



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

6th Meeting

DATE: Tuesday, April 9, 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/83126313468>

1. Call to Order.
2. Motion to approve minutes of Open Session held on March 26, 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.) Financial disclosure;
 - e.) General office administration.
4. Advisory Opinions:
 - a.) Brianna Dixon, a social caseworker with the Rhode Island Department of Children, Youth, and Families, requests an advisory opinion regarding whether

she is prohibited by the Code of Ethics from accepting secondary employment as a clinician with The Inner You Counseling Center, a private entity, where she would provide therapeutic services to adolescents. [Lynne Radiches]

- b.) Neal Murphy, a member of the New Shoreham Town Council, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in Town Council discussions and voting regarding a proposed ordinance regulating residential short-term rental properties, given that his mother is a short-term rental property owner who would be subject to the ordinance if it passes. [Lynne Radiches]
 - c.) The Honorable Katherine S. Kazarian, a legislator serving in the Rhode Island House of Representatives, requests an advisory opinion regarding whether she may participate in discussion and decision-making relative to proposed legislation that, if passed, will prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, given that her mother owns and resides in a home along this section of 114A. [Staff Attorney Papa]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on March 26, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Michael Colasante, Complaint No. 2023-10, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Michael Colasante, Complaint No. 2023-12, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) In re: Joseph A. DiMartino, Complaint No. 2024-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - e.) In re: Robert Mancini, Complaint No. 2024-4, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - f.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on April 9, 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 April 4, 2023

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 9, 2024

Re: Brianna Dixon

QUESTION PRESENTED:

The Petitioner, a social caseworker with the Rhode Island Department of Children, Youth, and Families, a state employee position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from accepting secondary employment as a clinician with The Inner You Counseling Center, a private entity, where she would provide therapeutic services to adolescents.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a social caseworker with the Rhode Island Department of Children, Youth, and Families, a state employee position, is not prohibited by the Code of Ethics from accepting secondary employment as a clinician with The Inner You Counseling Center, a private entity, where she would provide therapeutic services to adolescents, provided that she follow the guidelines outlined below relative to the proper management of any conflicts of interest that might arise as result of her secondary employment.

The Petitioner has been employed as a social caseworker with the Rhode Island Department of Children, Youth, and Families (DCYF) since December 28, 2023. She identifies her work hours as 8:30 a.m. until 4:00 p.m., Monday through Friday. The Petitioner describes among her duties the performance of casework within DCYF's Division of Family Services with the goal of family preservation and/or reintegration. She states that efforts to preserve families often include providing referrals for intensive services for children and families facing physical, behavioral, and/or emotional challenges. The Petitioner further states that these services are sometimes provided by DCYF's Support and Response Unit, and sometimes provided by DCYF vendors, and can occur in a client's own home, in congregate care, or in foster care placement. The Petitioner represents that her duties include transporting clients to services, visits, and school. She adds that she could be tasked with helping a child to achieve permanency with a forever family through adoption.

The Petitioner states that she is currently a licensed clinical social worker (LCSW), which is the first of two levels of licensing for social workers practicing in Rhode Island. She further states that she is pursuing her second level of licensing as a licensed independent clinical social worker (LICSW). The Petitioner explains that, in order to become an LICSW, she must first complete 3,000 hours of clinical work under the supervision of an LICSW in Rhode Island. She further

explains that she has completed close to the required 3,000 hours and that she must finish the rest of them within approximately the next 24 months. The Petitioner states that she has been offered a fee for service position as a clinician for adolescents with The Inner You Counseling Center, a private entity that offers mental health treatment to those in need. She further states that accepting this position would allow her to complete the clinical work hours necessary to become an LISCW in Rhode Island. The Petitioner represents that her work for Inner You would occur outside of her normal work hours for DCYF and without the use of public resources. She further represents that she would keep confidential all information acquired during her public and private employment. The Petitioner states that Inner You is not currently under contract with DCYF to provide vendor services. She explains that, while Inner You might appear on a list of providers that she distributes to a client in need of mental health services, it would be the client who selects a provider from that list, without the exercise of any discretion or decision-making on the part of the Petitioner.

