



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

40 Fountain Street

Providence, RI 02903

(401) 222-3790 (Voice/TT) Fax: (401) 222-3382

ethics.email@ethics.ri.gov

<https://ethics.ri.gov>

**NOTICE OF OPEN MEETING**

**AGENDA**

**10<sup>th</sup> Meeting**

**DATE:** Tuesday, July 23, 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/88562369977>

1. Call to Order.
2. Motion to approve minutes of Open Session held on June 25, 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.
    - i. Discussion and voting regarding Resolution in Appreciation of Outgoing Ethics Commission Chair Marisa A. Quinn.
4. Advisory Opinions:
  - a.) Adam M. Millard, Esq., a member of the East Greenwich Historic District Commission, requests an advisory opinion regarding whether he qualifies for a

hardship exception to the Code of Ethics' prohibition on representing himself before his own agency, in order to seek a certificate of appropriateness for planned renovations to his home. [Staff Attorney Papa]

- b.) Dennis Turano, a member of the Middletown Town Council, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in town council discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, given that the Petitioner owns such a property but the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones. [Staff Attorney Radiches]
  - c.) Leon Amarant, a member of the Middletown Planning Board, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in planning board discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, given that the Petitioner, his parents, and certain of his business associates own such properties but the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones. [Staff Attorney Radiches]
  - d.) William Nash, a member of the Middletown Planning Board, who is also a member of the Middletown Public Schools Building Committee, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in planning board discussions and decision-making on matters in which he has participated and voted on as a member of the building committee. [Staff Attorney Radiches]
  - e.) Joseph Graziano, a senior public information specialist for the Rhode Island Department of State, who has declared his candidacy for the Rhode Island House of Representatives, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from receiving campaign contributions from lobbyists, given that in the course of his public employment the Petitioner is tasked with discretionary duties involving lobbyists from which he intends to recuse. [Staff Attorney Radiches]
5. Education Update.
6. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on June 25, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - b.) In re: Kenneth J. Hopkins, Complaint No. 2024-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- c.) Motion to return to Open Session.
- 7. Motion to seal minutes of Executive Session held on July 23, 2024.
- 8. Report on actions taken in Executive Session.
- 9. New Business proposed for future Commission agendas and general comments from the Commission.
- 10. 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 July 18, 2024*

# RHODE ISLAND ETHICS COMMISSION

---

---

## Draft Advisory Opinion

Hearing Date: July 23, 2024

**Re: Adam M. Millard, Esq.**

### **QUESTION PRESENTED:**

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own agency, in order to seek a certificate of appropriateness for planned renovations to his home.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own agency, in order to seek a certificate of appropriateness for planned renovations to his home.

The Petitioner is a member of the East Greenwich Historic District Commission (HDC), having been appointed by the East Greenwich Town Council in February of 2024 to a three-year term. The Petitioner represents that his personal residence, which he has owned since October of 2022, is located within the East Greenwich Historic District and, thus, subject to the jurisdiction of the HDC. He states that he would like to both add a window to the south-facing side of his home and replace most of the home's existing windows which he describes as old and having fallen into a state of disrepair. The Petitioner further states that, in order to do these things, he must receive a certificate of appropriateness from the HDC prior to any exterior alterations to his historic property. He represents that he has applied for a certificate of appropriateness; however, the review by the HDC of his application is pending until he receives guidance from the Ethics Commission through the instant advisory opinion regarding whether he qualifies for a hardship exception that will allow him to represent himself before the HDC. The Petitioner explains that he plans to personally appear before the HDC, that he intends to recuse from the HDC's discussions and decision-making relative to his application, and that he has already filed a statement of conflict of interest regarding this matter. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to represent himself before the HDC.

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); 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). 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. § 36-14-5(e)(1) & (4). Moreover, while many conflicts can be avoided under the Code of Ethics by recusing from participation, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions against self-representation absent an express finding by the Ethics Commission that a hardship exists. Upon receiving a hardship exception, the public official is required to recuse from participating in his agency's consideration and disposition of the matter at issue. § 36-14-5(e)(1)(ii). The public official must also "follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter." § 36-14-5(e)(1)(iii).

Here, the Petitioner's proposed conduct falls squarely within § 36-14-5(e)(1)'s prohibition on representing himself before an agency of which he is a member. Thus, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear, either personally or through a representative, before the HDC. The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of 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. The Ethics Commission may consider other factors and no single factor is determinative.

