



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

8th Meeting

DATE: Tuesday, June 4, 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/83385951247>

1. Call to Order.
2. Administration of Oath of Office to Scott P. Rabideau.
3. Motion to approve minutes of Open Session held on April 30, 2024.
4. 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.

5. Advisory Opinions:

- a.) Kelley Morris Salvatore, Esq., the solicitor for the Town of Cumberland, requests an advisory opinion regarding whether the Code of Ethics would permit another attorney in the law firm by which the Petitioner is privately employed to represent a private client before Cumberland's planning board, mayor, and town council. [Staff Attorney Radiches]
- b.) The Honorable Valarie J. Lawson, a legislator serving as a member of the Rhode Island Senate, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in the Senate's floor votes on legislation relating to the Rhode Island Pension System, given that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as president of the National Education Association of Rhode Island. [Staff Attorney Radiches]
- c.) Edward A. Mello, the town administrator for the Town of Jamestown, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the town planner and the zoning/building official over whom he has appointing and supervisory authority, given that the Petitioner would like to add a garage to the home that he intends to eventually become his personal residence, and that certain aspects of that project fall within the purview of the town planner and the zoning/building official. [Staff Attorney Papa]
- d.) Paul Jordan, a Data Analyst with the Rhode Island Department of Environmental Management, who as part of his public duties serves as the assistant state liaison officer to the National Park Service's Land and Water Conservation Fund, requests an advisory opinion regarding whether the Code of Ethics prohibits him from reviewing an application submitted by the Town of South Kingstown for the conversion of the use of a town lot for the construction of a new high school, given that the Petitioner is a resident of the town. [Staff Attorney Papa]
- e.) Christian Lachapelle-Miller, the Chief Implementation Aide to the Director of the Rhode Island Department of Children, Youth & Families, who in his private capacity is the chief executive officer and founding president of Generous Heart, a private, non-profit organization, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Generous Heart's implementation of a Memorandum of Understanding between Generous Heart and Communities for People, a vendor to the Department of Children, Youth & Families. [Staff Attorney Papa]

6. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on April 30, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- b.) In re: Michelle Vacca, Complaint No. 2024-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Michael Colasante, Complaint No. 2023-10, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) In re: Olivia DeFrancesco, Complaint No. 2024-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - e.) Annual discussion and review re: Legal Counsel's contract pursuant to R.I. Gen. Laws § 42-46-5(a)(1).
 - f.) Motion to return to Open Session.
- 7. Motion to seal minutes of Executive Session held on June 4, 2024.
 - 8. Report on actions taken in Executive Session.
 - 9. Annual discussion and potential vote re: Legal Counsel's contract.
 - 10. New Business proposed for future Commission agendas and general comments from the Commission.
 - 11. 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 May 30, 2024

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 4, 2024

Re: Kelley Morris Salvatore, Esq.

QUESTION PRESENTED:

The Petitioner, the solicitor for the Town of Cumberland, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics would permit another attorney in the law firm by which the Petitioner is privately employed to represent a private client before Cumberland's planning board, mayor, and town council.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that, consistent with the representations stated below, the Code of Ethics would permit another attorney in the law firm by which the Petitioner, the solicitor for the Town of Cumberland, a municipal appointed position, is privately employed to represent a private client before Cumberland's planning board, mayor, and town council.

The Petitioner is the solicitor for the Town of Cumberland, having been appointed to that position by the town's mayor, with the town council's approval. Her current term ends December 31, 2024. The Petitioner states that her duties as solicitor include, but are not limited to, providing advice and representation to the town's planning board, mayor, and town council. She further states that there is currently pending before the planning board an application for a mill conversion to a mixed-use development (the project). She adds that the project has already received master plan approval from the planning board, which is the first stage of review. The Petitioner informs that negotiations for a tax stabilization agreement for the project are also currently pending before the mayor, adding that any agreement reached will require approval by the town council.

The Petitioner represents that, in her private capacity, she is a non-equity, contract partner with Darrow Everett, a law firm in Providence. She further represents that she is compensated by the firm in the form of a salary, plus commission on matters that she originates for the firm. The Petitioner states that the owner of the property associated with the project has asked one of the Petitioner's colleagues at the firm to replace the owner's current attorney and to represent him in the project matters now pending before the planning board, mayor, and town council. The Petitioner explains that her colleague is also a non-equity contract partner at the firm and, like the Petitioner, is compensated in the form of a salary plus commission on the work that he brings into the firm.

The Petitioner states that she is prepared to recuse from continuing to provide advice and representation to the town's planning board, mayor, and town council on all matters relating to the project if her colleague assumes representation of the owner of the property associated with the project. She further states that, in the event of her recusal, the town's assistant solicitor will instead provide advice and representation to the town's planning board, mayor, and town council on all matters relative to the project. The Petitioner clarifies that the assistant solicitor works for a different law firm than the solicitor and was also appointed by the mayor with the town council's approval. The Petitioner emphasizes that she had no role in the selection of the assistant solicitor, nor does she supervise the assistant solicitor's work. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether her colleague from the law firm may represent the owner of the property before the planning board, mayor, and town council relative to the project.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment 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 her employer 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 "business associate" is defined as a person joined together with another person to achieve a common financial objective. R.I. Gen. Laws § 36-14-2(3). A "person" is defined as "an individual or business entity." § 36-14-2(7). 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. § 36-14-5(d). Finally, the Code of Ethics requires a public official to recuse herself from participation in a matter when her business associate or employer, or a person authorized by her business associate or employer, appears or presents evidence or arguments before her municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) & (3) Additional Circumstances Warranting Recusal (36-14-5002).