The Petitioner represents that, if allowed to accept the position with Inner You, she would see three to four clients per week. She states that, during an Inner You initial intake interview in which the Petitioner would not participate, a new client would be asked whether they are currently open to DCYF services or had previous DCYF involvement. If the client were to respond in the affirmative, the client would not be assigned to the Petitioner for counseling services. The Petitioner represents that, in the event that one of her clients at Inner You were to become open to DCYF services during the course of their treatment with the Petitioner, the client would immediately be reassigned to a different clinician at Inner You. The Petitioner states that she would then inform her DCYF supervisor of a conflict of interest on the Petitioner's part with regard to the assignment of her former Inner You client to the Petitioner's DCYF caseload. The Petitioner states that her superiors at DCYF have informed her that, if not prohibited by the Code of Ethics from doing so, the Petitioner may accept the fee for service position with Inner You. It is in the context of these representations that the Petitioner seeks guidance regarding whether she is prohibited by the Code of Ethics from accepting secondary employment as a clinician with Inner You.¹

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of her duties in the public interest if she 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. R.I. Gen. Laws § 36-14-7(a). Additionally, the Code of Ethics provides that a public employee shall not use her public office or confidential information received through her holding 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. § 36-14-5(d). The Code of Ethics also provides that a public employee shall not accept other employment which will either impair her independence of judgment as to her official duties

¹ In her letter requesting this advisory opinion, the Petitioner identified a second fee for service opportunity with St. Mary's Home for Children. Following a telephone conversation with Ethics Commission staff regarding that option, the Petitioner eliminated St. Mary's from consideration after it became clear that she would have a near insurmountable conflict of interest if privately employed there, given her public employment with DCYF.

or employment, or require or induce her to disclose confidential information acquired by her in the course of, and by reason of, her official duties or employment. § 36-14-5(b).

The Code of Ethics further prohibits a public official or employee from representing herself or any other person, or acting as an expert, before a state or municipal agency of which she is a member or by which she is employed. §§ 36-14-5(e)(1)-(3). A person “represents” herself before a state or municipal agency if she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in her favor. R.I. Gen. Laws § 36-14-2(12). These prohibitions extend for a period of one year after the public official or employee has officially severed her position with the subject state or municipal agency. § 36-14-5(e)(4). Finally, a public employee must recuse from participation in any matter in which her business associate or employer appears or presents evidence or arguments before her state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” § 36-14-2(3). A person is defined as “an individual or a business entity.” § 36-14-2(7).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public positions, provided that the private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties, and subject to certain other restrictions. The Ethics Commission examines several factors when considering potential conflicts regarding secondary employment. These factors include, but are not limited to, the nexus between the official’s public duties and private employment; whether the employee completes such work outside of her normal working hours and without the use of public resources; whether the employee is to appear before her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses her position to solicit business or customers. See General Commission Advisory No. 2009-4.

In Advisory Opinion 2014-6, in which the facts were somewhat analogous to those of the instant matter, the Ethics Commission opined that another DCYF clinical social worker could provide counseling services in her private capacity at Counseling Services of RI (CSRI), based on her representations that she had not participated, and would not participate, in assessments, paperwork, discussions, or related activities involving any female then under the supervision of DYCF’s Division of Juvenile Probation to which the petitioner was assigned or who previously resided at the Training School where the petitioner worked. That petitioner stated that, before accepting a client at CSRI who was not affiliated with DCYF’s Division of Juvenile Corrections or Probation, she would inform the client and their parent or guardian of the position the petitioner held at the Training School, advise them that should they become incarcerated she would have to withdraw from their treatment and give them the opportunity to request another counselor before commencing treatment. In addition to these representations, the Ethics Commission required that all such work for CSRI on the part of the petitioner be performed on her own time and without the use of public resources or confidential information obtained as part of her public employment. See also A.O. 2020-1 (opining that a probation and parole officer at the Rhode Island Department of Corrections was not prohibited from working in her private capacity as an independent contractor for a private agency providing supervised visitation services between non-custodial parents and

