics and, therefore, the petitioner’s relationships with the SRB and the Waterfront Commission did not constitute business associations with those entities). Accordingly, in the instant matter, neither the DCYF nor the JHB is considered a business and, therefore, the relationship between the Petitioner and both the DCYF and the JHB is not one of business associates. As a result, the “business associate” prohibitions that would otherwise constrain the Petitioner while carrying out his public duties do not apply with respect to these two entities.

The Ethics Commission has also consistently concluded in prior advisory opinions that the Code of Ethics does not create an absolute bar against a person’s simultaneous service in two different governmental entities. Rather, the provisions of the Code of Ethics require a matter-by-matter evaluation and determination as to whether substantial conflicts exist with respect to carrying out one’s official duties in the public interest.

In Advisory Opinion 2015-14, for example, the Ethics Commission opined that a member of the Bristol Warren Regional School Committee (“School Committee”), who was also an alternate member of the Bristol Juvenile Hearing Board (“Hearing Board”), was not prohibited by the Code of Ethics from simultaneously serving in both positions. In that advisory opinion, the Ethics Commission determined that the petitioner served in two distinct public entities and, given that neither the School Committee nor the Hearing Board was considered to be a “business” as that term is defined in the Code of Ethics, the “business associate” prohibitions that would otherwise have constrained the petitioner while carrying out her public duties did not apply with respect to those two entities, despite their potential overlap relative to student discipline. See also A.O. 2021-41 (opining that the School Building Authority Finance Officer for the Rhode Island Department of Education was not prohibited by the Code of Ethics from accepting an appointment to fill a vacancy on the Lincoln School Committee and from then serving simultaneously in both positions, given that there was no indication that such simultaneous service would impair his independence of judgment as to his public responsibilities in either position or require him to disclose confidential information acquired by him in the course of his official duties in either role); A.O. 2018-20 (opining that a Housing Commission Coordinator with the Rhode Island Office of Housing and Community Development could serve as a member of the Pawtucket Housing Authority’s Board of Commissioners, given that there was no indication that such simultaneous service would impair her independence of judgment as to her public duties in either position).

Here, the Petitioner’s duties as the Chief Implementation Aid to the Director of the DCYF and as a member of the JHB are separate and distinct. Based on the Petitioner’s representations, there is no indication that serving in both capacities would impair the Petitioner’s independence of judgment as to his public responsibilities in either role or require him to disclose confidential

information acquired by him in the course of his official duties in either role. Nor is there any indication that his simultaneous service, in and of itself, creates a substantial conflict with respect to carrying out his duties in the public interest.

Accordingly, absent any other relevant fact that would implicate the Code of Ethics, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from simultaneously serving as the Chief Implementation Aid to the Director of the DCYF and as a member of the JHB. The Petitioner is cautioned, however, to remain vigilant in identifying any situations or matters that may come before him as he is carrying out his duties in either of his public roles that may present any potential conflict of interest that is not otherwise contemplated in this advisory opinion, and to either request further advice from the Ethics Commission or recuse 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(2)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-41

A.O. 2018-20

A.O. 2015-14

Keywords:

Dual Public Roles

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 27, 2024

Re: Joshua D. Ferreira

QUESTION PRESENTED:

The Petitioner, a captain in the Tiverton Fire Department, a municipal employee position, who has been recommended by the Tiverton Fire Chief to become the Tiverton Deputy Fire Chief, also a municipal employee position, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command would sufficiently insulate the Petitioner from conflicts of interest arising out of his anticipated position, given that the Petitioner's mother is employed by the Tiverton Fire Department as the Fire Chief's administrative assistant.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the proposed alternate supervisory chain of command, as modified herein, would sufficiently insulate the Petitioner, a captain in the Tiverton Fire Department, a municipal employee position, who has been recommended by the Tiverton Fire Chief to become the Tiverton Deputy Fire Chief, also a municipal employee position, from conflicts of interest arising out of his anticipated position, given that the Petitioner's mother is employed by the Tiverton Fire Department as the Fire Chief's administrative assistant.

The Petitioner is an 18-year veteran of the Tiverton Fire Department ("Fire Department") and currently holds the rank of captain. He states that he recently applied for the position of Deputy Chief within the Fire Department. The Petitioner further states that the position of Deputy Chief had been eliminated in 1996 with the simultaneous addition of four lieutenant positions to the Fire Department. He explains that the significantly increased responsibility of the Fire Department since 1996, coupled with the Fire Chief's added responsibilities in the role of Tiverton's Emergency Management Agency Director, prompted the Fire Chief to seek the reinstatement of the Deputy Chief position. The Petitioner represents that the funding for the Deputy Chief position was included in the proposed budget that was ultimately approved by Tiverton taxpayers.

