



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

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**NOTICE OF OPEN MEETING**

**AGENDA**

**9<sup>th</sup> Meeting**

**DATE:** Tuesday, June 25, 2024

**TIME:** 9:00 a.m.

**PLACE:** Rhode Island Ethics Commission  
Hearing Room - 8<sup>th</sup> Floor  
40 Fountain Street  
Providence, RI 02903

**LIVESTREAM:** The Open Session portions of this meeting will be livestreamed at:  
<https://us02web.zoom.us/j/81172756052>

1. Call to Order.
2. Motion to approve minutes of Open Session held on June 4, 2024.
3. Director's Report: Status report and updates regarding:
  - a.) Complaints and investigations pending;
  - b.) Advisory opinions pending;
  - c.) Access to Public Records Act requests since last meeting;
  - d.) Financial disclosure;
  - e.) General office administration.
4. Advisory Opinions:
  - a.) Philip L. Hervey, AICP, the Barrington Town Manager, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from

participating in the oversight, discussions, and decision-making relative to a redevelopment project in town under circumstances where the only developer to bid on the project initially intended to engage a real estate firm for the marketing and sale of certain real estate units that will be developed under the project and the Petitioner's spouse is employed by that real estate firm as its office manager. [Staff Attorney Papa]

- b.) Scott Millar, a member of the Exeter Planning Board, requests an advisory opinion regarding whether the Code of Ethics permits him to continue drafting proposed amendments and later participate in discussions and decision-making relative to the potential amendment of the Exeter Rural Residential Compound ordinance, given that the ordinance applies to his property. [Staff Attorney Papa]
  - c.) Dr. Patrice Milos, a Director of the Rhode Island Life Science Hub, requests an advisory opinion regarding whether she may accept and serve in the position of Interim President of the Life Science Hub until a permanent President/CEO can be found and confirmed by the Rhode Island Senate. [Executive Director Gramitt]
5. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on June 4, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(1), (2) & (4).
  - b.) In re: Scott Millar, Complaint No. 2024-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - c.) In re: Wayne Salisbury, Complaint No. 2024-9, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - d.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on June 25, 2024.
7. Report on actions taken in Executive Session.
8. New Business proposed for future Commission agendas and general comments from the Commission.
9. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED

THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE,  
AT 1-800-RI5-5555.

*Posted on June 20, 2024*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: June 25, 2024

**Re: Philip L. Hervey, AICP**

### **QUESTION PRESENTED:**

The Petitioner, the Barrington Town Manager, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in the oversight, discussions, and decision-making relative to a redevelopment project in town under circumstances where the only developer to bid on the project initially intended to engage a real estate firm for the marketing and sale of certain real estate units that will be developed under the project and the Petitioner's spouse is employed by that real estate firm as its office manager.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Barrington Town Manager, a municipal appointed position, is not prohibited by the Code of Ethics from participating in the oversight, discussions, and decision-making relative to a redevelopment project in town under circumstances where the only developer to bid on the project initially intended to engage a real estate firm for the marketing and sale of certain real estate units that will be developed under the project and notwithstanding that the Petitioner's spouse is employed by that real estate firm as its office manager.

The Petitioner is the Barrington Town Manager, having served in that position since January 1, 2022. The Petitioner represents that in 2021 the town purchased land located at 25 Watson Avenue in Barrington (property) which is the site of the former Carmelite Monastery and since has been planning the redevelopment of the property. He states that the town council ultimately approved a redevelopment plan for the property that includes the development of six single-family home sites, a public park, and a pocket neighborhood of 12 cottage-style single-family homes (collectively, "the project"). The Petitioner adds that in January 2024, the town council issued a Request for Proposals for the development of the pocket neighborhood aspect of the project. The Petitioner represents that a single developer, FJS Associates, Ltd. (FJS), submitted a proposal, which the Petitioner reviewed upon receipt. The Petitioner notes that the proposal indicated that FJS would engage the real estate firm of REMAX River's Edge (REMAX) for the marketing and sale of the real estate units to be located in the pocket neighborhood. He states that because his spouse is employed by REMAX as an office manager, and upon consultation with the town solicitor, he has since recused from further participation in the project and delegated his authority relative to the project to the town's Director of Planning, Building, and Resilience. The Petitioner notes that, as required, the project was subsequently approved by the voters at a Financial Town Meeting in May of 2024.