their children in Rhode Island, provided that the petitioner would not be assigned any families who had a parent currently on probation); A.O. 2019-27 (opining that a motor vehicle operator examiner for the Division of Motor Vehicles (DMV) could accept employment as a course administrator for the Driver Retraining Program at the Community College of Rhode Island, given that the petitioner's proposed private undertaking would neither impair his independence of judgement nor create an interest in substantial conflict with his public duties at the DMV; however, the petitioner was required to perform all of the work for the Driver Retraining Program on his own time and without the use of public resources or confidential information obtained as part of his state employment at the DMV).

Here, the Petitioner states that, if allowed to accept the fee for service position at Inner You, she would not be assigned to any private client who is now or was previously open to DCYF services and that, in the event that a client did become open to services with DCYF during the course of the Petitioner's provision of services to that client, the client would immediately be reassigned to a different clinician.² The Petitioner adds that she would then inform her DCYF supervisor of a conflict of interest on the Petitioner's part with regard to the assignment of her former Inner You client to the Petitioner's DCYF caseload. The Petitioner also states that Inner You is not a current vendor of DCYF and that the inclusion of Inner You on a list of potential service providers made available to a DCYF client leaves the selection of a service provider to the client, with no discretion or decision-making exercised on the part of the Petitioner. Thus, providing such a list to a client, rather than referring a client specifically to one of the providers on the list, would be a ministerial act on the part of the Petitioner that would not violate the Code of Ethics. See A.O. 2021-3 (opining that the Director of Social Services in Exeter, who in her private capacity was employed as a grant writer for the Rhode Island Center Assisting Those in Need (RICAN), a private food pantry that received grant funding in part based on the number of people it served, was prohibited from making direct referrals to RICAN to the Exeter residents she served, however, were RICAN to appear on a list of all food pantries available to Exeter residents, and that list was presented in such a manner that the petitioner was neither advocating for nor against a client's selection of RICAN as a food pantry, a violation of the Code of Ethics could be avoided.)

Based on the facts as represented by the Petitioner, there is no evidence to suggest that her performance of counseling duties for Inner You would impair her independence of judgment or create an interest that is in substantial conflict with her public duties at DCYF. Accordingly, the Petitioner is not prohibited by the Code of Ethics from accepting secondary employment as a fee for service clinician at Inner You, consistent with her representations set forth herein, and provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her state employment and, further provided, that the Petitioner does not use her public employment to advertise or promote her private work or to recruit or obtain potential clients for Inner You. Additionally, the Petitioner may not appear before DCYF in her capacity as a clinician for Inner You, including but not limited to reporting to DCYF on an Inner You client who became open to DCYF services following the start of therapy with the

² The Ethics Commission suggests that, prior to their assignment to the Petitioner for counseling services at Inner You, a new client be informed of the Petitioner's employment with DCYF and the possibility of the client being reassigned to a different clinician in the event that the client becomes open to DCYF services while receiving services from Inner You. This would allow the client and/or their parent or guardian to make an informed decision about whether to request a different counselor from the start of treatment.

Petitioner; representing the interests of Inner You; or acting as an expert witness on behalf of an Inner You client or Inner You. This would also include the submission to DCYF of documentation from Inner You that contains the Petitioner's name, or which is identifiable as the Petitioner's work product. Further, for the duration of her fee for service arrangement with Inner You, the Petitioner must recuse from all DCYF matters in which Inner You or its authorized representative appears or presents evidence or arguments and from all matters that will directly financially impact Inner You. All recusals must be made consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented herein. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest might arise.

