



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

4th Meeting

DATE: Tuesday, March 12, 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/88553268729>

1. Call to Order.
2. Motion to approve minutes of Open Session held on February 27, 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: 2024 – Senate 2463;
 - e.) Financial disclosure;
 - f.) General office administration.
4. Advisory Opinions.

- a.) Stanley Robert Traverse Jr., the Senior Advisor/Director of Civic Programming and Special Projects for the Rhode Island Secretary of State, requests an advisory opinion regarding whether he could accept a paid position as a second assistant coach to the women's softball team at Rhode Island College pursuant to R.I. Gen. Laws § 36-14-5(o)(5). [Staff Attorney Papa]
 - b.) Nicholas Anderson, the Fire Chief of the Cumberland Fire Department, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command is sufficient to insulate him from conflicts of interest arising out of his brother's anticipated promotion to the rank of deputy chief of the same fire department.
 - c.) Jessica Purcell, a member of the Chariho Regional School Committee, who in her private capacity is a member of the board of directors of Friends of Chariho for the Future, a non-profit organization, requests an advisory opinion regarding the proper management of any conflicts of interest that might arise as a result of her simultaneous service in both positions. [Staff Attorney Radiches]
 - d.) The Honorable Teresa Tanzi, a member of the Rhode Island House of Representatives, requests an advisory opinion regarding whether the Code of Ethics prohibits her from submitting, discussing, and voting on legislation that would establish a regional parity floor whereby all Rhode Island hospitals, physicians, and advanced practice providers would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut, given that her spouse is a practicing physician in Rhode Island who would be directly financially impacted by the passage of that legislation. [Staff Attorney Radiches]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on February 27, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Timothy J. McCormick, Complaint No. 2024-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Erika A. McCormick, Complaint No. 2024-2, 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 March 12, 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 March 7, 2024

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 12, 2024

Re: Stanley Robert Traverse Jr.

QUESTION PRESENTED:

The Petitioner, the Senior Advisor/Director of Civic Programming and Special Projects for the Rhode Island Secretary of State, a state employee position, requests an advisory opinion regarding whether he could accept a paid position as a second assistant coach to the women's softball team at Rhode Island College pursuant to R.I. Gen. Laws § 36-14-5(o)(5).

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Senior Advisor/Director of Civic Programming and Special Projects for the Rhode Island Secretary of State, a state employee position, may accept a paid position as a second assistant coach to the women's softball team at Rhode Island College, given that the unique circumstances described herein justify the application of the exception contained in R.I. Gen. Laws § 36-14-5(o)(5).

The Petitioner is the Senior Advisor/Director of Civic Programming and Special Projects to the Rhode Island Secretary of State within the Rhode Island Department of State ("department"). He has served in this position since January of 2023. The Petitioner represents that the department is responsible for the following: ensuring safe and accurate voting; maintaining a database of records relative to the administration of open government; maintaining a state business registry, including records of new business formations and ongoing business registration activity; administering notary public and justice of the peace commissions; issuing apostilles¹ and one-day marriage solemnizations; preserving and managing state archives; administering the Address Confidentiality Program,² and civic education and engagement.

The Petitioner states that his duties include the following: creating and maintaining a robust civics education division within the department; assisting with the creation of many of the initiatives envisioned by the Secretary of State, such as the Annual Civics/History Teacher of the Year Award

¹ Apostilles are used to legalize and authenticate documents intended for use outside of the United States. See <https://www.sos.ri.gov/Divisions/NotaryPublic/NotaryJPApostille> (last visited Feb. 28, 2024).

² The Address Confidentiality program provides a substitute address service and a protected records service to victims of domestic violence, stalking, sexual assault, and trafficking and/or abuse in order to protect them from being found by their abusive perpetrator. See <https://www.sos.ri.gov/AddressConfidentialityProgram> (last visited Feb. 28, 2024).

for high school teachers and the statewide Student Civic Liaison program;³ and the reconstituting the former Project Insite, which the Petitioner describes as a three-day immersive government experience for student liaisons. The Petitioner further states that he is involved in the process of building a state archive building. The Petitioner represents that his duties are oriented toward the high schools in the state rather than the universities. He further represents that, as Senior Advisor/Director of Civic Programming and Special Projects, he is considered a senior staff member, and oversees the Director and the Deputy Director of Civic Education and collaborates closely with the Director of Community Outreach and Engagement. The Petitioner adds that he reports directly to the Deputy Secretary of State, but has free access to the Secretary of State and is included in senior staff member meetings, as needed. The Petitioner represents that his normal working hours are 8:30 a.m. to 4:30 p.m., Monday through Friday.