The Ethics Commission has previously determined that advice by a solicitor to a municipal agency constitutes "official activity" as that term is used in the Code of Ethics. See, e.g., A.O. 2021-14 (opining that a Middletown solicitor who, while not a member of the town council, was a public official whose advice to the town council on various matters constituted official activity under the Code of Ethics, was prohibited from participation in town council discussions and decision-making regarding the proposed revision of an ordinance relating to short-term residential leases, given that the petitioner and his spouse owned property regulated by that ordinance). The Ethics Commission has also previously determined that a public official must recuse from participation in official activity that would likely financially impact the public official's employer or business associate. See, e.g., A.O. 2023-7 (opining, in pertinent part, that a state representative was required to recuse from participation in matters before the Rhode Island General Assembly that would have a direct financial impact upon, among others, her private employer); A.O. 2016-23 (opining that Pawtucket's assistant solicitor was required to recuse from participation in any matters pending before the city that would likely financially impact her business associate including, but not limited to, providing legal advice to the planning department or mayor concerning any block grants for which the petitioner's business associate

had applied or was likely to apply, or concerning any competing applications from other organizations).

In the instant matter, the Petitioner's advice as solicitor to the planning board, mayor, and the town council on various matters constitutes "official activity" as that term is used in the Code of Ethics. For this reason, the Petitioner's recusal is necessary under circumstances where another attorney in the firm by which she is employed appears to represent a private client before the Cumberland planning board, mayor, and town council. The Ethics Commission acknowledges the Petitioner's awareness of that responsibility and her preparedness to recuse from all matters involving the project if her colleague assumes representation of the owner of the property associated with the project. The Ethics Commission further acknowledges that, because the Petitioner is not an equity partner in the firm and does not share in the firm's general revenue, she does not stand to be personally financially impacted by her colleague's representation of the property owner before the planning board, mayor, or town council.

Accordingly, based on the facts as represented, the applicable provisions of the Code of Ethics, and previous advisory opinions issued, it is the opinion of the Ethics Commission that, following the Petitioner's recusal in her role as solicitor on all matters relating to the project, the Code of Ethics would not prohibit the other attorney from the law firm by which the Petitioner is employed from representing the owner of the subject property relative to the project before the Cumberland planning board, mayor, and town council. All recusals must 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:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2023-7

A.O. 2021-14

A.O. 2016-23

Keywords:

Business Associate

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 4, 2024

Re: The Honorable Valarie J. Lawson

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in the Senate's floor votes on legislation relating to the Rhode Island Pension System, given that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as president of the National Education Association of Rhode Island.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, is not prohibited by the Code of Ethics from participating in the Senate's floor votes on legislation relating to the Rhode Island Pension System, notwithstanding that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as president of the National Education Association of Rhode Island, given that the circumstances herein justify the application of the class exception as set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner is a legislator serving as a member of the Rhode Island Senate. She has served continuously in that capacity since 2019 and represents District 14 in East Providence. The Petitioner states that she was employed as a teacher by the East Providence School Department for 32 years, but left that position on December 31, 2022. She adds that, although she is no longer employed by the school department, she is not formally retired and is currently in deferred status relative to her participation in the Rhode Island State Pension Plan administered by the Employees' Retirement System of Rhode Island (pension system). The Petitioner states that, in her private capacity, she currently serves as president of the National Education Association of Rhode Island (NEARI), a full-time position which she has held since January 1, 2023.¹

The Petitioner describes NEARI as a registered nonprofit labor organization, the primary purpose of which is to provide collective bargaining representation, grievance and arbitration

¹ The Petitioner states that on January 1, 2023, when NEARI's former president left the position, the Petitioner, who was then serving as NEARI's vice-president, automatically became president for the remainder of her predecessor's term. She explains that this was the reason she left her employment as a teacher with the East Providence School Department on December 31, 2022. The Petitioner states that she was later elected president by NEARI's delegate assembly in May 2023.

representation, and professional development opportunities, among other benefits, to its members. She represents that NEARI is the Rhode Island affiliate of the National Education Association and consists of a diverse membership numbering approximately 11,000 to 12,000 people. She further represents that, in addition to herself, there are approximately 400 other NEARI officers and leaders who are positioned to direct and affect the financial objectives of that organization. The Petitioner states that NEARI members include public and private sector employees organized in approximately 75 local bargaining units. She further states that NEARI members include public sector teachers; public and private sector education support professionals; public and private sector higher education faculty, graduate students, and staff; and state and municipal employees and retirees. The Petitioner informs that approximately 78% of NEARI members are, by virtue of their employment, members of the pension system which also includes as members other state and municipal employees. She adds that members of the pension system include both active and former employees, numbering approximately 40,000, and retirees and their beneficiaries, numbering approximately 28,000.

The Petitioner states that there are presently five pieces of proposed legislation (“bills”) in particular pending before the Senate for which voting is imminent. She explains that all substantive discussions and testimony regarding each of the bills have already taken place before a subcommittee on which the Petitioner did not participate. The Petitioner further explains that while, theoretically, some discussion could occur prior to the Senate vote on each of the bills, that discussion would likely relate to technical issues such as the correction of typographical errors. The Petitioner represents that she will recuse from any discussion that may precede the vote on each bill, regardless of the topic. The bills, as described by the Petitioner, are summarized below:

S2979, if passed, would modify the retirement allowance calculation to define “average compensation” as the average of the highest three consecutive years of compensation for all teachers, state, and municipal employees who are eligible to retire on or after July 1, 2024. The Petitioner represents that there are approximately 30,000 pension system members who are eligible to retire on or after July 1, 2024, including herself, and that the benefit conferred by the passage of S2979 would apply equally to, and convey the same benefit upon, all members of this class.