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)

§ 36-14-2(12)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

G.C.A. 2009-4

A.O. 2021-3

A.O. 2020-1

A.O. 2019-27

A.O. 2014-6

Keywords:

Secondary Employment

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 9, 2024

Re: Neal Murphy

QUESTION PRESENTED:

The Petitioner, a member of the New Shoreham Town Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in Town Council discussions and voting regarding a proposed ordinance regulating residential short-term rental properties, given that his mother is a short-term rental property owner who would be subject to the ordinance if it passes.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the New Shoreham Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and voting regarding a proposed ordinance regulating residential short-term rental properties, notwithstanding that his mother is a short-term rental property owner who would be subject to the ordinance if it passes, given that the circumstances herein justify the application of the class exception set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner is a member of the New Shoreham Town Council, having been elected to that position in November 2022. He states that the Town Council is preparing to vote on whether to pass an ordinance regulating residential short-term rental properties in the town.¹ The ordinance, which would apply equally to all residential short-term property owners, includes sections addressing the following: registration and inspection of dwelling units; occupancy location, limits, and other requirements; obligations of both short-term rental property owners and renters; the designation of a local representative who is authorized by the owner to, among other things, respond to renter and neighborhood questions or concerns; and the penalty for violations of the ordinance. The Petitioner represents that the fee for registration of each dwelling unit would be set by the Town Council. The Petitioner further represents that, although the amount of the registration fee does not appear in the ordinance, it is likely to be a flat fee of \$250 for all owners of short-term rental properties, of which the Petitioner estimates there are 1,000.

The ordinance states that it shall apply to all rental dwelling units within the town, with the exception of the following: (1) hotels and rooming houses; (2) group homes, community residences and family day care homes; and (3) licensed rental rooms. The Petitioner states that

¹ The Petitioner included a copy of the proposed ordinance with his letter requesting this advisory opinion.

the goal of the ordinance is to provide town officials with a more accurate count of the number of short-term rental properties in the town, including those without realtor involvement; ensure that building safety codes are in place for all short-term rental properties; and to make certain that short-term rental property owners are paying the 1% mandatory annual rental tax that was approved by the General Assembly in 2004. The Petitioner explains that the town currently has no formal way of knowing who is collecting rental income, because rental income disclosure has been left to the discretion of owners. He adds that the town has relied on the honor system for the submission by short-term rental property owners of the 1% mandatory annual rental tax.

The Petitioner states that, in his private capacity, he owns and operates an inn in town. He further states that the inn is open year-round and has ten rooms available to guests. The Petitioner represents that the town's "bed and breakfasts" and inns are specifically excluded from the subject ordinance because they fall under the category of "hotels and rooming houses" which are already subject to registration and regulation. The Petitioner states that his mother owns a house in the town that was purchased in the 1960s. He further states that his mother has rented her house during the same four to five weeks in June and July every year for approximately the last twenty years and plans to continue to do so. The Petitioner adds that his mother does not use a realtor or reservation platform because she rents to the same families every year. The Petitioner states that his mother owns one of the approximately 1,000 short-term rental properties whose owners would be subject to the ordinance if it passes.

The Petitioner represents that the ordinance will soon come before the Town Council for a vote. He further represents that when it does, there will be no discussion about potential revisions to the ordinance, but only a vote taken on whether it should pass in its current form. He states that he would like to participate in the upcoming vote on whether to pass the ordinance.² It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may do so.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, 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 occurs if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) prohibits a public official from using his position, or confidential information received through his position, to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or a business by which he is employed or which he represents.

² The Petitioner has recused from participation in discussions and decision-making about the proposed ordinance since his telephone conversation with Ethics Commission staff in September 2023. During that telephone conversation, it became clear that the Petitioner had a potential conflict of interest because his mother is the owner of a residential short-term rental property who would be subject to the ordinance if it passes. Without a proposed draft of the ordinance available last September, no analysis could be performed which might have led to an opinion that the class exception applied to allow the Petitioner's participation.