The Petitioner states that the project will require significant resources and supervision from town officials, including himself. He further states that, in March of 2024, FJS removed REMAX from its proposal. Furthermore, the Petitioner represents that, as an office manager with REMAX, his spouse receives a fixed salary, and neither her salary nor any bonus that she might receive from her employment is based on specific sales. He further represents that his spouse would not have received any additional compensation based on the project or even worked on the project, and she would not have appeared before the town or the Petitioner to represent FJS relative to the project. Lastly, the Petitioner states that the town will have no role in selecting or approving the real estate agent or firm that FJS eventually selects to market and sell the real estate units in the pocket neighborhood. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may now resume his public duties relative to the performance respectively of the town and FJS under the terms of the development agreement between them.

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 occurs if a public official has reason to believe or expect that he, any member of 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). A “person within his [] family” includes the official’s spouse. R.I. Gen. Laws § 36-14-2(1); Commission Regulation 520-RICR-00-00-1.3.1(A)(2) Prohibited Activities – Nepotism (36-14-5004) (Regulation 1.3.1). A “business associate” is defined as a person joined together with another person to “achieve a common financial objective.” § 36-14-2(3). A “person” is defined as an individual or a business entity. § 36-14-2(7).

A public official is further prohibited from using his public office or confidential information received through his position to obtain financial gain, other than that provided for by law, for himself, his business associate, or any person within his family. § 36-14-5(d). Additionally, Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) requires a public official to recuse himself from participation when any person within his family appears or presents evidence or arguments before his state or municipal agency. Furthermore, Regulation 1.3.1(B)(1) prohibits a public official from participating in any matter as part of his public duties if he has reason to believe or expect that any person within his family is a party to or participant in the same matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage.

In the instant matter, REMAX has been removed from FJS’s proposal. Further, any official action taken by the Petitioner relative to the project at this stage of the project would have a direct financial impact on FJS rather than on REMAX. Additionally, the Ethics Commission has previously opined that a public official is not required to recuse from matters that may cause a financial impact on his family member’s employer or business associate, as long as there is no corresponding financial impact upon the family member. In Advisory Opinion 2018-53, for example, the Ethics Commission opined that a member of the Jamestown Zoning Board of Review could participate in discussions and voting on zoning board matters in which an applicant or objector was represented by an attorney from the law firm at which the petitioner’s spouse was

employed as a legal assistant, because none of the compensation received by the petitioner's spouse in the course of her employment was dependent upon a particular outcome in any case, and the petitioner's spouse did not work on zoning matters. See also A.O. 2015-45 (opining that the deputy chief of legal services for the Public Utilities Commission was not prohibited by the Code of Ethics from working on a matter involving a utility company that was represented by her spouse's law firm, based on the petitioner's representations that her spouse would not perform any work on the matter nor appear before the Public Utilities Commission); A.O. 2008-69 (opining that a member of the Woonsocket Zoning Board of Review was permitted to participate in discussion and voting on a petition for a variance brought by CVS, notwithstanding that the petitioner's sister was employed as an accounting analyst with CVS, since his sister would not be financially impacted by the zoning board's decision regarding the petition).

Here, the Petitioner's spouse is a salaried employee, and neither her salary nor a bonus she might receive is dependent upon whether REMAX is part of the project or the marketing and sale of the real estate units within the proposed pocket neighborhood. As an office manager, the Petitioner's spouse would not have performed any work on the project, nor would she have represented FJS before the town or the Petitioner relative to the project. Thus, even if REMAX had remained part of the project, or is later again selected by FJS to be part of it, the Petitioner would not be prohibited by the Code of Ethics from performing his public duties relative to the project. This would include any discussions and decision-making relative to the project and the supervision of the performance of the town and/or JFS under their development agreement. Accordingly, based on 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 Code of Ethics does not prohibit the Petitioner from participating in the project. However, if circumstances should change such that it becomes reasonably foreseeable that his participation in such matters could result in financial impact upon his spouse, the Petitioner is encouraged to seek further guidance from this Commission and/or recuse from participation in accordance with 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(1)

§ 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-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

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

Related Advisory Opinions:

A.O. 2018-53

A.O. 2015-45

A.O. 2008-69

Keywords:

Family

Financial Interest

Nepotism

DRAFT

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: June 25, 2024

**Re: Scott Millar**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Exeter Planning Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics permits him to continue drafting proposed amendments and later participate in discussions and decision-making relative to the potential amendment of the Exeter Rural Residential Compound ordinance, given that the ordinance applies to his property.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Exeter Planning Board, a municipal appointed position, is permitted by the Code of Ethics to continue drafting proposed amendments and later to participate in discussions and decision-making relative to a possible amendment of the Exeter Rural Residential Compound ordinance, notwithstanding that the ordinance applies to his property.