S2308, if passed, would modify the retirement eligibility requirement for all teachers and all other state and municipal employees in active service, by reducing the retirement eligibility age to 60 years old, provided that the teacher or employee has completed at least 30 years of service, effective July 1, 2024. As with S2979 above, the Petitioner represents that there are approximately 30,000 members who are eligible to retire on or after July 1, 2024, and that the benefit conferred by the passage of S2308 would apply equally to, and convey the same benefit upon, all members of the impacted class. However, the Petitioner states that the passage of S2038 would not impact her because she is already eligible to retire at age 59 pursuant to the provisions of R.I. Gen. Laws § 16-16-12(c)(iv).

S2312, if passed, would require additional state budget appropriations to the pension system based upon excess vacancies for full-time appropriated positions. More specifically, the state would be required to make contributions to the pension fund that would otherwise have been made by employees serving in positions which are instead vacant. The Petitioner states that the passage of

this bill would impact all members of the pension system, including herself, of which there are an estimated 40,000 active or former employees and 28,000 retirees.

S2580, if passed, would provide a one-time annual benefit adjustment of 2% for plan year 2025 for all retirees, and their beneficiaries, in the pension system, of which there are an estimated 28,000. The Petitioner states that she will become a member of this class once she retires,² and that the benefit conferred by the passage of S2580 would apply equally to, and convey the same benefit upon, all class members.

S2987, if passed, would provide an annual benefit adjustment of \$2,000 each calendar year commencing in plan year 2025 to all retirees, and their beneficiaries, in the pension system, of which there are an estimated 28,000. The Petitioner states that the benefit conferred by the passage of S2987 would apply to her upon her retirement and would apply equally to, and convey the same benefit upon, all class members.

Given her prior and current employment, and her membership in the pension system, the Petitioner seeks advice from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from participating in the Senate floor votes relative to the legislation described above.

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. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) 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. A business associate is defined as “a person joined together with another person to achieve a common financial objective.” R.I. Gen. Laws § 36-14-2(3). A person is defined as an “individual or a business entity.” § 36-14-2(7).

The Ethics Commission has consistently concluded that persons are “business associates” not only of the entities for which they serve as either officers or members of a board of directors, or in some other leadership position that permits them to direct and affect the financial objectives of an organization, but also of the other officers and leaders within the same organization. *See, e.g.*, A.O. 2021-40 (opining, among other things, that a member of the Retirement Board of the Employees’ Retirement System of the State of Rhode Island would be prohibited from participating in disability adjudications and contested administrative hearings which were likely to result in a financial impact upon himself or herself or upon any individual who served in a leadership position within a private organization for which the retirement board member also served in a leadership position, or upon the organization itself).

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

² The Petitioner represents that she will be eligible to retire without a penalty on August 14, 2026.

of her official duties if any benefit or detriment accrues to the public official, any person within her family, her business associate, or any business by which she is employed or which she represents, “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 proposed legislation. For example, in Advisory Opinion 2018-36, the Ethics Commission opined that a Rhode Island senator could participate in Senate discussions and voting relative to legislation that would provide a stipend to be paid to all retired teachers or their beneficiaries during years where no cost of living adjustments were applied to teachers’ retirement benefits, notwithstanding that the petitioner was a public school teacher who was vested in the Employees’ Retirement System of Rhode Island. In support of its application of the class exception, the Ethics Commission noted that the class of persons who would be affected by the legislation, if passed, included all teachers who were currently retired and receiving retirement benefits, plus those who would retire and receive retirement benefits following the effective date of the legislation, a class estimated to be in the tens of thousands. That particular petitioner, who upon his retirement would have been eligible for the stipend, would have been impacted by the passage of the legislation to no greater extent than any other member of the class. See also A.O. 2022-09 (applying the class exception to opine that a Rhode Island senator, who was receiving a military pension, could participate in Senate discussions and decision-making relative to a budget article recommending the phase-out of state income taxation on military service pensions, given that the proposed budget article would affect all Rhode Island retirees receiving a military service pension, the total number of which was then 4,861); A.O. 2003-57 (applying the class exception to opine that a Rhode Island senator was permitted to participate in the Senate’s consideration of legislation concerning the state pension plan of which he was a member, given that the legislation would affect all state employees and all teachers in the state); A.O. 93-55 (applying the class exception to opine that a Rhode Island senator who was employed as a public school teacher could participate in discussions and voting on legislation regulating teacher contract disputes and strikes because the subject legislation would affect all teachers in a like manner).

Here, the official action being contemplated by the Petitioner is her participation in the Senate’s floor votes on the five bills discussed above. The passage of all but S2308 would directly financially impact the Petitioner. The passage of all five bills would directly financially impact the 400 other NEARI officers and leaders who are the Petitioner’s business associates. The classes that would be impacted by the passage of one or more of these bills include the following: all active members within the pension system, which is estimated at 40,000; all members of the pension system who are in retirement status and/or their beneficiaries, which is estimated at 28,000; and all teachers and other state and municipal employees who will be eligible to retire on

or after July 1, 2024, which is estimated at 30,000. Based upon the facts as represented, the Petitioner's vote on each of the five bills would impact herself (in all but one case, where she would not be impacted at all) and her business associates (in all cases) to no greater extent than any other similarly situated member of the particular applicable class.