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 his official duties if any benefit or detriment accrues to any person within his 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.

The Ethics Commission has previously applied the class exception in a variety of circumstances involving elected officials who were concerned with their ability to participate in discussions and voting on ordinances, legislation, and regulations. For example, in Advisory Opinion 2016-27, the Ethics Commission opined that a member of the Jamestown Town Council could participate in discussions and voting relative to a proposed ordinance that would require residential landlords in Jamestown to file an emergency contact form; complete an annual filing; disclose contact information; potentially pay a filing fee; and face penalties for noncompliance, notwithstanding that the petitioner owned rental property that would be subject to the proposed ordinance. That petitioner owned one of 500 residential rental properties located in Jamestown to which the ordinance would apply equally. See also A.O. 2023-26 (applying the class exception to allow a state representative to participate in General Assembly discussions and voting on proposed legislation that would limit the renewal fee for a pharmacist license to \$250 biennially, notwithstanding that the petitioner was a pharmacist who would be impacted by the legislation, because the class of persons who would be impacted by the legislation, if passed, included all pharmacists seeking renewal of the Rhode Island license, the total number of which was estimated to be between 1,000 and 2,000); A.O. 2018-26 (applying the class exception to allow a member of the Westerly Town Council to participate in discussions and voting relative to the town’s Harbor Management Plan’s mooring regulations imposing a flat yearly mooring rate to all owners, notwithstanding that the petitioner’s spouse owned property with mooring rights, because the financial impact upon the petitioner’s spouse would be the same as that upon the other approximately 700 waterfront property owners with mooring rights).

Here, the class includes all owners of the approximately 1,000 residential short-term rental properties in New Shoreham. The official action being contemplated is the Petitioner’s participation in the discussion and vote on an ordinance which would directly financially impact his mother to no greater extent than any other individual member of the class. The Petitioner represents that the registration fee would likely be \$250 for all property owners. He also states that the ordinance would allow town officials to make certain that all residential short-term rental property owners are paying the 1% mandatory annual rental tax. Accordingly, it is the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception set forth in § 36-14-7(b) of the Code of Ethics and that the Petitioner may participate in the discussions and voting on the subject ordinance. However, in the unlikely event that the Town

Council's discussions veer into revision of the ordinance in ways that would impact the Petitioner's mother individually, or as a member of a much smaller class or subclass of residential short-term rental property owners, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. Any recusals shall be made consistent with the provisions of R.I. Gen. Laws § 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. 2018-26
A.O. 2016-27

Keywords:

Class Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 9, 2024

Re: The Honorable Katherine S. Kazarian

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether she may participate in discussion and decision-making relative to proposed legislation that, if passed, will prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, given that her mother owns and resides in a home along this section of 114A.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, may participate in discussion and decision-making relative to proposed legislation that, if passed, will prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more, from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, notwithstanding that her mother owns and resides in a home along this section of 114A.

The Petitioner is a legislator serving in the Rhode Island House of Representatives as its Majority Whip. The Petitioner explains that, in 2018, the East Providence City Council passed a resolution preventing large commercial motor trucks from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, also known as Pleasant Street. She further explains that the resolution was the result of concerns raised by residents living along Pleasant Street and the neighboring streets. The Petitioner states that, although the City Council passed that resolution, the passing of state legislation is also necessary because Pleasant Street is a state road. Therefore, in 2023, at the request of constituents living on Pleasant Street, the Petitioner and State Senator Robert Britto introduced such legislation in their respective chambers. The Petitioner explained that the legislation passed both chambers, but was ultimately vetoed by Governor McKee.

The Petitioner states that the Pleasant Street residents and those from the neighboring streets, who are also her constituents, continue to express concerns and complain about the large commercial motor trucks because they create loud noises, premature deterioration of the road, and destruction of the small bridge in the neighborhood. The Petitioner represents that the residents are also concerned about speeding, the safety of their children while waiting at their bus stops along

Pleasant Street, and the safety of drivers who are getting on or off Pleasant Street because of the traffic congestion and reduced visibility created by the large commercial motor trucks.