A copy of the job description for the Deputy Chief position was submitted by the Petitioner as a supplement to his request for this advisory opinion. It states in pertinent part that the Deputy Chief serves as the principal assistant to the Fire Chief in numerous activities designed to ensure the effective and efficient daily operation of the Fire Department. Those activities include the following: serving as the Fire Department's Training and Personnel Officer, which involves ensuring that the four platoons receive training in accordance with the Fire Department's Standard Operating Guidelines; assisting the Fire Chief in grievance processing; responding to employee

inquiries about the Fire Department's policies and procedures; supervising shift commanders in the enforcement of all department administrative, operational and personnel policies and procedures, including facilities, apparatus, and equipment maintenance; responding to fires and emergencies when necessary and assisting in directing firefighting activities at greater alarm fires; representing the Fire Department when requested by the Fire Chief at government, professional, and public meetings and activities; assisting the Fire Chief with Emergency Management duties and Fire Prevention duties as needed; and performing other duties as required or as responsibilities necessitate. The job description also states that the Deputy Chief will be responsible for the efficient operation of the Fire Department in the Fire Chief's absence.

The Petitioner represents that the Fire Chief opened the opportunity to apply for the Deputy Chief position to the Fire Department's four captains and to any lieutenants on the Fire Department having more than 20 years' experience, of which there was one. The Petitioner further represents that three of the five eligible people applied, but that only two of those people met the application deadline. He states that he was one of the two candidates who became final candidates for the Deputy Chief position. The Petitioner further states that he and the other candidate each then participated in an oral interview with Deputy Fire Chiefs from Lakeville, Massachusetts and Newport, Rhode Island; a retired Battalion Chief from East Providence; and the Tiverton Police Chief before sitting for a 100-question written test. The Petitioner represents that the Fire Chief ultimately notified the Petitioner that the Petitioner had scored higher than the other candidate in both the oral interview and the written test, and that the Fire Chief would be recommending to the Tiverton Town Council ("Town Council") that the Petitioner be appointed Deputy Chief, but that both candidates would still be required to interview with the Town of Tiverton's five-member Personnel Board prior to a decision by the Town Council.¹ The Petitioner states that he met with the Personnel Board and expects that the Town Council's consideration of his candidacy is imminent.²

The Petitioner states that his mother has been employed by the Fire Department as the Fire Chief's administrative assistant for the past 23.5 years. He further states that the administrative assistant reports directly to the Fire Chief, as is evidenced by the Tiverton Fire Department Organizational Chart submitted by the Petitioner in supplement to the instant request. As stated in the organizational chart, the administrative assistant is responsible for, among other things, payroll, processing invoices, recording, filing, and maintenance of all daily absences and extended leave for all Fire Department personnel, subject to the approval of the Fire Chief. The Petitioner adds that the administrative assistant reports directly to the Fire Chief on all matters relating to her duties and responsibilities.³

¹ The Petitioner states that, upon learning from the Fire Chief that the Petitioner would be the Fire Chief's recommendation for the Deputy Chief position, the other candidate removed himself from consideration.

² The Petitioner represents that the Personnel Board did not want to make a recommendation immediately following their interview of the Petitioner because the Personnel Board wanted to ask the Tiverton Solicitor for an opinion regarding whether the search for a Deputy Fire Chief should have extended beyond the Fire Department. The Petitioner further represents that the Solicitor opined that limiting the search to the Fire Department did not violate the Tiverton Town Charter and was a managerial right of the Fire Department Chief.

³ The job description for the administrative assistant was submitted by the Petitioner as a supplement to his request for this advisory opinion. The document is entitled, "Fire Department Medical Billing Clerk Job Description."