Accordingly, it is the opinion of the Ethics Commission that the circumstances herein justify the application of the class exception, and the Petitioner is not prohibited by the Code of Ethics from participating in the Senate's floor votes on the legislation described above, notwithstanding that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as the president of NEARI. However, in the event that any discussions that occur prior to the votes on any of the legislation veer into amending any of the bills in ways that would impact the Petitioner and/or her business associates individually, or as a member of a much smaller class or subclass of any of the classes identified above, the Petitioner must either recuse from participation in those discussions and/or the votes which follow, or seek additional guidance from the Ethics Commission. In the event of a recusal, the Petitioner must file a statement of conflict of interest 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:

§ 36-14-2(3)
§ 36-14-2(7)
§ 36-14-5(a)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)
§ 36-14-7(b)

Other R.I. Gen. Laws:

§ 16-16-12(c)(iv)

Related Advisory Opinions:

A.O. 2022-9
A.O. 2021-40
A.O. 2018-36
A.O. 2003-57
A.O. 93-55

Keywords:

Class Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 4, 2024

Re: Edward A. Mello

QUESTION PRESENTED:

The Petitioner, the town administrator for the Town of Jamestown, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the town planner and the zoning/building official over whom he has appointing and supervisory authority, given that the Petitioner would like to add a garage to the home that he intends to eventually become his personal residence, and that certain aspects of that project fall within the purview of the town planner and the zoning/building official.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the town administrator for the Town of Jamestown, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the town planner and the zoning/building official over whom he has appointing and supervisory authority, given that the Petitioner would like to add a garage to the home that he intends to eventually become his personal residence, and that certain aspects of that project fall within the purview of the town planner and the zoning/building official.

The Petitioner is the town administrator for the Town of Jamestown, having served in that position since July 2023, upon his appointment by the town council. He represents that he and his spouse own a single-family home in Jamestown which they purchased in 2020 and which they currently offer as a rental unit year-round.¹ The Petitioner explains that, sometime during the next four years, they plan to move into this home and make it their primary residence. Thus, they would like to construct a single-car garage for the home in preparation for their anticipated move. The Petitioner represents that in order to construct the garage, he will need to obtain a building permit, which will require him to submit an application to the town planner and the zoning/building official. The Petitioner describes the process as administrative, as he will not have to request any variances or exceptions, or even appear before either the planning board or the zoning board. He explains that he would submit the building plans to the town planner who, in turn, would advise the zoning/building official regarding whether any variances would be required. The zoning/building official would then review the proposed plans, determine whether they comply with all the zoning requirements, and issue a building permit, as appropriate.²

¹ The Petitioner represents that he and his spouse currently live in a second home that they own in Jamestown.

The Petitioner represents that, as town administrator, he has supervisory authority over the town planner and the zoning/building official. The Petitioner further represents that pursuant to the town's charter, the hiring process for the town planner and the zoning/building official consists of nomination by the town administrator, with the approval of the town council. The Petitioner states that both the town planner and the zoning/building official are considered town employees and do not have a set term of employment. The Petitioner further states that he did not participate in the hiring process for either the current town planner or the zoning/building official as they were hired prior to the Petitioner's appointment. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception in order to represent himself before the town planner and the zoning/building official relative to his desire to construct the garage.

The Code of Ethics prohibits a public official from representing himself, or authorizing another person to appear on his behalf, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) (section 5(e)); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). Pursuant to Regulation 1.1.4(A)(1)(a), a person will represent himself before a state or municipal agency if he "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] favor." Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receiving a hardship exception, the public official must also "follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter." Section 5(e)(1)(iii). See, e.g., A.O. 2019-64 (granting a hardship exception to the president of the North Smithfield Town Council and permitting him to appear before the North Smithfield Zoning Board of Review to seek a dimensional variance for his personal residence, provided that he recused from the town council's appointment or reappointment of any person to the zoning board until after the election cycle for his town council seat and following the complete resolution of his application before the zoning board, including appeals, and that, prior to the zoning board's consideration of his variance application, he informed the zoning board members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency for which he is the appointing authority. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the town planner and the zoning/building official, either personally or through an authorized representative.

² The Petitioner explains that although the duties of the zoning official and the building official are performed by the same person in Jamestown, the duties of these two positions are normally performed by two separate people. He further explains that appeals of decisions made by the town planner and the zoning official are normally reviewed by the zoning board and that appeals of decisions made by the building official are reviewed by the state building commission. The Petitioner states that he has no appointing authority over the zoning board or the state building commission.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. When deciding whether to apply the hardship exception, the Ethics Commission considers the totality of the circumstances and no single factor is determinative.

In the past, the Ethics Commission has applied the hardship exception in various circumstances allowing public officials to represent themselves before an agency over which they had appointing authority. For example, in Advisory Opinion 2022-10, the Ethics Commission opined that a member of the Scituate Town Council qualified for a hardship exception allowing him to appear before the town's building and zoning official over whom the town council had appointing authority, in connection with the construction of a new home in which the petitioner intended to reside with his family. In that advisory opinion, the Ethics Commission noted that, although the subject property was not acquired prior to the start of the petitioner's public service, the relief sought involved the petitioner's anticipated future personal residence and not a new commercial venture. See also A.O. 2024-8 (granting a hardship exception to a member of the Newport City Council allowing him to appear before the Newport Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the city council had appointing authority, in order to request approval of repairs and renovations he had planned for a home that he was waiting to close on and in which he and his family intended to reside); A.O. 2023-29 (granting a hardship exception to a member of the Bristol Town Council and permitting him to represent himself, either personally or through a representative, before the Bristol Historic District Commission over which the town council had appointing authority, in order to seek review and approval of proposed renovations to his primary residence).