Under similar circumstances in Advisory Opinion 2020-28, the Ethics Commission granted a hardship exception to a member of the East Greenwich Historic District Commission, allowing him to represent himself before that commission in order to seek a certificate of appropriateness for the replacement of the windows at his personal residence, the ownership interest in which predated his appointment to the commission. See also A.O. 2020-26 (granting a hardship exception to an East Greenwich Historic Commission member, allowing him to represent himself before his own commission in order to seek certificates of appropriateness to install a new shed and roof-mounted solar array on his property, the ownership of which predated his appointment to that commission); A.O. 2020-15 (granting a hardship exception to an Exeter Zoning Board of Review member, allowing him to represent himself before his own board in order to seek a dimensional variance to construct a shed at his personal residence that he acquired prior to his appointment to the zoning board, but requiring him to recuse from participation and voting during the zoning board's consideration of his request for relief).

In the present matter, the Petitioner seeks to add a window and replace most of the existing windows on his historic home, the ownership of which predates his appointment to the HDC. Further, the relief sought is related to his personal residence rather than a commercial venture. Based upon the Petitioner's representations, and our review of the relevant provisions of the Code of Ethics and prior advisory opinions, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to § 36-14-5(e)'s prohibitions against representing oneself before one's own agency. Accordingly, the Petitioner may appear, either personally or through a representative, before the HDC to seek a certificate of appropriateness for the addition and replacement of windows at his personal residence. However, as the Petitioner correctly anticipated, he must recuse from participation and voting when the HDC

considers his application. Pursuant to § 36-14-5(e)(1), the Petitioner shall, prior to or at the time of his appearance before the HDC, inform the other HDC members of his receipt of the instant advisory opinion and of his recusal in accord therewith. Notice of recusal must be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 36-14-6.

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

Code Citations:

§ 36-14-5(e)

§ 36-14-6

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

Related Advisory Opinions:

A.O. 2020-28

A.O. 2020-26

A.O. 2020-15

Keywords:

Hardship Exception

# RHODE ISLAND ETHICS COMMISSION

---

---

## Draft Advisory Opinion

Hearing Date: July 23, 2024

**Re: Dennis Turano**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Middletown Town Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in town council discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, given that the Petitioner owns such a property but the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Middletown Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in town council discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, notwithstanding that the Petitioner owns such a property, given that the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones.

The Petitioner was elected to the Middletown Town Council in 2016 and has served continuously in that capacity since. His current term ends in November 2024. The Petitioner states that there are currently approximately 525 residential short-term rental (STR) properties in Middletown which are regulated by a municipal ordinance that will likely soon be revised. He further states that an STR subcommittee comprised of three of the seven town council members (of which the Petitioner was not one) was recently tasked with presenting to the full town council recommended changes to the existing municipal ordinance regulating residential STR properties. The Petitioner represents that, because he currently owns a residential STR property and was awaiting this advisory opinion, he recused from participation in the discussion and decision-making relative to the two draft revised ordinances presented by the subcommittee and the ultimate selection of one of them to be forwarded to the Middletown Planning Board for its review and input.<sup>1</sup> He adds that after the planning board has reviewed the draft revised ordinance and provided its opinion regarding it, the matter will once again be before the town council for further discussion and voting.

---

<sup>1</sup> The Petitioner informs that he made a motion to postpone the town council's discussion and vote on the drafts of the revised ordinances presented by the subcommittee until such time as he could receive an advisory opinion from the Ethics Commission in response to the instant request. However, because his motion to postpone was not seconded, he recused from participation.