The Petitioner is a member of the Exeter Planning Board, to which he was appointed by the Exeter Town Council in 2019. The Petitioner represents that during a recent review of the Exeter Comprehensive Plan, the planning board determined that the rural residential compound ordinance should be revised and updated by way of an amendment. The Petitioner states that, because he has experience drafting ordinances, and because the town's part-time planner did not have the availability to draft a proposed amendment, the Petitioner volunteered to draft a proposed amendment for the planning board to review. The Petitioner explains that, in Exeter, there currently can be only one dwelling unit per lot, unless the property is subdivided and developed according to either the compound ordinance or the conservation development ordinance. The Petitioner further explains that the existing compound ordinance, which has not been used in years, requires for a land development a density of no more than one dwelling unit per ten acres of land, which he notes is excessive. The Petitioner adds that the conservation development ordinance, on the other hand, allows a property owner to subdivide and develop his or her land to the maximum number of lots allowed according to the type of residential zone in which the property is located.<sup>1</sup> He explains that there are three types of residential zones in Exeter, all of which are considered rural, and each of which requires either two, four, or five acres of land for the construction of a

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<sup>1</sup> The Petitioner notes that the compound ordinance was created prior to the conservation development ordinance and property owners can use either ordinance to subdivide and develop their land.



home.<sup>2</sup> The Petitioner states that he has yet to develop a specific proposal, although he is currently considering two options, based on his research of the laws of other Rhode Island municipalities containing rural compound development requirements. The Petitioner represents that any potential amendment to the compound ordinance will apply in the same way and to the same extent to all properties located in the various residential zones. The Petitioner states that Exeter is primarily comprised of lots zoned for residential development and, although he does not know the exact number, he estimates that there are hundreds of lots that would be impacted by amendments to the compound ordinance.<sup>3</sup>

The Petitioner describes one option as an amendment to the compound ordinance that would require an increase by 50 percent of the current lot size necessary for the construction of a home in a particular residential zone. For example, if a particular residential zone currently requires four acres for the construction of a home, then the compound ordinance, as amended, would require six acres for the construction of a home in that particular zone. Another option would be to reduce by 50 percent the number of lots into which a parcel could be subdivided in a particular residential area. For example, if a resident owns 40 acres of land in a four-acre residential area, and is currently permitted to subdivide the land into ten four-acre lots, under the Petitioner's second option for amending the compound ordinance, the resident would be able to subdivide the lot into only five four-acre lots, thus decreasing the number of lots by 50 percent. The Petitioner represents that either option would apply in the same way and to the same degree to all lots in the different residential areas.

The Petitioner states that he and his spouse own and reside in a home on 43 acres of land located in a residential zone that requires four-acre home lots.<sup>4</sup> The Petitioner further states that under the existing compound ordinance he would be allowed to subdivide his land and build a compound with three more homes on his property. He represents that a resident in town has alleged that the Petitioner should not be participating in the amendment of the compound ordinance as the Petitioner's motive for doing so would be to increase the value of his own property by increasing the number of homes that he could build on it. The Petitioner counters that allegation by pointing out that an existing conservation development ordinance already allows him to create more lots on his property than the current compound ordinance or an amendment to it would allow. Thus, the Petitioner states that if he were to develop his land further, he would be able to use the existing conservation development ordinance to do so. The Petitioner further states that an amendment to the compound ordinance on its own would not increase the value of his property. More notably, the Petitioner represents that he and his spouse have no intention to sell or subdivide their property, nor have they previously submitted an application for the development of a compound on their property. Moreover, he notes that he and his spouse have submitted an application, which is currently pending, with the United States Department of Agriculture for the sale of the

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<sup>2</sup> The Petitioner explains that Exeter is considered a rural town and all properties in these three types of residential zones are considered rural.