The Petitioner states that in the event the Fire Chief is unavailable, the Deputy Chief would serve as the Fire Chief's designee. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner has submitted in supplement to his request a proposed alternate supervisory chain of command to be implemented should he ultimately be appointed Deputy Chief and called upon to act as the Fire Chief's designee. The proposed alternate supervisory chain of command document states that only in cases where the Fire Chief is unavailable and supervisory actions involving the administrative assistant become necessary, the Town Administrator will serve as the Fire Chief's designee. The document includes as examples of supervisory matters the "evaluation, appointment, promotion, transfer, and/or any financial matter that directly impacts the employee." The proposed alternate supervisory chain of command document also states that the Fire Chief and the Town Administrator have explicitly agreed to the proposed alternate supervisory chain of command and contains the signatures of both those individuals. It is in the context of these representations that the Petitioner seeks guidance regarding whether the proposed alternate supervisory chain of command would sufficiently insulate him from conflicts of interest arising in situations where, in the absence of the Fire Chief, the Petitioner as Deputy Chief would act as the Fire Chief's designee.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, 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 employee has reason to believe or expect that he or any person within his family, among others, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Also, a public employee may not use his public position to obtain financial gain, other than that provided by law, for himself or any person within his family, among others. Section 36-14-5(d).

The Code of Ethics contains specific provisions aimed at curbing nepotism which are laid out in Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1"). Pursuant to Regulation 1.3.1(B)(1), a public employee may not participate in any matter as part of his public duties if there is reason to believe or expect that any person within his family is a party to or participant in such matter, or will be financially impacted or obtain an employment advantage by reason of the public employee's participation. Additionally, Regulation 1.3.1(B)(2) prohibits a public employee from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of any person within his family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission. The phrase "any person within his [] family" expressly includes "mother." Regulation 1.3.1(A)(2).

The Ethics Commission has issued numerous advisory opinions applying the above-cited provisions of the Code of Ethics in response to analogous questions from petitioners involving their family members. For example, in Advisory Opinion 2009-26, the Ethics Commission opined that the Code of Ethics did not prohibit the Deputy Chief of the Valley Falls Fire Department from serving in that position while his nephew simultaneously served as a firefighter within the same department. The Ethics Commission determined that the recusal procedures and alternate

supervisory chain of command approved by the Fire Chief and the Chairman of the Board of Fire Commissioners, whereby the Fire Chief would handle supervisory matters concerning the Deputy Chief's nephew, were reasonable and sufficient to insulate the Deputy Chief from apparent conflicts of interest. See also A.O. 2010-40 (opining that the Chief of the Manville Fire Department, whose son was employed as a firefighter in the department, would not violate the Code of Ethics because an alternate chain of command had been established where the Chief recused from the supervisory chain of command in matters involving his son, and that the Chairman of the Board of Fire Wardens had agreed to become the son's designated supervisor regarding all administrative matters such as the scheduling of work shifts and disciplinary actions); A.O. 2005-19 (opining that the Code of Ethics would not prohibit the Chief of the Cranston Police Department from continuing in that position notwithstanding that his brother served in the department, given that an alternate chain of command had been established wherein the mayor would replace the chief as the final decision-maker on matters concerning the chief's brother).

Here, in consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and past advisory opinions issued, it is the opinion of the Ethics Commission that the alternate supervisory chain of command outlined by the Petitioner and agreed upon by the Fire Chief and the Town Administrator appropriately requires that, in situations where the Fire Chief is unavailable and the Deputy Chief is acting as the Fire Chief's designee, the Petitioner's mother shall report directly to the Town Administrator regarding all matters involving her supervision, evaluation, appointment, promotion, transfer, and/or any financial matter that directly impacts her.

For purposes of including additional requirements of the provisions cited in this advisory opinion, the Ethics Commission would add to the alternate supervisory chain of command that the Petitioner must recuse from participation in his public capacity in all situations where he has reason to believe or expect that his mother will be financially impacted or will obtain an employment advantage as a result of his participation, and in all matters involving the classification or discipline of his mother. In each of the situations from which the Petitioner is required to recuse, he may not delegate such tasks to a subordinate, but must instead defer to the established alternate chain of command. With these modifications, which are subject to the agreement of the Fire Chief and the Town Administrator, the proposed alternate supervisory chain of command will be reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest involving his mother's current employment. The Petitioner is advised, however, to remain vigilant about identifying and avoiding any conflicts of interest that might arise given his anticipated new position that are not addressed herein and is encouraged to seek further guidance from the Ethics Commission as needed. Any episodes of recusal shall be exercised 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-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2010-40

A.O. 2009-26

A.O. 2005-19

Keywords:

Family: Public Employment

Family: Supervision

Nepotism

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 27, 2024

Re: Melanie Reeves

QUESTION PRESENTED:

The Petitioner, the finance director at the Block Island School, a municipal employee position, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon her in carrying out her duties as described herein, given that her spouse is expected to submit a bid in response to a request for proposal relating to a project at the school.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the finance director at the Block Island School, may carry out her duties as described herein in conformance with the Code of Ethics at this time, notwithstanding that her spouse is expected to submit a bid in response to a request for proposal relating to a project at the school, because the Petitioner's limited duties relative to the project are ministerial in nature and will not directly financially impact her spouse.

