

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-16

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

Code Citations:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 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

Private Employment

Recusal