<sup>3</sup> The Petitioner represents that according to the town's 2024 Comprehensive Plan, there are 266 parcels of land that are ten acres or larger and enrolled in the farm, forest, and open space program, which is not under consideration in this advisory opinion. However, he notes that not all parcels of land greater than ten acres are enrolled in that program. Therefore, the parcels of land that are ten acres or larger are 266, at a minimum.

<sup>4</sup> The Petitioner explains that he has owned the property for 30 years.

development rights to their property in order to preserve the land as it currently is. The Petitioner states that, in light of the town resident's allegations, he has at this time ceased his involvement in the development of the amendments to the compound ordinance until he receives guidance from the Ethics Commission through the instant advisory opinion. Therefore, based on this set of facts, the Petitioner seeks advice from the Ethics Commission regarding whether the Code of Ethics allows him to continue drafting proposed amendments and participate in discussions and decision-making relative to the compound ordinance.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that he, or any person within his family, or 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). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," that is, when the probability is greater than "conceivably," but the conflict of interest need not be certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, § 36-14-5(d) of the Code of Ethics prohibits a public official from using his public office or confidential information received through his holding public office to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether, in this particular case, the Petitioner and his spouse would be directly financially impacted by the official action that is under consideration. If a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in the drafting, discussion, or voting on the proposed amended compound ordinance.

In Advisory Opinion 2024-15, for example, the Ethics Commission opined that a state representative could participate in discussion and decision-making relative to proposed legislation that, if passed, would prohibit commercial motor trucks with a certain gross weight from traveling on Route 114A in East Providence between Pawtucket Avenue and the Massachusetts state line, also known as Pleasant Street, notwithstanding that her mother owned and resided in a home along the affected section of 114A. There, the Ethics Commission based its opinion on the fact that the ban on commercial trucks of that weight from traveling on Pleasant Street was not expected to directly impact the values of the properties on Pleasant Street, including that of the petitioner's mother. See also A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the general assembly's discussion and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned a number of child care centers in Rhode Island and voluntarily reimbursed applicants for the cost of obtaining a criminal-records check because, notwithstanding the petitioner's choice to voluntarily reimburse applicants, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment); A.O. 2019-25 (opining that a member of the Cranston City

Council could participate in city council discussion and voting relative to a proposed ordinance that would ban the use of plastic bags by Cranston business establishments, notwithstanding that the petitioner owned and operated a restaurant in Cranston, given the petitioner's representation that the proposed ordinance's ban on plastic bags would have no impact on his current operations).

Here, the Petitioner represents that amendments to the compound ordinance would have no direct financial impact on his property. He further represents that an existing conservation development ordinance allows him to maximize the development of his property, if he so wishes. However, the Petitioner states that he and his spouse have no intention to sell or subdivide their property, nor have they previously applied to develop a compound on their property. Finally, the Petitioner notes that he and his spouse have a pending application with the United States Department of Agriculture for the sale of the development rights to their property in order to preserve the land as is. Accordingly, based upon the Petitioner's representations, a review of the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may continue drafting proposed amendments and participate in discussions and decision-making relative to the compound ordinance.

**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)

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

Related Advisory Opinions:

A.O. 2024-15

A.O. 2021-17

A.O. 2019-25

Keywords:

Financial Interest

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: June 25, 2024

**Re: Patrice Milos**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Board of Directors of the Rhode Island Life Science Hub, a state appointed position, requests an advisory opinion regarding whether she may accept and serve in the position of Interim President of the Life Science Hub until a permanent President/CEO can be found and confirmed by the Rhode Island Senate.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Board of Directors of the Rhode Island Life Science Hub, a state appointed position, may accept and serve in the position of Interim President of the Life Science Hub until a permanent President/CEO can be found and confirmed by the Rhode Island Senate, based on the Ethics Commission's finding that, under the circumstances presented, disallowing the Petitioner's employment in this position would create a substantial hardship for the Life Science Hub.