The Petitioner states that he learned only the day before the subcommittee presented its proposed revisions to the town council that, as the owner of a current residential STR property in Middletown, he will remain subject to the existing ordinance and be exempt from any revised ordinance that may pass. He further states that he has no plans to purchase or operate any additional residential STR property that would be subject to the revised ordinance, nor is he aware of any member of his family, any business associate, or his private employer having such plans. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited from participating in future town council discussions and decision-making regarding the potential revision of the existing residential STR ordinance.<sup>2</sup>

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is “reasonably foreseeable,” which means that the probability is greater than “conceivably,” but the conflict of interest is not necessarily certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, § 36-14-5(d) prohibits a public official from using his position, or confidential information received through his position, to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or a business by which he is employed or which he represents.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner will 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 town council discussions and decision-making regarding potential revisions to the subject ordinance. For example, in Advisory Opinion 2024-22, an Exeter Planning Board member was permitted to continue drafting proposed amendments, and later to participate in discussions and decision-making, relative to a potential amendment of the Exeter Rural Residential Compound ordinance, notwithstanding that the ordinance applied to the petitioner’s property. There, the petitioner represented that amendments to the compound ordinance would have no direct financial impact upon his property, explaining that an existing conservation development ordinance allowed him to maximize the development of his property, if he so chose, but that he and his spouse had no intention to sell or subdivide their property. See also A.O. 2024-15 (opining that a legislator serving in the Rhode Island House of Representatives could participate in discussions and decision-making relative to proposed legislation that, if passed, would prohibit certain commercial motor trucks from traveling on parts of Route 114A,

---

<sup>2</sup> The Petitioner’s advisory opinion request letter contained the following sentence: “I have also attached a document that the council will be discussing soon.” That sentence referenced a petition submitted by the Short Term Rental Organization of Middletown (STROM) to the State Fire Safety Board of Appeal and Review. During a subsequent telephone conversation with a member of the Ethics Commission staff, the Petitioner stated that he no longer wished to participate in the town council’s consideration of the STROM petition and would be recusing. For that reason, the twenty-two page petition enclosed with the Petitioner’s request was rendered moot and has been excluded from review.



notwithstanding that her mother owned and resided in a home along the relevant portion of 114A, because the petitioner represented that the proposed legislation, if passed, would not directly financially impact her mother or her mother's property); A.O. 2019-25 (opining that a member of the Cranston City Council could participate in city council discussions 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 he currently owns a residential STR property that is, and will remain, subject to the existing ordinance, even if the revised ordinance passes. Additionally, the Petitioner states that he has no plans to purchase and/or operate any additional residential STR property which would be subject to a revised ordinance; nor is he aware of any member of his family, any business associate, or his private employer having such plans. Accordingly, for all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in future town council discussions and decision-making concerning potential revisions to an ordinance that, if passed, would regulate new residential short-term rental properties but not existing ones. The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that he, or a member of his family, his business associate, or any business by which he is employed or which he represents would be directly financially impacted by his participation in the aforementioned town council activities, he must recuse from further participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further guidance from the Ethics Commission.

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

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2024-22

A.O. 2024-15

A.O. 2019-25

Keywords:

Financial Interest

# RHODE ISLAND ETHICS COMMISSION

---

---

## Draft Advisory Opinion

Hearing Date: July 23, 2024

**Re: Leon Amarant**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Middletown Planning Board, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in planning board discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, given that the Petitioner, his parents, and certain of his business associates own such properties but the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Middletown Planning Board, a municipal appointed position, is not prohibited by the Code of Ethics from participating in planning board discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, notwithstanding that the Petitioner, his parents, and certain of his business associates own such properties, given that the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones.

The Petitioner was appointed by the Middletown Town Council to the Middletown Planning Board in January of 2023 and has served continuously in that capacity since. The Petitioner states that there are currently approximately 585 registered short-term rental (STR) properties in Middletown which are regulated by a municipal ordinance that will likely soon be revised. He further states that the town council recently forwarded to the planning board for review and input a series of recommended changes to the existing municipal ordinance regulating residential STR properties. The Petitioner explains that after the planning board has reviewed the draft revised ordinance and provided its opinion regarding it, the matter will once again go before the town council for further discussion and voting.

The Petitioner represents that he currently owns two residential STR properties in Middletown and that his parents own three. He further represents that there are also several individuals for whom he provides paid services in his capacity as a self-employed contractor who own STR properties in Middletown. The Petitioner states that he is the treasurer and a board member of the Short Term Rental Organization of Middletown (STROM), which he describes as a non-profit organization that supports the operation of STR properties in Middletown in a reasonable manner. He further

states that there are other STROM officers and board members who own residential STR properties in Middletown.