The Petitioner is employed by the Block Island School as its finance director. She states that she has held this position for more than ten years and works under the direct supervision of the school superintendent. The Petitioner identifies among her official duties the following: payroll, accounts payable, purchasing, employee benefits, budgeting, and school audits. She states that the school recently received grant funding from the Rhode Island Department of Education, one hundred percent of which is to be used to construct an outdoor classroom at the school. The Petitioner further states that the funding, including its intended use, was discussed in open session at a recent school committee meeting. She explains that the project will involve the pouring of concrete and construction of a prefab shade structure to be modeled after an existing structure at a local park. The Petitioner states that her husband is a self-employed, full-time excavation contractor whom she expects will be interested in submitting a bid in response to the request for proposal ("RFP") that is issued for the project.

The Petitioner represents that the RFP was developed by an architect, the project manager, and two teachers from the school. She further represents that the project manager then forwarded the RFP to the Petitioner for posting on the Block Island Bulletin and Bidnet.¹ The Petitioner states that the project manager invited her to edit the RFP to reflect consistency with a previously used format or to use a different format. The Petitioner represents that her role in the editing of the RFP

¹ The Petitioner describes Bidnet as a national public forum used to post public solicitations.

did not include discretion to make any substantive changes to it. She explains that her edits to the RFP were limited to changing the deadline dates for the release of the RFP, the site visit by potential bidders, and the submission of bids from a Thursday to the immediately preceding Wednesday in order to align with the superintendent's work schedule. The Petitioner further explains that the award date for the project was changed from March 8, 2024, to March 18, 2024, in order to align with a previously scheduled school committee meeting. The Petitioner states that her final edit to the RFP was to correct the name of the school, which had been inadvertently misidentified.

The Petitioner states that submissions in response to the RFP will be addressed to the superintendent's administrative assistant. She further states that the submissions will be scored by the superintendent, the superintendent's administrative assistant, and the school's facilities director. The Petitioner represents that she has in the past scored bid submissions for school projects in her capacity as finance director. She further represents that, when this particular project was announced, she eliminated herself as a potential member of the scoring team because she suspected her spouse might be interested in responding to the RFP. The Petitioner adds that the superintendent then made his administrative assistant a member of the scoring team for this project. The Petitioner represents that the project manager developed the following 100 point system for scoring the bids: technical requirements (30 points); pricing (35 points); past project experiences (25 points); and references (10 points). She states that once the scores have been determined, the superintendent will make a recommendation to the school committee, which will have the discretion to accept or reject that recommendation.

The Petitioner represents that once a contract is awarded to the successful bidder, she in her capacity as finance director will have no role in approving payments to that person. She explains that the superintendent will be responsible for the approval of all purchase orders and that the Petitioner will only be responsible for coding payments, which she describes as assigning a string of numbers to the expenditures in conformance with the Uniform Chart of Accounting required by the state. The Petitioner states that she will be tasked with grant reporting on the project, which involves submitting quarterly reports of expenditures as a prerequisite to requesting a next round of funding. She further states that she will be asked to print and mail checks issued by the school committee to the contractor, but not sign them. The Petitioner affirmatively represents that she will exercise no discretion in her role as finance director while performing any of her official duties associated with this project. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks guidance regarding what limitations, if any, the Code of Ethics places upon her in carrying out her official duties, given that her spouse is among those expected to bid on the project.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity 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 public employee has an interest which is in substantial conflict with the proper discharge of her duties in the public interest if she has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). A public employee has reason to believe

or expect a conflict of interest exists when it is “reasonably foreseeable,” specifically, when the probability is greater than “conceivably,” but the conflict of interest need not be certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001).

A public employee is further prohibited by the Code of Ethics from using her public position, or confidential information received through her public position, to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or her employer. Section 36-14-5(d). Additionally, a public official is required to recuse herself from participation when a business associate or any person within her family appears or presents evidence or arguments before her public agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002). The Code of Ethics also provides that a public employee shall not participate in any matter as part of her public duties if she has reason to believe or expect that any person within her family is a party to or a participant in such matter or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004).