The Petitioner states that, prior to his current employment with the department, he worked as a teacher in the East Providence School Department for 33 years. He adds that he also coached many different boys' and girls' teams in East Providence for more than 30 years, with his longest tenure being his role as head coach of the East Providence High School Softball Team from 1999 to 2019. The Petitioner states that he was also the founder and president of the RI Fire N' Ice Fast Pitch Travel Softball Organization, a non-profit organization for which he also coached from 2010 to 2023. He represents that he stepped down from his position as a president and coach in 2023, at which time he became one of its board members to help the new president with the transition. The Petitioner explains that he started Fire N' Ice purely for his children, who are now adults, but a few years into it he expanded the organization. The Petitioner adds that he has been coaching girls' softball for more than 25 years.

The Petitioner states that the head coach of the women's softball team at Rhode Island College ("RIC"), a public state college, recently offered him a position as a part-time second assistant coach.⁴ He clarifies that that he did not use his position with the department to secure the assistant coaching position, which he explains is not related to his public duties with the department. The Petitioner represents that the assistant coaching position carries with it a stipend,⁵ and that the softball season runs from the end of January through May, followed by four to six weeks in the fall. The Petitioner states that his responsibilities would include driving a van with the players to and from games and attending the team's practices and games. He explains that that the team has daily practices during the week from 4 p.m. to 6 p.m. and games and/or practices on the weekends. The Petitioner states that, if allowed to accept the assistant coaching position, he will be attending

³ "The Student Civic Liaison Program is a new initiative of Secretary [Gregg] Amore and the RI Department of State, designed to create connections between local students and their government. The program will take place over the 2023-2024 academic year, with students meeting monthly to hear from community leaders, elected officials, and education and non-profit professionals. * * * The inaugural cohort includes 89 high school students representing 42 Rhode Island high schools." <https://www.ri.gov/press/view/46432> (last visited March 1, 2024).

⁴ The Petitioner explains that the second assistant coach did not return to coach this season, and the head coach was initially looking to replace him with a pitching coach. The Petitioner adds that, because the head coach was unsuccessful in finding a pitching coach, she reached out to the Petitioner and offered him the position of an assistant coach.

⁵ The Petitioner states that he is not yet aware of how the employment relationship would be structured and/or whether he would be considered an independent contractor. This information is not pertinent to the instant analysis.

such weekday practice after his normal working hours with the department. He further states that the department has no authority or control over RIC and the interaction between the two public bodies is limited to voting registration and civic engagement. The Petitioner adds that RIC has no interest in any decision that he makes through his employment with the department and reiterates that his focus and outreach is primarily oriented toward the high schools in the state.⁶ Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for an exception to R.I. Gen. Laws § 36-14-5(o) (“Section 5(o)”) to allow him to accept the assistant coaching position.

Under the Code of Ethics, a person holding a senior policy-making, discretionary, or confidential position on the staff of any state elected official or the general assembly is prohibited from seeking or accepting any other employment by any state agency while serving in such position and for a one-year period thereafter. Section 5(o)(1). Commission Regulation 520-RICR-00-00-1.5.6 entitled Revolving Door, “Employment” Defined (36-14-5017) specifies that, for the purposes of Section 5(o), “employment” shall also include services as an independent contractor or consultant to the state or any state agency. This prohibition contains some express exceptions, such as situations in which the employee has at least five years of uninterrupted state service, is moving to the senior staff of another elected official, or is seeking election to a constitutional office. See Section 5(o)(2), (3) & (4). Additionally, and most relevant to the instant matter, this statute expressly authorizes the Ethics Commission to allow an exception to the revolving door prohibition where such exemption would not create an appearance of impropriety. Section 5(o)(5).

Section 5(o) applies to limited group of state employees who hold a high-level position on the staff of any state elected official or the general assembly. See, e.g., A.O. 2017-20 (applying section 5(o) to the Senate President’s Chief of Staff); A.O. 2012-20 (applying section 5(o) to the Director of Performance Management in the Office of the Governor); A.O. 2010-49 (applying section 5(o) to the Deputy Executive Counsel in the Office of the Governor); A.O. 2009-16 (applying section 5(o) to the Governor’s Chief of Staff). Here, the Petitioner’s current position as a Senior Advisor/Director of Civic Programming and Special Projects to the Secretary of State subjects him to the prohibition of section 5(o)(1). He is a senior staff member on the staff of the Secretary of State who participates in senior staff member meetings, has access to the Secretary of State, and who oversees the Director and the Deputy Director of Civic Education. The Petitioner also wrote his request anticipating that section 5(o)’s prohibitions apply to him and he does not dispute such assumption. Therefore, the Ethics Commission will determine whether the exception in section 5(o)(5) is appropriate under the circumstances.