The Petitioner represents that, should the draft revised ordinance ultimately be passed by the town council following input from the planning board, the new ordinance will apply prospectively only. He emphasizes that he, his parents, his clients, and his fellow STROM officers and board members will all remain subject to the existing ordinance and be exempt from the revised ordinance if it passes. The Petitioner states that he has no plans to purchase or operate any additional residential STR property that would be subject to the revised ordinance, nor is he aware of any member of his family, any client, or any fellow STROM officer or board member having such plans. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited from participating in planning board discussions and decision-making regarding the potential revision of the existing residential STR 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, 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). A public official has reason to believe or expect that a conflict of interest exists when it is “reasonably foreseeable,” which means that the probability is greater than “conceivably,” but the conflict of interest is not necessarily certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, § 36-14-5(d) prohibits a public official from using his position, or confidential information received through his position, to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he 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).

Applying these provisions of the Code of Ethics, it is clear that that Petitioner must recuse from participating in any matters before the planning board that not only involve or financially impact himself or his family members, but that involve or financially impact his business associates. Here, that would include the Petitioner’s clients for whom he performs work as a contractor and his fellow STROM officers and board members. See, e.g., A.O. 2020-50 (opining that a North Smithfield Planning Board member, who in his private capacity was the president and a director of the North Smithfield Heritage Association, a non-profit organization, was prohibited from participating in planning board discussions and voting concerning an application filed by a member of the Heritage Association’s board of directors); A.O. 2016-45 (opining that a Tiverton planning board member was prohibited from participating in the planning board’s discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects and often referred work and clients to each other).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner, his parents, and/or his business associates will 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 planning board discussions and decision-making regarding potential revisions to the subject ordinance. For example, in Advisory Opinion 2024-22, an Exeter Planning Board member was permitted to continue drafting proposed amendments, and later to participate in discussions and decision-making, relative to a potential amendment of the Exeter Rural Residential Compound ordinance, notwithstanding that the ordinance applied to the petitioner's property. There, the petitioner represented that amendments to the compound ordinance would have no direct financial impact upon his property, explaining that an existing conservation development ordinance allowed him to maximize the development of his property, if he so chose, but that he and his spouse had no intention to sell or subdivide their property. See also A.O. 2024-15 (opining that a legislator serving in the Rhode Island House of Representatives could participate in discussions and decision-making relative to proposed legislation that, if passed, would prohibit certain commercial motor trucks from traveling on parts of Route 114A, notwithstanding that her mother owned and resided in a home along the relevant portion of 114A, because the petitioner represented that the proposed legislation, if passed, would not directly financially impact her mother or her mother's property); A.O. 2019-25 (opining that a member of the Cranston City Council could participate in city council discussions 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 he, his parents, and his business associates currently own residential STR properties that are, and will remain, subject to the existing ordinance, even if the revised ordinance passes. Additionally, the Petitioner states that he has no plans to purchase and/or operate any additional residential STR property which would be subject to a revised ordinance; nor is he aware of any member of his family or any business associate having such plans. Accordingly, for all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in future planning board discussions and decision-making concerning potential revisions to an ordinance that, if passed, would regulate new residential short-term rental properties but not existing ones. The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that he, or a member of his family, his business associate, or any business by which he is employed or which he represents would be directly financially impacted by his participation in the aforementioned planning board activities, he must recuse from further participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further guidance from the Ethics Commission.

**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-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2024-22

A.O. 2024-15

A.O. 2020-50

A.O. 2019-25

A.O. 2016-45

Keywords:

Business Associate

Family Member

Financial Interest

DRAFT

# RHODE ISLAND ETHICS COMMISSION

---

---

## Draft Advisory Opinion

Hearing Date: July 23, 2024

**Re: William Nash**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Middletown Planning Board, a municipal appointed position, who is also a member of the Middletown Public Schools Building Committee, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in planning board discussions and decision-making on matters in which he has participated and voted on as a member of the building committee.

### **RESPONSE:**

It is the opinion of the Ethics Commission that the Petitioner, a member of the Middletown Planning Board, a municipal appointed position, who is also a member of the Middletown Public Schools Building Committee, a municipal appointed position, is not prohibited by the Code of Ethics from participating in planning board discussions and decision-making on matters in which he has participated and voted on as a member of the building committee.