The Ethics Commission has previously opined that a public employee or public official was not prohibited by the Code of Ethics from performing their official duties in situations where those duties were not expected to directly financially impact their family member. For example, in Advisory Opinion 2010-45, a chief distribution officer for the Rhode Island Department of Environmental Management sought an advisory opinion regarding whether he would have a conflict of interest in the event that his brother, who owned and operated a landscaping business, responded to a bid on a contract to clean and landscape state beaches. After clarifying for the Ethics Commission that he had no input into the request for bids or bid specifications, would have no part in reviewing the bids, and that the contract would be supervised by the regional managers and division chief of RIDEM’s Division of Parks and Recreation who were not within that petitioner’s supervisory chain of command, the Ethics Commission opined that the submission of a bid on the contract by the petitioner’s brother would not create a conflict of interest for the petitioner. See also A.O. 2019-40 (opining that a member of the Smithfield School Building Committee was not prohibited from participating in the review of an RFP for, and the selection of, a construction manager for an elementary school reconfiguration project, and from all other building committee matters concerning the selected construction manager, notwithstanding that his daughter was employed by a company that was expected to bid on the project, because the petitioner’s daughter would not be directly financially impacted by reason of his official activity). Contra A.O. 2019-17 (opining that a member of the Smithfield School Building Committee was prohibited from participating in the school building committee’s selection of a construction manager for the elementary school reconfiguration project, given the reasonable foreseeability of direct financial impact upon his son who, in his capacity as the manager of business development for a company that was expected to bid on the project, would have been eligible for a bonus should his employer have been awarded the contract).

Here, the Petitioner’s responsibilities as she describes them, which include editing dates associated with the RFP to accommodate her supervisor’s work schedule and correcting the school’s name prior to arranging for the RFP to be advertised, appear to have been solely ministerial in nature. Additionally, the Petitioner, who properly eliminated herself as a potential participant in the RFP

process, did not take part in developing the RFP or the scoring system to review the bids. Nor will the Petitioner participate in scoring the bids, awarding the contract, supervising the work performed under the contract, or reviewing and approving payments under the contract. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and a review of prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may carry out her duties as described herein in conformance with the Code of Ethics at this time, notwithstanding that her spouse is among those expected to respond to the RFP for a project at the 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)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

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

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2019-40

A.O. 2019-17

A.O. 2010-45

Keywords:

Conflict of Interest

Family Member

Nepotism

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 27, 2024

Re: Mark Aramli

QUESTION PRESENTED:

The Petitioner, a member of the Newport City Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the City Council has appointing authority, in order to request approval of repairs and renovations he has planned for a home that he recently purchased in Newport.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport City Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the City Council has appointing authority, in order to request approval of repairs and renovations he has planned for a home that he recently purchased in Newport.

The Petitioner was elected to a two-year term as a member of the Newport City Council ("City Council") on November 8, 2022. He identifies among his City Council duties the participation in the appointments of members to various Newport boards and commissions, including the Newport Historic District Commission ("HDC") and the Newport Zoning Board of Review ("Zoning Board"). The Petitioner states that he and his spouse, who currently reside in Newport with their three young children, would like to expand their family with more children, which will require a home with more bedrooms than are in their current residence. He further states that he has been pursuing a larger primary residence in Newport since 2020 by way of a new construction on a parcel of land that he and his spouse purchased in 2020. The Petitioner represents that he still hopes to construct a new home in Newport on the parcel purchased in 2020, but believes that it will be at least seven years before that new home is available.¹

¹ The Petitioner explains that he applied to the HDC to build a new home in March 2021 and that the application was denied in March 2022, at which time he promptly appealed to the Zoning Board. He further explains that the Zoning Board eventually ruled in his favor on the appeal in January 2024. The Petitioner states that, because the Zoning Board's reversal of the HDC denial included a remand to the HDC for further evaluation and there is no longer a quorum of HDC members who originally heard the Petitioner's application, the remand effectively restarts the process before the HDC. He estimates that, given the numerous abutters who have indicated to the Petitioner that they will

The Petitioner states that he and his spouse determined that their best course of action to accommodate their growing family would be to purchase an existing interim home while they pursue construction of a new home on the parcel that they own, which could take years. He Petitioner further states that he and his spouse are currently under contract to purchase an interim home in Newport that is located in a historic district.² He explains that, because the interim home is in a historic district, any alterations to the home's exterior will be subject to review and approval by the HDC.