The Petitioner is a member of the Board of Directors of the Rhode Island Life Science Hub (RILSH), a quasi-public state agency created through the 2023 passage of enabling legislation in the Rhode Island General Assembly known as the "Rhode Island Life Science Hub Act." See R.I. Gen. Laws § 23-99-1 *et seq.* (the Act). Pursuant to the Act, the RILSH was established to be the central and coordinating organization of life science initiatives on behalf of the state, and shall:

- (1) Facilitate the development of medical advances and scientific breakthroughs with companies that specialize in the fields of: medical devices, biomedical technology, medical therapeutic therapies, biogenetics, biomedical engineering, biopharmaceuticals, genomics, and life sciences; and
- (2) Through targeted investment of grants, tax credits, and incentives, fund and incubate Rhode Island-based life science companies that will promote economic and workforce development within the state and that shall allow the state to successfully compete in the national and international life science industries.

R.I. Gen. Laws § 23-99-2. The RILSH is governed by a fifteen-member Board of Directors, seven of whom must possess specifically enumerated qualifications and are appointed by the Governor, and eight of whom must hold enumerated leadership positions with Rhode Island government agencies, higher education institutions, and healthcare providers. R.I. Gen. Laws § 23-99-4(b).

Directors serve without compensation and for a term of four years. §§ 23-99-4(d) and (f). Among the powers of the Board of Directors is the authority to hire, subject to the advice and consent of the Rhode Island Senate, a President who will serve as the RILSH's full-time chief executive officer (CEO). § 23-99-4(k).

The Petitioner states that the RILSH's inaugural Board of Directors was appointed by the Governor in January and February of 2024. Pursuant to the Act, the Chair of the Board of Directors must be a person who has been a senior executive with extensive background in the banking, grant making, and fundraising fields. On January 11, 2024, the Rhode Island Senate confirmed the Governor's nomination of Neil Steinberg, the former President and CEO of the Rhode Island Foundation, to serve as Chair. The Petitioner was appointed to the Board of Directors in January 2024, to satisfy the Act's requirement that one Director be a "member of a life science trade association." § 23-99-4(b). Since joining the RILSH Board of Directors, the Petitioner states that she has served in roles such as Corporate Secretary, Summit Panel Moderator, Investment Review Committee member, and Lab RFP Review Committee member. The Petitioner represents that she has over 30 years of relevant research, business, and advocacy experience, including extensive experience in the life science field having served as the chair of a life science trade association and as CEO of multiple biotech companies. She notes that she was the author of a 2019 RI Bio hub report which laid the foundation for the future of the RILSH. The Petitioner has a master's and doctoral degree in biology from Rensselaer Polytechnic Institute, and she was a postdoctoral fellow at Harvard and Brown Universities. She spent the first 14 years of her career at Pfizer Inc., where she advanced to executive director of molecular medicine and returned later to head the company's Centers for Therapeutic Innovation in Boston.

According to the Petitioner, the Board of Directors held its first meeting on January 22, 2024. The minutes of that meeting show that the RILSH's immediate objectives were to hire a President/CEO by May 2024,<sup>1</sup> execute strategic objectives for workforce development, establish a wet lab incubator and shared lab space facility, and establish a life science investment fund to finance the operations and initiatives of the RILSH. The minutes also show that the Board of Directors voted to hire a global organizational consulting firm (the consultant) to conduct a nationwide search for a President/CEO.

The Petitioner represents that the consultant's search yielded substantial interest and, in April, it was reported by the media that the RILSH's Chair advised that "he was confident in making the June deadline, with seven semifinalists already plucked from the field of 100-plus applicants."<sup>2</sup> The RILSH Board of Directors meeting minutes for April 23, 2024, indicate that the consultant announced that it had reviewed 225 potential candidates for President/CEO, had screened out 210+ candidates, and anticipated three to four finalists. The minutes of the RILSH's meeting on May 9, 2024, indicate that the Board of Directors interviewed three finalists for the President/CEO

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<sup>1</sup> The Petitioner notes that the Board of Directors was operating under an expedited timeline given that the President/CEO position would require Senate approval, and the 2024 Senate session was expected to recess or adjourn by the end of June 2024 and not reconvene for new confirmations until the next legislative session that begins in January 2025.