The Petitioner is a member of the Middletown Planning Board. He was initially appointed to that position by the Middletown Town Council in January 2016, and has served continuously since. The Petitioner, who is currently the planning board's chair, identifies among his duties the following: facilitating all board meetings for specific land development projects and voting on matters related to Middletown's land development regulations. The Petitioner is also a member of the Middletown Public Schools Building Committee, for which he currently serves as vice-chair. He states that he volunteered to serve on the building committee three years ago and, as a result, was appointed by the Middletown School Committee to the building committee as a community member.<sup>1</sup> The Petitioner further states that his role as vice-chair of the building committee is to assist the chair with all of the issues related to the building committee's work as Middletown plans to design and construct a new joint middle school and high school (project) by using funds from a \$190 million bond that was approved by a majority of Middletown voters in November 2023.

The Petitioner represents that Middletown's land development regulations require that the project receive approval from the planning board. He explains that the building committee's applications to the planning board relative to the project will be limited to those for master plan, preliminary, and final approval. The Petitioner states that the application for master plan approval will go

---

<sup>1</sup> The Petitioner explains that the Rhode Island Department of Education School Construction Regulations require that the building committee include a minimum of three community members.

before the planning board in September 2024. He adds that the master plan application will be presented to the planning board on behalf of the building committee by the building committee's architect, the project manager, and the town solicitor. The Petitioner represents that later this year, or perhaps early next year, the building committee will seek preliminary and final approval of the project. The Petitioner explains that he will not personally appear before the planning board relative to any of the building committee's applications.

The Petitioner states that his membership on the building committee does not impair his independence of judgment with regard to his planning board duties. He further states that neither he, nor any of his family members, business associates, or his employer will be directly financially impacted by any of the planning board's voting regarding the project. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited from participating in planning board discussions and decision-making on matters relating to projects in which he has participated and voted on as a member of the building committee.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that 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 his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, the Code of Ethics prohibits a public official 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). 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). A business is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted." § 36-14-2(2).

The Ethics Commission has indicated that the Code of Ethics does not consider a public body to be a "business" or the relationship between a public official and a public body to be that of "business associates." See, e.g., A.O. 2011-29 (opining that a member of the Portsmouth Planning Board, who was also a civil engineer for the Rhode Island Department of Transportation (RIDOT), could participate and vote on a development proposal pending before the planning board, notwithstanding that in her capacity as a RIDOT civil engineer she had been reviewing the same property to ensure that the state's property interests were protected); A.O. 2007-14 (opining that a member of the North Kingstown Town Council, who was also a member of the Quonset Development Corporation (QDC), both public bodies, could participate in and vote on a development proposal pending before the QDC, even though he had previously considered and voted on the same matter when it was before the town council). Here, neither the planning board nor the building committee is a business; thus, the Petitioner is not a business associate of either of those public entities.

The Ethics Commission has also consistently opined that a public official is not prohibited by the Code of Ethics from voting on a matter as a member of one public agency and then voting on the

same matter as a member of another public agency, provided that the above-cited provisions of the Code of Ethics were not otherwise implicated. In Advisory Opinion 2021-37, for example, a member of the Smithfield Town Council, who was also a former member of the Smithfield Land Trust, questioned whether she was required to recuse from participating in town council discussions and voting on property matters in which she had previously participated and voted as a member of the land trust. That petitioner had been appointed by the town council to the land trust, and served on the land trust until her election to the town council. The Ethics Commission determined that both the town council and the land trust were public entities, and acknowledged the petitioner's representations that neither she nor her family members, business associates, or employer stood to be directly financially impacted by any of the town council's decisions relative to the subject property. The Ethics Commission opined that the petitioner was not prohibited from participating in town council matters related to the subject property, notwithstanding that she had previously participated and voted on those matters as a member of the land trust. See also A.O. 2003-39 (opining that a member of the Gloucester Town Council could participate and vote on the town's funding of the purchase of a parcel of land from the Gloucester Housing Authority, notwithstanding his prior status as a member of the housing authority at the time it purchased the lot and decided to offer it for sale to the town).

Here, the Petitioner is not a business associate of either the planning board or the building committee. Additionally, the Petitioner represents that neither he nor any of his family members, business associates, or his employer stand to be directly financially impacted by any planning board decisions relative to the design and construction of the new joint middle school and high school in Middletown. Finally, the Petitioner states that he will not personally appear before the planning board relative to any of the building committee's applications. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior advisory opinion issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from participating in planning board discussion and decision-making on matters in which he participated and voted on as a member of the building committee.

