

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-10

Approved: 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.<sup>1</sup> 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

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

combination of points awarded for seniority,<sup>2</sup> 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 command<sup>3</sup> 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:

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<sup>2</sup> 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.

<sup>3</sup> 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 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. 2023-13

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

Keywords:

Nepotism  
Recusal