

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-6

Approved: 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 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:

§ 36-14-5(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