The Petitioner states that the interim home for which he and his spouse are currently under contract is 135 years old and has its original slate roof. He further states that the roof has substantial water leaks which, per the home inspector's report, necessitates a complete roof replacement which will require HDC approval. The Petitioner notes that the remediation of substantial wood rot and water intrusion on various exterior windows and doors will likewise require HDC approval, as will various window and door relocations that are anticipated. The Petitioner next addresses the garage at the interim residence, explaining that it is not connected to the residence and is undersized for the home and the family's needs. He states that he would like to construct a short connector from the garage to the home and expand the garage, adding that these projects will require approval by both the HDC and the Zoning Board.

The Petitioner represents that if he is not granted a hardship exception that will allow him to appear before the HDC and the Zoning Board to address the current state of disrepair to the interim home, he will suffer severe financial harm and an inability for the residence to meet the needs of his family. He further represents that he intends to sell his current personal residence as soon as he and his family are able to move into the interim home that is currently under contract, once necessary repairs and renovations are complete. The Petitioner states that his current personal residence will not become a rental or investment property and that, if and when the new construction home he has been pursuing since 2020 ever becomes completed, he will sell the interim home in favor of the constructed one. 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 the HDC and the Zoning Board.

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, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). Pursuant to Regulation 1.1.4(A)(1)(a) and (b), a person will represent himself before a state or municipal agency if he or, pursuant to his authorization and/or direction, another person "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] favor." 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 receipt of a hardship exception,

use all legal means available to them to prevent the Petitioner from constructing the new home, it will be at least seven years, if at all, before a new home is available to him and his family on the parcel that they own.

² The Petitioner states that more than 50% of the parcels in Newport are located in historic districts.

the public official must also follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. Section 5(e)(1)(i-iii).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency for which he is the appointing authority. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner justify a finding of hardship to permit him to appear before the HDC and the Zoning Board, whether personally or through an authorized representative.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of 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. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences. For example, in Advisory Opinion 2020-34, a hardship exception was granted to a member of the Bristol Town Council that allowed him to represent himself, either personally or through a representative, before the Bristol Historic District Commission, over which that town council had appointing authority, in order to seek review and approval of proposed renovations to his primary residence which he had purchased two years prior to his election to the town council. However, in order to avoid even the appearance of impropriety, that petitioner was required to recuse from the town council's appointment or reappointment of any persons to the historic district commission until after the election cycle for the petitioner's town council seat following the complete resolution of the historic district commission's review and approval of his renovation plans, including any appeals. Additionally, the petitioner was required, prior to his appearance before the historic district commission relative to his application, to inform its members of the receipt of the advisory opinion issued to him and that, consistent therewith, he would recuse from their reappointments in the manner set forth therein. See also A.O. 2019-64 (granting a hardship exception to the president of the North Smithfield Town Council that permitted him to appear before that town's Zoning Board of Review to seek a dimensional variance for his personal residence, provided that he recused from the town council's appointment or reappointment of any person to the zoning board until after the election cycle for his town council seat and following the complete resolution of his application before the zoning board, including appeals, and that prior to the zoning board's consideration of his variance application, he inform the zoning board members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

Here, the Petitioner is waiting to close on a home in which he and his family intend to reside. The subject property was not acquired prior to the start of the Petitioner's public service; however, the relief sought involves the Petitioner's anticipated future personal residence and not a new commercial venture. Also, the decision to purchase the interim home was the result of the prolonged time it is taking for the Petitioner to be able to construct his desired new home, the

process for which he started prior to his election to the City Council. Further, the purchase of what the Petitioner hopes will be an interim home necessitates a number of repairs and renovations amounting to a significant economic impact. In consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, 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 HDC and the Zoning Board in matters relative to the repairs and renovations associated with the purchase of his interim personal residence. However, in order to avoid even the appearance of impropriety, the Petitioner must recuse from the City Council's discussions and decision-making as relates to the appointment or reappointment of any person to the HDC and/or to the Zoning Board until after the election cycle for his City Council seat following the complete resolution of the HDC and Zoning Board's review and approval of his applications, including any appeals related to them. Notice of recusal shall be filed consistent with the provisions of section 36-14-6. Additionally, the Petitioner shall, prior to his appearance before the HDC and the Zoning Board relative to the repairs and renovations to his interim home, inform the HDC and the Zoning Board of his receipt of the instant advisory opinion and that, consistent herewith, he will recuse from the City Council's discussions and decision-making regarding the appointment of members to both agencies as set forth above.

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. 2020-34

A.O. 2019-64

Keywords:

Hardship Exception