The exception to section 5(o)(5) only applies in circumstances in which the Ethics Commission determines that a petitioner’s secondary state employment would not create an appearance of impropriety. The Ethics Commission has in the past considered and applied the exception contained in section 5(o)(5) on one previous occasion. In Advisory Opinion 2012-20, the Ethics Commission allowed the Director of Performance Management in the Office of the Governor to accept a position as the Director of Performance Management within the newly statutorily created Office of Management and Budget (“OMB”) in the Department of Administration, a position that

⁶ The Petitioner states that the Secretary of State has in the past been asked to speak or present a class before students attending the University of Rhode Island and that there are five Providence College students who intern for the department’s Community Outreach Department over which the Petitioner has no jurisdiction.

was nearly identical to his then current position. There, the Ethics Commission noted that the petitioner had played an instrumental role in the Governor's performance management initiative since its inception and, therefore, was the natural and expected choice to continue leading that initiative in the newly created OMB. Thus, the Ethics Commission found no appearance of impropriety under those unique circumstances, and authorized the exception contained in section 5(o)(5).

Here, the Petitioner represents that he had been coaching softball for 30 years until 2023. He states that he was not looking for the assistant coaching position but, rather, it was offered to him by the head coach. The Petitioner represents that he does not exercise jurisdiction over RIC in his role with the department, nor does RIC have interest in decisions that the Petitioner is authorized to make in that role. Given 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 Petitioner's acceptance of the assistant coaching position for the women's softball team at Rhode College would carry with it no appearance of impropriety, notwithstanding his position with the Rhode Island Secretary of State. Accordingly, the Petitioner qualifies for an exception to the revolving door prohibition of section 36-14-5(o) and may accept the position.

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(o)

520-RICR-00-00-1.5.6 Revolving Door, "Employment" Defined (36-14-5017)

Related Advisory Opinions:

A.O. 2017-20

A.O. 2012-20

A.O. 2010-49

A.O. 2009-16

Keywords:

Public Employment

Revolving Door

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 12, 2024

Re: Nicholas Anderson

QUESTION PRESENTED:

The Petitioner, the Fire Chief of the Cumberland Fire Department, a quasi-public appointed position, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command is sufficient to insulate him from conflicts of interest arising out of his brother's anticipated promotion to the rank of deputy chief of the same fire department.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the proposed alternate supervisory chain of command is sufficient to insulate the Petitioner, the Fire Chief of the Cumberland Fire Department, a quasi-public appointed position, from conflicts of interest arising out of his brother's anticipated promotion to the rank of deputy chief of the same fire department.

The Petitioner is the Chief of the Cumberland Fire Department. He has served in that position since his appointment by the Cumberland Board of Fire Commissioners ("board") in July of 2021. The Petitioner clarifies that he has been in the Cumberland fire service since 1997 and eventually achieved the rank of fire chief. The Petitioner represents that, as fire chief, he is the administrative head of the fire department. He further represents that his brother is also employed by the same fire department and serves in the rank of captain ("Captain Anderson"). The Petitioner states that Captain Anderson has been in the Cumberland fire service since 1999 and is a member of the Cumberland Professional Firefighters Local 2722 ("union").

The Petitioner represents that the fire department is operated by the Cumberland Fire District, which is managed by the board. He explains that the fire department operates out of four stations and employs two deputy chiefs, four captains, twelve lieutenants, and thirty-two firefighters. The Petitioner states that one of the deputy chiefs retired in the beginning of March and the Collective Bargaining Agreement ("CBA") between the union and the fire district requires that a new deputy chief be selected within two weeks of the vacancy by promoting the next eligible person who is ranked number one on a promotional list maintained by Deputy Chief Jeffrey McCabe.¹ The Petitioner further states that his brother has been on the promotional list for four years and is the next eligible person for promotion to the rank of deputy chief. The Petitioner represents that the promotional list is continuously maintained without his input. Under the CBA, the ranking of persons on the list is based on the results of a written multiple-choice examination and a

¹ Under the CBA, promotional lists are maintained for all ranks and are updated every two years.

combination of points awarded for seniority,² education, and National Fire Protection Association certification. The Petitioner states that the fire chief does not award points and does not participate in the administration or the scoring of the examination. The Petitioner represents that the procedure for the administration of the test is established by the CBA. He further represents that the test is created by an outside company, and administered and scored by representatives from the union and the fire district, which usually include the fire district's administrative assistant and Deputy Chief McCabe.