<sup>2</sup> See Nancy Lavin, *R.I. Life Science Hub board looks for temporary hire while permanent president search continues*, Rhode Island Current, May 16, 2024. <https://rhodeislandcurrent.com/2024/05/16/r-i-life-science-hub-board-looks-for-temporary-hire-while-permanent-president-search-continues/>.

position during executive session, and voted to offer one of the candidates the position subject to negotiation of a satisfactory contract. Notwithstanding the May 9<sup>th</sup> vote to offer the position to a candidate, the Board of Directors announced at a special meeting held on May 15, 2024, that it would continue its search for a President/CEO. The Petitioner represents that upon a determination that no satisfactory candidate had been identified, and that a new round of searching could not be completed in time to obtain Senate approval prior to its June 2024 recess,<sup>3</sup> the Board of Directors directed the consultant to continue its search for a permanent President/CEO while the Board of Directors moved to identify and hire an Interim President who possessed knowledge of the life science industry and experience in management to immediately execute the strategic objectives and priorities outlined in the Act.

Although it had not yet identified a President/CEO to administer its day-to-day operations, the RILSH moved forward with its Act-mandated objectives and initiatives. In April 2024, the RILSH issued an RFP to identify a firm to build both wet and dry lab space in Rhode Island (Lab RFP), per the Act's mandate that the RILSH fund and incubate Rhode Island-based life science companies. § 23-99-2. Then, on May 21, 2024, the RILSH held its Inaugural Life Science Summit at the Rhode Island Convention Center, with over 500 attendees/stakeholders. The Petitioner indicates that the RILSH wishes to maintain the momentum created by the Summit and to move forward with the selection of a contractor to build a life science incubator with wet and dry lab space in Rhode Island through the pending RFP.

At its June 11, 2024 meeting, the RILSH Board of Directors announced that it had voted to approve a three-month contract to hire the Petitioner as RILSH's Interim President for a renewable three-month term beginning July 1, 2024. The Petitioner informs that she recused from this vote and left the meeting room. The Petitioner represents that her compensation under the contract will be \$25,000 per month, which she states is the approximate estimated salary of a permanent President/CEO. The Petitioner further represents that she has agreed to forgo the receipt of employee benefits. She states that the contract offer will be revoked absent approval from the Rhode Island Ethics Commission. Should such approval be conditioned upon the Petitioner resigning from her position on the Board of Directors, the Petitioner states that she is willing to do so.

The Petitioner advises that she is not interested in serving as the RILSH's permanent President/CEO, and she will not apply for the position. Rather, she believes that her extensive background and experience in life science and her familiarity with the RILSH's ongoing projects will provide necessary short-term continuity and expertise as Interim President to maintain and capitalize on the RILSH's existing momentum following its successful Summit in May and its pending review and implementation of the existing RFP to develop and build a new life science incubator and lab space.

The instant request for an advisory opinion was received by the Ethics Commission on June 20, 2024. Therein, the Petitioner seeks an opinion from the Ethics Commission that her acceptance of the position as the RILSH's Interim President would not contravene the Code of Ethics under the circumstances presented. In conjunction with the Petitioner's request, the Commission also

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<sup>3</sup> According to the Petitioner, the consultant informed the RILSH that a new round of President/CEO semi-finalists would not be identified until October or November of 2024.

received correspondence from the RILSH's Chair, Neil Steinberg, requesting that the Petitioner be permitted to serve as the RILSH's Interim President based upon a finding of hardship to the RILSH in the absence of such permission.

Cognizant that the Rhode Island Code of Ethics contains a provision, 520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006)(hereinafter, Regulation 1.5.1), which generally prohibits an appointed official from accepting paid employment or appointment that requires the approval of the body of which he or she is a member, the Petitioner seeks the Ethics Commission's guidance concerning the application of Regulation 1.5.1.

Regulation 1.5.1 is one of the so-called "revolving door" provisions of the Code of Ethics.<sup>4</sup> Entitled "Employment From own Board," Regulation 1.5.1 generally prohibits elected and appointed officials from accepting a paid position that is offered by or through their own board or elective body. The regulation reads as follows:

No elected or appointed official may accept any appointment or election that requires approval by the body of which he or she is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one (1) year after termination of his or her membership in or on such body, unless the Ethics Commission shall give its approval for such appointment or election, and, further provided, that such approval shall not be granted unless the Ethics Commission is satisfied that denial of such employment or position would create a substantial hardship for the body, board, or municipality.

