

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-11

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

Code Citations:

§ 36-14-2(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