The Petitioner states that the duties of the deputy chiefs are established by the CBA, not by the fire chief, and that those duties are assigned based on seniority. The Petitioner explains that Deputy Chief McCabe is responsible for the operations of the fire department, whereas, when promoted to deputy chief, Captain Anderson will head the Emergency Medical Services, become the training coordinator for the fire department, and work with the fire district's fire inspector on fire prevention and fire inspections. The Petitioner states that under the CBA the work schedules for the deputy chiefs are comprised of four ten-hour shifts with one deputy chief working Monday through Thursday and the other, Tuesday through Friday. The Petitioner represents that there is no minimum manpower requirement for the deputy chiefs and the Petitioner does not approve their requests for time off. The Petitioner explains that the deputy chiefs can take days off by self-reporting those days through a scheduling program monitored by the fire district's business manager. The Petitioner states that the only circumstances under which the fire chief could suspend the time off of the deputy chiefs and require them to work would be under a state of emergency.

The Petitioner represents that he does not participate in collective bargaining negotiations or approval of the CBA between the union and the fire district and that his only involvement is to provide information relative to the fire department as needed. The Petitioner further represents that he does not participate in the approval of the fire department's budget, as the budget is approved by the board. The Petitioner states that the budget is created by the fire district's finance director, who is not under the Petitioner's supervision, and by the Finance Subcommittee, which is comprised by members of the board. He further states that the extent of his participation in the creation of the budget is to provide information to the finance director regarding the financial needs of the fire department, such as expenses related to gas, oil, repairs, maintenance, improvements, and the like.

The Petitioner represents that, under the standard chain of command, the firefighters report to the lieutenants, who report to the captains, who report to the deputy chiefs, who report to the chief, who reports to the fire commissioners. The Petitioner further represents that in order to ensure compliance with state ethics requirements, the fire district has instituted an Anti-Nepotism Policy. The Petitioner states that, pursuant to that policy, the board has developed an alternate supervisory chain of command³ to address and avoid any potential conflicts of interest that may arise from the promotion of Captain Anderson to the rank of deputy chief. The proposed alternate supervisory chain of command submitted to the Ethics Commission by the Petitioner is as follows:

² Pursuant to the CBA, seniority points consist of one point for each completed year of full-time service with the fire department or one of the former fire districts that were merged into it.

³ The proposed alternate supervisory chain of command is, in fact, entitled "Management Plan."

Chief Anderson will have no supervisory responsibility with regard to Deputy Chief Anderson, and all responsibility for the direct and indirect supervision of Deputy Chief Anderson shall be handled by the Chairman of the Board of Fire Commissioners. This expressly includes handling workplace complaints and/or grievances brought against or by the Deputy Chief Anderson; commencing a disciplinary investigation into Deputy Chief Anderson; commencing a disciplinary investigation into a member at the request of Deputy Chief Anderson; administering discipline to Deputy Chief Anderson; and the conducting of an [sic] employment evaluations. Any and all complaints about Deputy Chief Anderson shall be referred directly to the Chairman of the Board of Fire Commissioners without following the normal chain of command. Should any such complaint come to the attention of Chief Anderson, he is required to forward the complaint to the Chairman of the Board of Fire Commissioners without delay.

The proposed alternate supervisory chain of command further acknowledges that, because Deputy Chief Anderson will continue to be in the collective bargaining unit, his compensation, hours, benefits, and job duties are prescribed by the CBA between the fire district and the union. Therefore, the Petitioner will have no discretion with regard to these matters. Also, the proposed alternate supervisory chain of command requires that, if any issues arise that are not within the scope of the CBA, and involve a potential or perceived financial advantage or disadvantage to Deputy Chief Anderson, the Petitioner shall recuse from any decision-making, and refer the matter to the chairperson of the board.

Further, the proposed alternate supervisory chain of command specifies that the Petitioner will have no discretion over the increase, decrease, or alteration of his brother's pay, benefits, appointments, classifications, promotion, or transfer, all of which will be governed by the CBA. The proposed alternate supervisory chain of command also requires that the Petitioner not be involved in contract negotiations by and between the fire district and the union as it pertains to wages, hours, and other terms and conditions of employment.

Finally, the proposed alternate supervisory chain of command notes that the fire chief's responsibilities relative to the fire department's budget are limited to the preparation of a proposed budget and administration of the budget, once approved. The final decision-making about budgetary matters, including the final approval on all spending, rests with the board. The proposed alternate supervisory chain of command prohibits the Petitioner from participating in budgeting and/or spending to the extent such decision-making may in any way advantage or disadvantage his brother.

The Code of Ethics provides that a public official 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 official 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 official 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).

Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) (“Regulation 1.3.1”) contains specific provisions aimed at curbing nepotism. Pursuant to Regulation 1.3.1(B)(1), a public official may not participate in any matter as part of his public duties if “any person within his [] family” is a participant or party, or if there is reason to believe that a family member will be financially impacted or will obtain an employment advantage. Additionally, Regulation 1.3.1(B)(2) prohibits a public official 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 “brother.” Regulation 1.3.1(A)(2).