In contrast, the Ethics Commission has previously declined to grant a hardship exception for matters involving new commercial ventures. For example, in Advisory Opinion 2003-49, the assistant solicitor for the Town of Lincoln wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board regarding the development of two parcels of real estate he owned in the town. A hardship exception was not granted because the petitioner's ownership of the lots did not predate his appointment as assistant solicitor and it was uncertain as to whether either lot would be used as the petitioner's primary residence or simply resold in commercial transactions after development. The Ethics Commission also declined to grant a hardship in Advisory Opinion 2000-41, where a member of the Exeter Zoning Board sought to generate additional income by entering into a contract to locate a cellular communications tower on his residential property. Although the subject property involved the petitioner's principal residence, the proposed commercial venture served only to generate additional income for the petitioner.

In the instant matter, the Petitioner would like to construct a single-car garage for a home that, although currently used as a rental property, he and his spouse intend to reside in sometime in the next four years. He describes the process for obtaining a building permit for the construction of the garage as administrative and not requiring a variance or a special use permit. Further, the

subject property was acquired prior to the start of the Petitioner's public service, and the relief sought involves the Petitioner's anticipated future personal residence and not a new commercial venture. In consideration of 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 totality of these particular circumstances justifies making an exception to section 5(e)'s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the town planner and the zoning/building official relative to the proposed construction of a garage on the rental property that he anticipates becoming his personal residence within the next four years. However, in order to avoid even the appearance of impropriety, the Petitioner must recuse from discussions and decision-making relative to the town planner's and the zoning/building official's job performance, retention, or reappointment until after the completion of the construction of the proposed garage and all inspections and/or awarding of certificates related thereto, including any appeals. Notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6. Additionally, the Petitioner shall, prior to his appearance before or application to the aforementioned officials relative to the construction of the garage, inform them of his receipt of the instant advisory opinion and that, consistent herewith, he will recuse from any discussions and decision-making regarding their job performance, retention, or reappointment as set forth above.

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(e)

§ 36-14-6

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2024-8

A.O. 2023-29

A.O. 2022-10

A.O. 2019-64

A.O. 2003-49

A.O. 2000-41

Keywords:

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 4, 2024

Re: Paul Jordan

QUESTION PRESENTED:

The Petitioner, a Data Analyst with the Rhode Island Department of Environmental Management, a state employee position, who as part of his public duties serves as the assistant state liaison officer to the National Park Service's Land and Water Conservation Fund, requests an advisory opinion regarding whether the Code of Ethics prohibits him from reviewing an application submitted by the Town of South Kingstown for the conversion of the use of a town lot for the construction of a new high school, given that the Petitioner is a resident of the town.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Data Analyst with the Rhode Island Department of Environmental Management, a state employee position, who as part of his public duties serves as the assistant state liaison officer to the National Park Service's Land and Water Conservation Fund, is not prohibited by the Code of Ethics from reviewing an application submitted by the Town of South Kingstown for the conversion of the use of a town lot for the construction of a new high school, notwithstanding that the Petitioner is a resident of the town.

The Petitioner is employed by the Rhode Island Department of Environmental Management (DEM) as a Data Analyst and as part of his public duties serves as the assistant state liaison officer to the National Park Service's (NPS) Land and Water Conservation Fund (LWCF). He explains that he assists municipal officials in maintaining compliance with federal grant requirements relative to the LWCF. The Petitioner represents that the Town of South Kingstown is planning to construct a new high school building on the existing high school property. He explains that the current high school property consists of two lots, one approximately 6.9 acres in size that houses the current high school building (school lot) and another, adjacent to the school lot, approximately 5.2 acres in size that houses the recreational field (recreational lot). The Petitioner states that the town proposes that the new high school building be constructed on the recreational lot and, upon the demolition of the old high school building, a new recreational field be created in its place on the former school lot.

The Petitioner represents that because the recreational lot was developed with LWCF money, federal rules require that its use remain the same in perpetuity. The Petitioner further represents that in order for the town to use the recreational lot for the construction of the new school building, the town must first convert its use. The Petitioner explains that conversion of the recreational lot

to another use is possible if the town shows that suitable replacement land is available, demonstrates a compelling need for the conversion, has all land values appraised, shows a plan for recreational development on the replacement land, and addresses social equity or environmental justice concerns through a meaningful public engagement process. The Petitioner states that applications for conversion are submitted to the DEM and reviewed by him, followed by a review by his superior, the Chief of DEM Planning and Development, who is the LWCF state liaison officer. The Petitioner further states that upon approval of the conversion application by the DEM, the application will then be forwarded to the NPS for approval. The Petitioner informs that some town residents have expressed concern about the Petitioner's participation in the review of the town's conversion application and his objectivity, given that the Petitioner resides in South Kingstown.

The Petitioner states that he is not an abutter to the school property, his home is located approximately one-half mile away from it, and he does not see the school property from his home. He further states that he has not received an abutters' notice relative to the new school construction project, does not have family members or business associates who abut the school property, and does not have school-age children. He represents that a review of the conversion application would not have a financial impact on him, although the approved school project would increase property taxes for all town residents equally based on their property values. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from reviewing the town's conversion application.