Enacted in 1991, the Ethics Commission has stated that the general purpose of Regulation 1.5.1 is to prevent government employees and officials from unfairly profiting from or trading upon the contacts, associations, and special knowledge that they acquired while performing their public duties as members of state and municipal boards. A.O. 2004-36 (citing In re Advisory From the Governor, 633 A.2d 644, 671 (R.I. 1993)).

The Ethics Commission has considered and applied Regulation 1.5.1 in numerous past advisory opinions. In Advisory Opinion 2016-43, the Commission opined that a member of the North Smithfield Planning Board was prohibited from accepting employment as the Town Planner, given the Planning Board's role in approving any hiring for the position. See also A.O. 2010-26 (opining that a member of the City of East Providence Canvassing Authority may not be hired by the Authority as the Canvassing Authority Administrator); A.O. 2010-24 (opining that a member of the Coventry Housing Authority Board of Commissioners was prohibited from accepting employment from the Housing Authority as its Maintenance Director); A.O. 2004-36 (opining that

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<sup>4</sup> Other sections of the Code of Ethics making up its revolving door provisions include: R.I. Gen. Laws § 36-14-5(e) (prohibiting public officials and employees from representing themselves or others before their own agency); 520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007) (prohibiting any member of the General Assembly from seeking or accepting state employment, not held at the time of the member's election, while serving in the legislature and for one year thereafter); § 36-14-5(n) (applying Regulation 1.5.2's prohibitions to all state elected officials); § 36-14-5(o) (prohibiting senior policy-making, discretionary or confidential staffers of state elected officials from seeking or accepting other state employment, subject to certain exceptions); 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014); and 520-RICR-00-00-1.5.5 State Executive/Administrative Revolving Door (36-14-5015).

a state employee sitting on the Rhode Island Water Resources Board as the designee of the Director of Administration could not become employed by the Board as its General Manager while serving and for one year thereafter); and A.O. 2001-53 (former Tiverton Town Councilor may not accept appointment as the Tiverton Fire Chief prior to the expiration of one year from the date of leaving his position on the Council, given that appointment requires the Council's advice and consent).

Initially, it is clear that the facts set forth by the Petitioner implicate the provisions of Regulation 1.5.1. The Petitioner is a state appointed official serving on the RILSH's Board of Directors. The Act expressly empowers the Board of Directors to hire a President and CEO. § 23-99-4(k). This is a compensated position that will receive pay in the amount of \$25,000 per month. Based on these factors, the Petitioner is prohibited by the terms of Regulation 1.5.1 from accepting the Board of Directors' offer of employment as Interim President unless the Ethics Commission gives its approval based upon a finding that enforcement of Regulation 1.5.1 would result in a substantial hardship to the RILSH.

Regulation 1.5.1 provides for a single exception to its prohibition on accepting employment from one's own board. Such exception is authorized only if "the Ethics Commission is satisfied that denial of such employment or position would create a substantial hardship for the body, board, or municipality." Regulation 1.5.1. Without a showing and finding of a substantial hardship to the governmental body, as opposed to a hardship to the public official seeking employment, the official may not accept a paid appointment from their own Board.

There is no definition of "substantial hardship" in the Code of Ethics. Instead, the Ethics Commission makes that determination on a case-by-case basis considering the totality of the circumstances. Some of the circumstances the Ethics Commission has previously relied upon in making this determination include:

1. Whether and to what extent the position being filled was adequately publicized or advertised;
2. whether the position requires very specific and unique skills;
3. whether there are any other qualified candidates available to fill the position;
4. whether the position has been vacant for a long period of time;
5. whether the employment is a temporary measure or intended to be permanent; and
6. whether and to what extent the public official being offered the employment has participated in the hiring process or decision-making.

In Advisory Opinion 2006-1, the Commission found that the Rhode Island Municipal Police Training Academy ("Training Academy") would suffer a substantial hardship if it was not able to hire the Chairman of the Police Officers Commission on Standards and Training ("POST Commission") as its Director, notwithstanding that the POST Commission oversaw the operation of the Training Academy. There, the petitioner had recused from any POST Commission matters relating to filling the Director's position for which he had applied, which was intended to be permanent. After publicly advertising the position and interviewing candidates, the petitioner was selected as the first choice of two qualified candidates, but the only other qualified candidate withdrew his application leaving the petitioner as the sole remaining qualified candidate.