Additionally, a public official is prohibited from participating in “discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family” unless he participates in such budgetary line item in accordance with particular instructions and advice received from the Ethics Commission in a written advisory opinion. Regulation 1.3.1(B)(3)(a) and (b). Finally, the Code of Ethics prohibits a public official from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation, or benefits of any person within his family or a household member. Regulation 1.3.1(B)(4)(a).

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 and the approval of proposed alternate supervisory chains of command. In Advisory Opinion 2010-40, for example, the Ethics Commission opined 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 in light of an established alternate supervisory chain of command whereby the Chief was removed from the supervisory chain of command in matters involving his son, and where 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. Also, in Advisory Opinion 2011-19, the Ethics Commission approved an alternate supervisory chain of command for the Director of the Department of Labor and Training (“DLT”), who sought guidance regarding the appropriate measures to be taken in order to avoid conflicts of interest, given that his first-cousin’s husband was a long-time DLT employee, then serving as an Assistant Director of its Division of Workers’ Compensation. In that matter, Assistant Directors reported to the Deputy Director who, in turn, reported to the petitioner. The fact that the petitioner’s cousin-in-law had been employed by the DLT for a number of years prior to the petitioner’s appointment as Director compelled the approval by the Ethics Commission of a reasonable and achievable alternate supervisory chain of command wherein the petitioner was required to recuse from any decision-making relative to the employment of his family member. Upon recusal by the petitioner, such matters were to be handled by appropriate personnel administrators within the Department of Administration who were not under the petitioner’s

authority or supervision. See also A.O. 2023-13 (approving an alternate supervisory chain of command whereby the newly appointed Chief of the Johnston Police Department was required to recuse from any matters involving his spouse, who was also employed by the Johnston Police Department, and such matters were to be ultimately reviewed by the Mayor’s Chief of Staff, whose responsibilities already included the supervision of all department heads); A.O. 2021-5 (opining that the established alternate supervisory chain of command was sufficient to insulate the Chief of the Lime Rock Fire Department from conflicts of interest arising from his son-in-law’s employment as a firefighter in the same department, provided the particular lieutenant or captain in charge would report any personnel matters involving the chief’s son-in-law directly to the Chairperson of the Board of Fire Commissioners for review and decision, rather than to the chief).

Here, the duties, responsibilities, work schedule, compensation, time off, and promotional requirements of the deputy chiefs are established by the CBA, in the negotiations of which the Petitioner does not participate. Also, the chairperson of the board has approved an alternate supervisory chain of command whereby the Petitioner will be removed from any decision-making relative to his brother and replaced by the chairperson. Finally, the Petitioner and his brother have been employed by the fire department since 1997 and 1999, respectively. Accordingly, based on the facts as represented, a review of the applicable provisions of the Code of Ethics, and consistent with advisory opinions previously issued, it is the opinion of the Ethics Commission that the proposed alternate supervisory chain of command outlined by the Petitioner is, under these unique circumstances, reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest. As we have noted in prior advisory opinions, during discrete emergency situations, such as fighting fires where incident-specific supervision of his brother may be unavoidable, the Ethics Commission finds that a violation of the Code of Ethics will not exist. The Petitioner is advised, however, to remain vigilant in identifying and avoiding additional conflicts of interest that may arise in non-emergency situations and which are not presently covered by the proposed alternate supervisory chain of command. The Petitioner is encouraged to either recuse from participation or seek further guidance from the Ethics Commission in such situations. Recusal shall be 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. 2023-13

A.O. 2021-5
A.O. 2010-40
A.O. 2011-19

Keywords:
Nepotism
Recusal

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 12, 2024

Re: Jessica Purcell

QUESTION PRESENTED:

The Petitioner, a member of the Chariho Regional School Committee, a municipal elected position, who in her private capacity is a member of the board of directors of Friends of Chariho for the Future, a non-profit organization, requests an advisory opinion regarding the proper management of any conflicts of interest that might arise as a result of her simultaneous service in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Chariho Regional School Committee, a municipal elected position, who in her private capacity is a member of the board of directors of Friends of Chariho for the Future, a non-profit organization, should follow the Ethics Commission's guidelines as outlined below relative to the proper management of any conflicts of interest that might arise as a result of her simultaneous service in both positions.

In July of 2023, the Petitioner was appointed by the Richmond Town Council to serve as a member of the Chariho Regional School Committee. The appointment was the result of a vacancy created by the departure of a previously elected school committee member. The Petitioner states that, in her capacity as a school committee member, she is obligated to operate the public schools in Charlestown, Richmond, and Hopkinton in accordance with the fundamental principles and standards of school management. She adds that she receives no stipend for her service as a member of the school committee.