Under the Code of Ethics, a public official 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 exists 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). The Code of Ethics also prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, a member of his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d).

In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property. *See, e.g.*, A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in discussions or votes concerning properties abutting their own properties, absent reliable evidence that their official actions would not affect the financial interests of the public officials, either positively or negatively.

Just as the Ethics Commission has presumed that a property owner will be financially impacted by official action concerning abutting property, the Ethics Commission has also presumed that a property owner will not be financially impacted by official action concerning property that is near, but not abutting, a subject property absent evidence indicating a reasonable foreseeability of

financial impact. See A.O. 2023-14 (opining that a member of the Coventry Planning Commission was not prohibited by the Code of Ethics from participating in planning commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property located a half-mile from the petitioner's personal residence); A.O. 2003-44 (opining that a member of the Cranston City Council could participate in the Safety Services and Licensing Committee's consideration of a proposed license for a Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, absent evidence indicating a reasonable foreseeability of financial impact upon him); A.O. 2002-30 (opining that a Jamestown Town Council member could participate in the determination of the location for a highway garage, notwithstanding that two of the location options were 1000 and 900 feet away from her land).

Here, the Petitioner represents that he is not an abutter to the school property, his home is located approximately one-half mile away from it, and he does not see the school property from his home. He states that he has not received an abutters' notice relative to the new school construction project, he does not have family members or business associates who abut the school property, and does not have school-age children. He represents that approval or disapproval of the conversion application would not have a financial impact on him, other than a potential impact to all taxpayers in South Kingstown. Accordingly, based on the foregoing analysis, it is the opinion of the Ethics Commission that the Petitioner may participate in the review of the town's conversion application relative to the construction of the new school building without running afoul of the provisions of the Code of Ethics, notwithstanding that he is a resident of the town.

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)

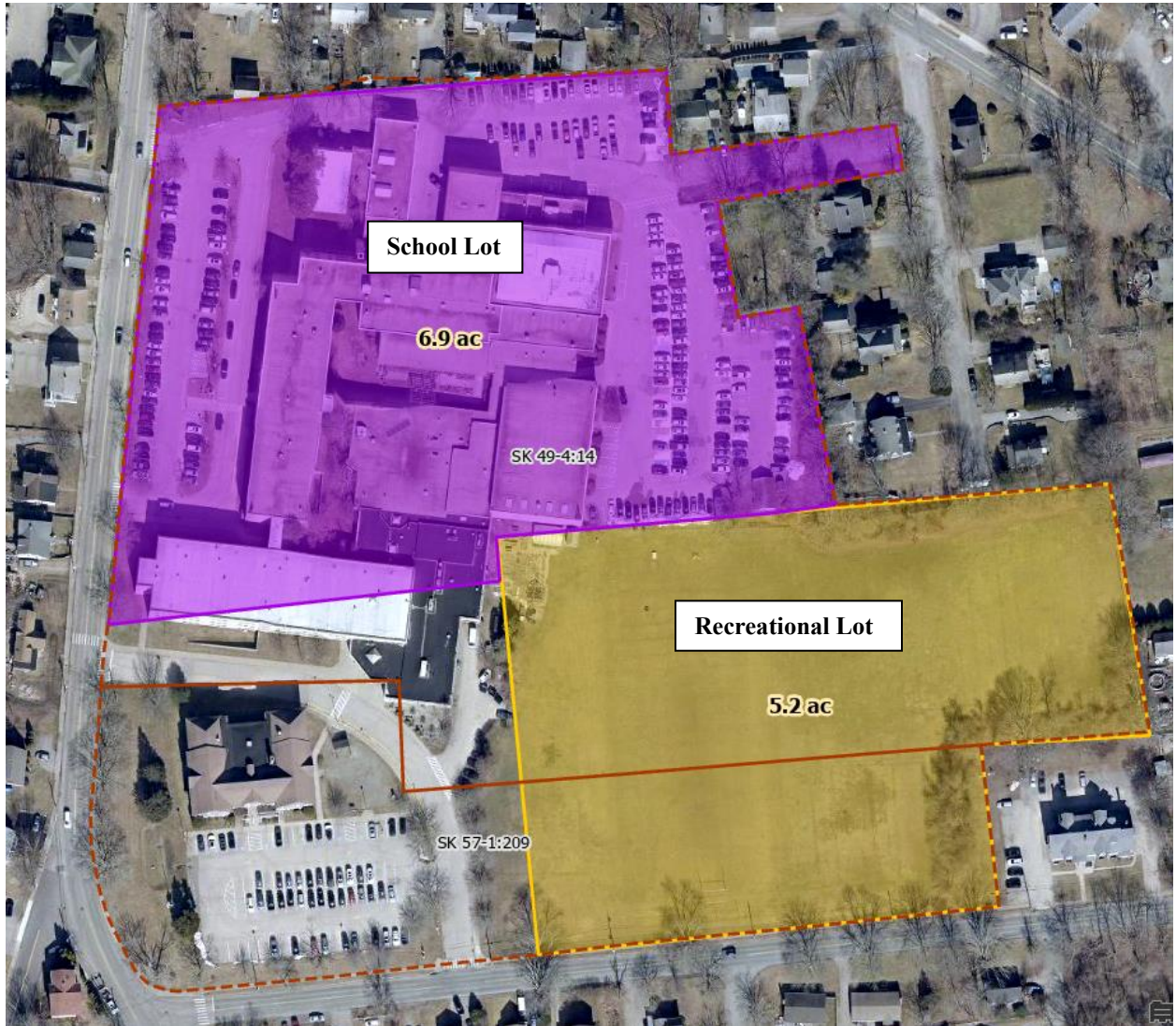
Related Advisory Opinions:

A.O. 2023-14
A.O. 2012-4
A.O. 2007-18
A.O. 2006-37
A.O. 2005-16
A.O. 2003-44
A.O. 2002-30

Keywords:

Property Interest

South Kingstown High School Property



RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 4, 2024

Re: Christian Lachapelle-Miller

QUESTION PRESENTED:

The Petitioner, the Chief Implementation Aide to the Director of the Rhode Island Department of Children, Youth & Families, a state employee position, who in his private capacity is the chief executive officer and founding president of Generous Heart, a private, non-profit organization, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Generous Heart's implementation of a Memorandum of Understanding between Generous Heart and Communities for People, a vendor to the Department of Children, Youth & Families.¹

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chief Implementation Aide to the Director of the Rhode Island Department of Children, Youth & Families, a state employee position, who in his private capacity is the chief executive officer and founding president of Generous Heart, a private, non-profit organization, is not prohibited by the Code of Ethics from participating in Generous Heart's implementation of a Memorandum of Understanding between Generous Heart and Communities for People, a vendor to the Department of Children, Youth & Families.

The Petitioner is employed as the Chief Implementation Aide to the Director of the Rhode Island Department of Children, Youth & Families (DCYF or department). The DCYF website identifies that agency as "the state child welfare, children's mental health and juvenile corrections services agency which promotes safety, permanence, and well-being of children," and supports "children and their families involved in child protection, behavioral health, and juvenile justice."² The Petitioner represents that he has served in this position since August 2023 and that his role is to provide support to the DCYF's Executive Director relative to the implementation and administration of the department's special projects and programs. The Petitioner adds that this support includes, but is not limited to, serving as a liaison between the DCYF Director and external stakeholders; analyzing data, reports, and relevant information in support of executive level decision-making; monitoring the progress of special projects; identifying potential challenges, and

¹ The Petitioner's initial advisory opinion request sought guidance regarding whether Generous Heart and Communities for People, both private entities, may implement the Memorandum of Understanding. However, the Ethics Commission is not able to address such a question because private entities are not subject to the Code of Ethics. The Code of Ethics does, however, regulate actions taken by public officials or employees.

² <https://dcyf.ri.gov/our-office> (last visited May 24, 2024).

proposing solutions and ways to improve the process efficiency in the administration of projects and programs throughout the department. The Petitioner represents that his regular working hours are 8:30 a.m. to 4:00 p.m., Monday through Friday, although those hours may sometimes vary.

The Petitioner represents that in his private capacity he is the chief executive officer and founding president of Generous Heart, a private, non-profit organization founded in 2021. The Petitioner notes that currently he does not receive compensation for his service to Generous Heart. He states that Generous Heart was organized to promote sustainable independent living and improved economic outcome for individuals between the ages of 18 and 29 who were previously involved in foster care, through an array of resources and prospective relief programs. The Petitioner further states that Generous Heart mainly provides direct financial relief payments and assistance with basic human needs. He represents that Generous Heart is governed by a board of directors and receives philanthropic, private, and corporate sponsorship funds to effectuate its programs, increase its capacity, and maintain its overall operations. The Petitioner further represents that Generous Heart does not receive any federal or state funding and does not contract with the DCYF.

The Petitioner states that, prior to his employment with the DCYF, he entered into a Memorandum of Understanding (MOU) on behalf of Generous Heart with Communities for People (CFP), a private, non-profit organization that provides foster care services in both Rhode Island and Massachusetts for children and adolescents in the custody of the DCYF and the Massachusetts Department of Children and Families.³ The Petitioner represents that, pursuant to the MOU, CFP will provide back-end administrative office support to Generous Heart, free of charge, which includes providing a physical office space,⁴ access to CFP's administrative support staff, file storage space, and technology such as printers and fax machines. The Petitioner represents that, as a precautionary measure given the Petitioner's subsequent employment with the DCYF and pending the issuance of an advisory opinion that will assist the Petitioner with avoiding any conflicts of interest under the Code of Ethics, the MOU has yet to be implemented. He also states that, once implemented, the MOU would be in place for two years.

The Petitioner represents that, unlike Generous Heart, CFP is a vendor with the DCYF and receives both state and federal funding. He explains that CFP offers a variety of programs and services to support children, youth, and families in the state foster care system. The Petitioner further explains that those services include, for example, the provision of behavioral health and support services; independent living services and support for youth who are about to leave foster care; congregate, foster, and residential group home placements and support; case management; and assisting youth with their transition out of foster care. The Petitioner represents that CFP provides services to youth while they are in the state's child welfare system, whereas Generous Heart assists youth to achieve sustainable independent living and improved economic outcomes after they leave the state's child welfare system. The Petitioner represents that Generous Heart does not contract with CFP for the provision of services related to its contract with the DCYF.

³ See <https://communities-for-people.org/> (last visited May 29, 2024).

⁴ The Petitioner explains that the office space is located in a building leased by CFP. He further explains that CFP provides office space to multiple organizations under varying arrangements. The Petitioner adds that Generous Heart currently has only an online presence and no physical office space.

