

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion No. 2024-20

Approved: 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.<sup>1</sup>

### **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."<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> <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.<sup>3</sup> 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,<sup>4</sup> 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.

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

<sup>4</sup> 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 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)

§ 36-14-5(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