The Petitioner represents that, in her private capacity, she serves as one of four directors on the board of Friends of Chariho for the Future, a non-profit organization comprised of community members and parents from Charlestown, Richmond, and Hopkinton who work together for the greater good of students served by the Chariho Regional School District. She further represents that she joined that organization prior to her appointment to the school committee. The Petitioner identifies ballot advocacy in relation to the annual budget process as one of the organization's main tasks. She states that, in addition to posting on social media, the organization engages in email messaging, hosting public events, and expending money for yard signs and mailers. The Petitioner further states this year the organization expects to advocate for the passage of the Chariho school budget referendum and a bond referendum to fund construction of new elementary schools and capital improvements at Chariho's main campus on which the high school and

technical center are located. She adds that Friends of Chariho relies upon monetary donations to operate, and that the organization does not solicit or receive funding from the school committee. The Petitioner states that she has not solicited monetary donations to Friends of Chariho from her fellow school committee members or the superintendent, and that she does not intend to do so.

The Petitioner represents that both the budget and the bond are topics that she actively discusses in her capacity as a school committee member. She further represents that she has personally advocated for passage of both the budget and the construction bond and anticipates that she will continue to do so as the dates for the budget and bond referenda approach. The Petitioner states that she does not anticipate that any of the other members of the board of directors of Friends of Chariho, or any other representative of that organization, will appear or present evidence before the school committee on behalf of the organization relative to the budget or bond matters, other than possibly during a period of public comment.

It is in the context of all of the foregoing representations that the Petitioner seeks guidance from the Ethics Commission regarding the proper management of any conflicts of interest that might arise as a result of her simultaneous service as a member of the school committee and as a member of the Friends of Chariho Board of Directors.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that she, 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). The Code of Ethics also prohibits a public official from using her public office, or confidential information received through her public office, to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d).

The Code of Ethics further prohibits a public official from representing herself or any other person before a state or municipal agency of which she is a member or by which she is employed. Sections 36-14-5(e)(1) & (2). These prohibitions apply while the public official is in office and for one year thereafter. Section 36-14-5(e)(4). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”), a public official must recuse from participation in any matter in which her business associate appears or presents evidence or arguments or authorizes another person, on their behalf, to appear or to present evidence or arguments before the public official’s state or municipal agency. A business associate is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3). A person is defined as “an individual or a business entity.” Section 36-14-2(7). Regulation 1.2.1 (B)(2) provides that a person subject to the Code of Ethics is not required to recuse when her business associate is before the public official’s state or municipal agency during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the business associate is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

1. Business Associate Relationship and Prohibited Activities

The Ethics Commission has previously opined that a person is a business associate of the organization for which they serve as either an officer or member of the board of directors, or in some other leadership position that permits them to direct and affect the financial objectives of the organization, and has advised public officials to recuse from participation in matters before their public agencies that involved or directly financially impacted their business associates. For example, in Advisory Opinion 2022-1, a member of the Lincoln School Committee, who in his private capacity was the vice president of the Lincoln Youth Basketball Association, a non-profit organization, was required to recuse from participation in school committee discussions and decision-making on matters in which a basketball association representative appeared to represent the organization's interests, and on matters that financially impacted the basketball association. That petitioner was also prohibited from using his public office, or confidential information received through his public office, to obtain financial gain for the basketball association, and from representing the basketball association's interests before the school committee. See also A.O. 2021-6 (opining that a member of the North Smithfield Planning Board was a business associate of the North Smithfield Heritage Association, a private non-profit organization of which he served as a member of the board of directors and as its president and, therefore, was required to recuse from participating in planning board matters when the heritage association appeared or presented evidence or arguments).

Here, the Petitioner is a member of the Friends of Chariho Board of Directors and, as such, is that organization's business associate. She is also a business associate of each of the other members of the board of directors of the organization. In prior advisory opinions, the Ethics Commission has determined that those persons who are fellow officers in an organization, including non-profit organizations, are business associates. Specifically, the Ethics Commission has opined that, while an organization may pursue various objectives that are not necessarily financial, the existence of a financial component to the running of the organization is sufficient to qualify an official and his fellow officers as business associates. See, e.g., A.O. 2018-30 (opining that a member of the Coventry Town Council was prohibited by the Code of Ethics from participating in the town council's discussions and decision-making relative to the reappointment of the Coventry Municipal Court Judge, given that both were members of the board of directors of Gabriel's Trumpet Christian Book Store, Inc., a non-profit corporation, and the existence of a financial component in the bookstore's operations was sufficient to qualify the fellow board members as business associates). Therefore, the instant Petitioner may be required to recuse from participation in any school committee matters if her business associates appear or present evidence or arguments, or authorize another person to appear or present evidence or arguments on their behalf, before the school committee, even in matters unrelated to Friends of Chariho or its mission. Notices of recusal shall be filed with the Ethics Commission consistent with the provisions of section 36-14-6. The Petitioner, however, may not be required to recuse if her business associates are before the school committee during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that her business associates are not otherwise parties or participants, and have no financial interest, in the matter under discussion. Additionally, the Petitioner is prohibited from using her public office, or confidential information

received through her public office, to obtain financial gain for Friends of Chariho, and/or the other members of its board of directors, and from representing that organization's interests before the school committee.