The Petitioner states that her constituents have requested that the subject legislation be introduced again this legislative session and have collected more than one hundred signatures on a petition in support of the legislation. The signatures include not only those of residents who live on Pleasant Street, but also those of residents who live on neighboring streets. The Petitioner states that Representative Matthew S. Dawson recently introduced legislation that seeks to prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more from traveling on Pleasant Street. The Petitioner describes Pleasant Street as a narrow residential road stretching one-quarter of a mile in length, with one lane in each direction. She adds that most of that street has no sidewalk or curbing, with homes that closely abut the road. The Petitioner states that the historic Hunts Mills Homestead, which is open to the public, is also located on the same small stretch of road, as is the entrance to a popular reservoir hiking trail and dog park that is frequented by many pedestrians.

The Petitioner represents that her mother owns a home on Pleasant Street and has lived in it since 1991. The Petitioner further represents that, unlike many other neighbors on the same street, her mother's home does not have a driveway that directly feeds out to Pleasant Street, and does not have any children that use the bus stop on Pleasant Street. The Petitioner adds that her mother has neither signed the petition nor worked with the other residents to support the legislation. The Petitioner states that neither her mother nor her mother's property will be financially impacted by the legislation. The Petitioner represents that not all commercial motor vehicles will be prohibited by the legislation, but just the very large ones and, therefore, she does not expect the values of the properties along Pleasant Street, including her mother's, to be affected either positively or negatively by the passing of the legislation.¹ Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in House discussion and decision-making relative to the 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, or any person within her family, or 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. R.I. Gen. Laws § 36-14-7(a). A substantial conflict of interest does not exist if the monetary gain or loss accrues to the person because of her membership in a group, or in a significant and definable class of persons within such group, to no greater extent than to any other similarly situated member of the group. § 36-14-7(b). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," that is, when the probability is greater than "conceivably," but the conflict of interest need not be certain to occur. Commission Regulation

¹ The Petitioner was not able to obtain information relative to the number of properties located on Pleasant Street and, therefore, did not provide Ethics Commission staff with information regarding that number. Through an online search, Ethics Commission staff was able to estimate, for informational purposes only, that there are approximately 23 properties with Pleasant Street addresses, some of which are commercial. The number of properties, however, is not necessary for the application of the analysis herein.

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using her public office or confidential information received through her holding public office to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or her employer.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether, in this particular case, the Petitioner's mother would be directly financially impacted by the official action that is under consideration. If a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in discussion and voting on the proposed legislation. See A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the General Assembly's discussion and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned a number of child care centers in Rhode Island and voluntarily reimbursed applicants for the cost of obtaining a criminal-records check because, notwithstanding the petitioner's choice to voluntarily reimburse applicants, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment); A.O. 2019-25 (opining that a member of the Cranston City Council could participate in City Council discussion and voting relative to a proposed ordinance that would ban the use of plastic bags by Cranston business establishments, notwithstanding that the petitioner owned and operated a restaurant in Cranston, given the petitioner's representation that the proposed ordinance's ban on plastic bags would have no impact on his current operations).

Here, the Petitioner represents that her participation in House discussion and voting on the proposed legislation that, if passed, will ban the large commercial trucks from traveling on Pleasant Street will have no direct financial impact on her mother or the mother's property. Specifically, she states that banning only the large commercial trucks is not expected to directly impact the values of the properties on Pleasant Street. Also, based on the Petitioner's representations as to safety concerns, there is no indication that the Petitioner's mother would be impacted more directly or differently than any of the other residents or visitors who use the road for travel or recreation.

Accordingly, based upon the Petitioner's representations, a review of the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may participate in House discussion and discussion-making relative to the proposed legislation.

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)

§ 36-14-7(a)

§ 36-14-7(b)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2021-17

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