

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-4

Approved: 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”)<sup>1</sup> 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

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<sup>1</sup> 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).

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.”<sup>2</sup> 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

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<sup>2</sup> 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and**

**are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.**

Code Citations:

§ 36-14-2(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

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