2. Fundraising Activities

Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) ("Regulation 1.4.4") generally prohibits a person subject to the Code of Ethics from engaging in a financial transaction with a subordinate or person or business for which, in the official's public duties and responsibilities, she exercises supervisory responsibilities. Regulation 1.4.4(A). However, this prohibition does not apply where such a transaction is initiated by the subordinate or person or business. Regulation 1.4.4(A)(2). The term "subordinate" is defined as "an employee, contractor, consultant, or appointed official of the official's or employee's agency." Regulation 1.4.4(C).

In the instant matter, the Petitioner represents that Friends of Chariho solicits donations that are then used to offset costs incurred by that organization in its mission of ballot-advocacy. The Petitioner states that she will not solicit donations from her fellow school committee members or the superintendent. However, without knowing the identity of every business or individual to be solicited by Friends of Chariho and/or the Petitioner, or the particular interest each business or individual may have before the school committee, the Ethics Commission is unable to provide specific guidance concerning the solicitation of individual donations.

The Ethics Commission has previously distinguished between a private organization's solicitation of contributions through a procedure that avoids the direct involvement of a petitioner/public official or employee, versus a petitioner/public official or employee's personal solicitation of contributions to benefit a private entity for which they serve as an officer. For example, in Advisory Opinion 2022-1, which was issued to a Lincoln School Committee member who in his private capacity served as the vice president of the Lincoln Youth Basketball Association, the Ethics Commission opined that the petitioner was prohibited from personally soliciting donations for that organization from his subordinates as defined in Regulation 1.4.4(C). Additionally, that petitioner's name could not appear on any fundraising materials or correspondence sent to his subordinates soliciting donations or any other contributions to the youth basketball association. Nor could that petitioner use his public position to promote the basketball association or identify his public position as part of the advertisement of his work for it. Similarly, in Advisory Opinion 2020-16, the Ethics Commission opined that a member of the North Providence Town Council, who in his private capacity was the president of a private non-profit organization in North Providence, was prohibited from personally soliciting donations from subordinates as defined in Regulation 1.4.4(C). The Ethics Commission instructed that the petitioner's name was not to appear on any fundraising materials, newsletters or correspondence sent to his subordinates which solicited donations or any other financial contributions. That petitioner was further prohibited from using his public position to promote the work of his business associate, the organization, and from identifying his public position as part of the advertisement of his work on behalf of the organization.

Here, consistent with the above-cited advisory opinions, it is the opinion of the Ethics Commission that the Petitioner is prohibited from personally soliciting donations from her subordinates as defined in Regulation 1.4.4(C).¹ Accordingly, the Petitioner's name must not appear on any fundraising materials or correspondence sent to her subordinates soliciting monetary donations or any other contributions to Friends of Chariho. The Petitioner is further prohibited from using her public position on the school committee to promote Friends of Chariho, which includes identifying her public position as part of the advertisement of her work on behalf of Friends of Chariho. Finally, the Petitioner shall conduct her Friends of Chariho fundraising activities on her own time and without the use of public resources² or confidential information obtained as part of her public position.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is advised to remain vigilant about identifying potential conflicts of interest and to either recuse or seek further guidance from the Ethics Commission in the future as warranted.

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(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-13-5(e)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2022-1

A.O. 2021-6

A.O. 2020-16

A.O. 2018-30

¹ The Ethics Commission acknowledges and commends the Petitioner's willingness to refrain from soliciting donations from her fellow school committee members. However, the Petitioner's fellow school committee members are not considered her subordinates as the term is defined by the Code of Ethics. Thus, she is not prohibited from solicitating them, as long as all of the other requirements described in this advisory opinion are followed.

² Public resources may include, but are not limited to, use of the Petitioner's school committee email address, stationary, and office supplies.

Keywords:

Business Associate

Solicitation

Transactions with Subordinates

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RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 12, 2024

Re: The Honorable Teresa Tanzi

QUESTION PRESENTED:

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from submitting, discussing, and voting on legislation that would establish a regional parity floor whereby all Rhode Island hospitals, physicians, and advanced practice providers would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut, given that her spouse is a practicing physician in Rhode Island who would be directly financially impacted by the passage of that legislation.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Rhode Island House of Representatives, a state elected position, is not prohibited by the Code of Ethics from submitting, discussing, and voting on legislation that would establish a regional parity floor whereby all Rhode Island hospitals, physicians, and advanced practice providers would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut, notwithstanding that her spouse is a practicing physician in Rhode Island who would be directly financially impacted by the passage of that legislation, given that the circumstances herein justify the application of the class exception as set forth in Rhode Island General Laws § 36-14-7(b).