The Petitioner states that in his capacity as Chief Implementation Aide to the Director of the DCYF, he does not oversee CFP and does not participate in discussions or decisions relative to CFP's budget or the renewal of its contract. He adds that CFP is overseen by the DCYF's Associate Director of Contracts, who is not a subordinate of the Petitioner. The Petitioner asserts that he does not have any subordinates. He notes that he may be asked to attend a meeting in the absence of the DCYF Director where representatives of CFP could be present; however, the Petitioner would not be involved in any decision-making relative to matters discussed and his primary function at such a meeting would be to observe and later relay to the Director what transpired at the meeting. The Petitioner represents that he will recuse from participating in meetings where CFP representatives are present, he is asked to sit at the meeting as a representative of the DCYF executive director's office, and the subject matter of the meetings involves solely CFP. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits his participation in Generous Heart's implementation of the MOU between Generous Heart and CFP.

Under the Code of Ethics, a public official or employee shall not accept other employment which will either impair his independence of judgment or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. R.I. Gen. Laws § 36-14-5(b). Further, a public official or employee 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. § 36-14-5(a). A substantial conflict of interest exists if a public official or employee 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). The Code of Ethics also prohibits a public official or employee from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) (Regulation 1.2.1), the Petitioner must recuse from participation in any matter if his business associate appears or presents evidence or arguments before the Petitioner's state or municipal agency. A "business associate" is defined as an individual or business entity joined together with another person to achieve a common financial objective. R.I. Gen. Laws § 36-14-2(3).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding private positions that are in addition to their primary public employment or positions subject, however, to certain restrictions and provided that their private position would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties. See, e.g., A.O. 2019-27 (opining that a motor vehicle operator examiner for the Division of Motor Vehicles (DMV) was not prohibited from accepting employment as a course administrator for the driver retraining program at the Community College of Rhode Island, provided that all work was performed 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 represents that, in his public capacity, he neither supervises CFP under its contract with the DCYF, nor has decision-making authority over matters that involve or impact

CFP. He further represents that the MOU was negotiated and executed prior to his employment with the DCYF. The Petitioner states that the extent of his involvement in DCYF meetings attended by representatives of CFP is to observe and report back to the DCYF executive director. Thus, upon consideration of the relevant provisions of the Code of Ethics, prior advisory opinions issued, and the facts as represented by the Petitioner, it is the opinion of the Ethics Commission that there is no indication that the Petitioner's participation in Generous Heart's implementation of the MOU between Generous Heart and CFP would either impair his independence of judgment or create an interest in substantial conflict with the proper discharge of his public duties with the DCYF. Therefore, the Petitioner is not prohibited by the Code of Ethics from participating in the implementation of the MOU, notwithstanding his employment with the DCYF and CFP's contractual obligation with the DCYF, provided that all of his work on behalf of Generous Heart is performed on his own time and without the use of public resources or confidential information obtained as part of his public duties.

As a result of his simultaneous public and private service, the Petitioner is required to remain vigilant in identifying and managing any conflicts of interest that may arise in the performance of his public duties and follow any advice discussed below. The Ethics Commission has consistently opined that persons are "business associates" of the entities for which they serve as either officers or members of the board of directors, or in some other leadership position that permits them to direct and affect the financial objectives of the entity. See, e.g., A.O. 2021-6 (opining that a member of the North Smithfield Planning Board was a business associate of the North Smithfield Heritage Association (NSHA), a private non-profit organization of which he served as a member of the board of directors and as its president and, thus, was required to recuse from participating in planning board matters when a NSHA representative appeared or presented evidence or arguments); A.O. 2014-14 (opining that the director of the Rhode Island Department of Environmental Management (DEM), who was also a Director of the Rhode Island Boy Scouts (Boy Scouts), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization's interests).

Here, the Petitioner is a business associate of Generous Heart because of his position as its CEO and president. Furthermore, the Petitioner is not a business associate with CFP, given that, based on his representations, there is no indication of an independent financial nexus between the Petitioner and CFP. See A.O. 2011-36 (opining that a Providence City Plan Commission member was not a business associate of his tenant's client, absent an independent financial nexus between the petitioner and the individual client); A.O. 2002-76 (opining that the Narragansett town solicitor was not a business associate of his client's business associate). Therefore, the Petitioner will not run afoul of sections 36-14-5(a) and (d), and Regulation 1.2.1 while performing his public duties relative to CFP. Nonetheless, the Petitioner may run afoul of section 36-14-5(b) of the Code of Ethics as it pertains to his independence of judgment while performing his public duties relative to CFP, given the Petitioner's position with Generous Heart, the MOU between Generous Heart and CFP, and his anticipated involvement with the implementation of the MOU. Accordingly, based on the Petitioner's representations, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner shall recuse from participating in those DCYF meetings where, as described by him, he may be asked to sit as

a representative of the DCYF executive director's office, representatives of CFP are present, and/or the subject matter of the meetings involves and/or financially impacts CFP.

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 reminded that he may not use his public employment or confidential information received through his public employment to obtain financial gain for Generous Heart or any of its other officers. The Petitioner is encouraged to remain vigilant about potential conflicts of interest that could arise as a result of his simultaneous public employment and private business associate relationship with Generous Heart, and either recuse from participating in his public capacity under circumstances where Generous Heart would be directly financially impacted, or seek additional advice from the Ethics Commission. All recusals must be made consistent with the provisions of R.I. Gen. Laws § 36-14-6. The Petitioner is further encouraged to seek additional guidance from the Ethics Commission as appropriate, if and when, his duties in either of his positions or the relationship between Generous Heart and CFP change.

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)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2021-6

A.O. 2019-27

A.O. 2014-14

A.O. 2011-36

A.O. 2002-76

Keywords:

Private Employment