More recently, in Advisory Opinion 2023-41, the Ethics Commission opined that a substantial hardship existed to permit a member of the Tiverton Wastewater District Board of Directors to be hired as the Executive Director of the Wastewater District, provided that he resigned from the Board of Directors upon accepting the position. Factors considered by the Ethics Commission in making that determination included that: 1) the Board had just completed the hiring process for its previous Executive Director earlier in the year, but that person resigned after less than two months; 2) the Board had then engaged in further advertising and networking with professional associations to search for qualified candidates, but no other qualified candidates were identified; 3) there was a looming deadline for the completion of a substantial sewer expansion project that required the immediate leadership of a qualified Executive Director; and 4) the Petitioner was uniquely qualified to serve in the position and he had been, during the vacancy, voluntarily assisting with numerous projects and issues that would normally be handled by the Executive Director. See also A.O. 2014-18 (member of Rhode Island Fire Safety Code Board of Appeal and Review could be hired as its Executive Director, based on finding of substantial hardship, because the position had been vacant for six months and required unique skills and qualifications, public advertisement had produced no other qualified candidates, and the petitioner was not involved in the hiring process); A.O. 95-118 (opining that a member of the Rhode Island Commission on Women could temporarily serve as the Commission's Interim Executive Director, based upon the following representations: 1) the petitioner was uniquely familiar with the work of the Commission and its office procedures; 2) the Commission had been without a full-time Executive Director for over six months; 3) the petitioner would resign from her position on the Commission; 4) the petitioner would serve as Interim Executive Director temporarily while the Commission completed its search for a permanent replacement; and 5) there would be an open and public hiring process for the permanent Executive Director position).

In the present matter, the Petitioner and the RILSH, through its Chair, have offered numerous circumstances that are supportive of a finding of substantial hardship. The President/CEO position requires a person with specialized skills, having both life sciences expertise and extensive managerial experience. The RILSH has undertaken substantial and reasonable efforts to locate a qualified permanent President/CEO, including the hiring of an organizational consulting firm to conduct a nationwide search. Notwithstanding these efforts, no qualified or satisfactory candidate was identified. The consultant has begun a new search round, but does not expect semi-finalists to be selected until four or five months from now. The permanent position requires Senate confirmation, and the Senate is expected to be in recess for the next six months. The RILSH currently has no staff, but immediately requires a full-time CEO to oversee its ongoing, mandated initiatives and pending RFP to develop a life science incubator and lab space in Rhode Island. The Petitioner is uniquely qualified to serve as Interim President given her background and experience, and she did not participate in the Board of Directors' decision to hire her. The Interim President position is temporary in nature, and the Petitioner will not seek or accept the position of permanent President/CEO.

Having considered the circumstances represented by the Petitioner and the RILSH Chair, as well as our previous advisory opinions applying Regulation 1.5.1, it is the opinion of the Ethics Commission that the Petitioner may accept and serve in the position of Interim President of the RILSH until a permanent President/CEO can be found and confirmed by the Rhode Island Senate.

This opinion is based on a finding by the Ethics Commission that the denial of the Petitioner's services on a temporary basis would create a substantial hardship for the RILSH.

However, this approval of the Petitioner's employment is conditioned upon her resignation from the RILSH Board of Directors, an action that the Petitioner has proactively agreed to take. Resignation from the Board of Directors is necessary given that every action the Petitioner takes as Interim President is properly subject to the scrutiny, supervision, and direction of the Board of Directors. Therefore, accepting employment as Interim President risks impairing her independence of judgment as to her official duties as a RILSH Director, as prohibited by the Code of Ethics. See R.I. Gen. Laws § 36-14-5(b).

**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(b)  
520-RICR-00-00-1.5.1

Other Authority:

*In re Advisory From the Governor*, 633 A.2d 644, 671 (R.I. 1993).  
§ 23-99-1  
§ 23-99-2  
§ 23-99-4

Related Advisory Opinions:

A.O. 2016-43  
A.O. 2014-18  
A.O. 2012-31  
A.O. 2010-26  
A.O. 2010-24  
A.O. 2006-1  
A.O. 2004-36  
A.O. 2001-53  
A.O. 2000-32  
A.O. 95-118

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