The Petitioner is a member of the Rhode Island House of Representatives, representing District 34 in Narragansett and South Kingstown, and has served continuously in that capacity since her initial election in November 2010. She serves on the House Finance Committee; the State Government and Elections Committee; the Internet and Technology Committee; and chairs the Subcommittee on Human Services which oversees the budget for all human service related budget items and departments. The Petitioner states that she has been asked by the hospital in her district to submit legislation that, if passed, would address the disparity between payments made by insurance companies to Rhode Island hospitals, physicians, and advanced practice providers and the payments made to their regional counterparts in Massachusetts and Connecticut.¹ A copy of the proposed legislation was submitted by the Petitioner with her request for this advisory opinion.

¹ The Petitioner explains that she has submitted legislation for several years on behalf of behavioral health providers and, due to her knowledge of the issue, was regarded by the hospital as someone with particular expertise on the issue.

The Petitioner represents that her spouse is a podiatrist at Ortho Rhode Island and the medical director of the wound care center at South County Hospital. She further represents that, in addition to his compensation by the hospital for his work as the director of wound care there, her spouse also bills for that work as an individual physician. The Petitioner states that, of the three categories of hospitals, physicians, and advanced practice providers who would be impacted by the introduction and passage of the subject legislation, her spouse would fall only into the category of physicians, of which there are 7,532 in Rhode Island.² She further states that, if passed, the legislation would establish a regional parity floor, to be achieved over a three-year period, whereby all Rhode Island hospitals, physicians, and advanced practice providers ultimately would be paid materially equivalent rates to the average payment rates in Massachusetts and Connecticut. The Petitioner explains that this would be accomplished through the adjustment of billing codes used to invoice for provider services, to which all Rhode Island hospitals, physicians, and advanced practice providers would be subject and by which all members of each of those three groups would be impacted in the same way. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from submitting, discussing, and voting on the subject legislation.

A person subject to the Code of Ethics may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official 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). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or a business by which she is employed or which she represents.

Section 36-14-7(b) of the Code of Ethics, often referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with the proper discharge of her official duties if any benefit or detriment accrues to any person within her family “as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.”

When determining whether particular circumstances justify the application of the class exception, the Ethics Commission considers the totality of those circumstances. Among the important factors to be considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

² The Petitioner provided this number to Ethics Commission staff following her visit to the Rhode Island Department of Health website. She was also able to ascertain at that time that there her spouse is currently one of 102 podiatrists in Rhode Island.

The Ethics Commission has previously concluded that the class exception was justified in a number of matters involving proposed legislation that would impact members of the medical field in the same way. For example, in Advisory Opinion 2023-26, the Ethics Commission concluded that a member of the Rhode Island House of Representatives could participate in General Assembly discussions and voting on proposed legislation that would limit the license renewal fee for Rhode Island pharmacists, notwithstanding that the petitioner was a pharmacist who would be impacted by the legislation. See also A.O. 2004-27 (concluding that a state senator, who in his private capacity was a pharmacist and pharmacy owner, could participate and vote on legislation that would not impact him or his business to any greater extent than any other pharmacist or pharmacy); A.O. 98-40 (concluding that a legislator serving in the Rhode Island House of Representatives, whose spouse was a dentist, could participate in proposed legislation prohibiting any non-licensed person from directing the practice of dentistry that would impact all dentists and dental hygienists equally and concluding that the contemplated legislative activity, which involved broad-based issues of public policy, was precisely the type of legislative activity contemplated by the section 36-14-7(b) exception).

Here, there are 7,532 members of the class of Rhode Island licensed physicians who would be impacted by the passage of the legislation. If passed, the legislation would establish a regional parity floor whereby three classes, namely all Rhode Island hospitals, physicians, and advanced practice providers, would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut. Further, everyone in each of the three classes would be subject to the same adjustment in billing codes used to bill for their services and, therefore, impacted in the same way. Therefore, the Petitioner's spouse would be impacted by the legislation to no greater extent than any other individual member of the class 7,532 physicians to which he belongs. It is therefore the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception set forth in section 36-14-7(b) of the Code of Ethics and that the Petitioner may submit, discuss, and vote on the proposed legislation. However, in the event that her participation at any point veers into amending the proposed legislation in ways that would impact her spouse individually, or as a member of a much smaller class or subclass of physicians, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. Recusals are to be filed consistent with the provisions of section 36-14-6.

This Draft Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2023-26

A.O. 2004-27

A.O. 98-40

Keywords:

Class Exception

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