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

Related Advisory Opinions:

A.O. 2021-37



A.O. 2011-29  
A.O. 2007-14  
A.O. 2003-39

Keywords:  
Dual Public Roles

DRAFT

# RHODE ISLAND ETHICS COMMISSION

---

---

## Draft Advisory Opinion

Hearing Date: July 23, 2024

**Re: Joseph Graziano**

### **QUESTION PRESENTED:**

The Petitioner, a senior public information specialist for the Rhode Island Department of State, a state employee position, who has declared his candidacy for the Rhode Island House of Representatives, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from receiving campaign contributions from lobbyists, given that in the course of his public employment the Petitioner is tasked with discretionary duties involving lobbyists from which he intends to recuse.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a senior public information specialist for the Rhode Island Department of State, a state employee position, who has declared his candidacy for the Rhode Island House of Representatives, is not prohibited by the Code of Ethics from receiving campaign contributions from lobbyists, notwithstanding that in the course of his public employment the Petitioner is tasked with discretionary duties involving lobbyists, given that the Petitioner intends to recuse from those duties.

The Petitioner has been employed by the Rhode Island Department of State since 2016 and currently holds the position of senior public information specialist. He describes among his general duties the following: assisting public employees and officials with the filing of agendas and minutes pursuant to the Open Meetings Act; processing recently enacted state and municipal legislation and posting it on the Department of State website; and managing the appointments of individuals by others to boards, commissions, and agencies. The Petitioner states that his duties as pertain to lobbyists include the following: assisting with the management and maintenance of the online register of lobbyists, including their clients, lobbying activities, and expenditures; aiding with the organization and facilitation of training seminars; and investigating complaints against lobbyists and recommending appropriate dispositions to the Department of State's public information director. The Petitioner further states that fines and penalties against lobbyists are assessed and administered by the public information director. The Petitioner represents that his discretionary authority relative to the administration of fines and penalties against lobbyists is limited to those occasional instances when the public information director is absent. He further represents that, if such an instance were to occur, he would recuse from participation, and the administration of the fines and penalties would be either addressed by the public information director upon her return or handled by the Department of State's deputy secretary (to whom the director reports).

The Petitioner explains that he recently declared his candidacy for the Rhode Island House of Representatives.<sup>1</sup> He states that he will not solicit political contributions from lobbyists, either directly or through a surrogate. The Petitioner further states that he will recuse from participation in his capacity as a public employee for the Department of State in all matters involving lobbyists for which he would be in a position to exercise discretion, regardless of whether that particular lobbyist had contributed to his campaign. He clarifies that this would include, but not be limited to, investigating complaints against lobbyists and recommending appropriate dispositions to the public information director. It is under this set of facts that the Petitioner seeks advice from the Ethics Commission regarding whether he may accept campaign contributions from lobbyists.

Under the Code of Ethics, a public official or employee shall not have any interest, financial or otherwise, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his 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 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 holding public office to obtain financial gain, other than that provided by law, for himself or any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). Further, a public official or employee may not solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding or expectation that his vote, official action, or judgment will be influenced thereby. § 36-14-5(g).

Pursuant to 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) (“Regulation 1.4.4”) a public official or employee shall not solicit or request, directly or through a surrogate, any political contributions from a subordinate for whom, in his official duties and responsibilities, the public official or employee exercises supervisory responsibilities. Regulation 1.4.4(B). This regulation, however, does not prohibit or limit the right of a subordinate to make unsolicited political contributions, which are subject to the protections of the First Amendment of the U.S. Constitution. For purposes of the prohibition against solicitations, the term “subordinate” includes other employees, contractors, consultants, or appointed officials of the official’s or employee’s agency. Regulation 1.4.4(C).

While the above provisions of the Code of Ethics serve to regulate the potential interaction between the Petitioner’s public duties as a senior public information specialist for the Department of State and his private campaign for public office, they do not bar such simultaneous endeavors, provided that the requirements of the Code of Ethics cited above are followed. On several occasions, the Ethics Commission has guided the conduct of public officials who were seeking election to public office relative to campaigning and fundraising activities. In Advisory Opinion 2020-45, for example, the Ethics Commission opined that the director of the Rhode Island Department of Administration, who was interested in exploring the possibility of running for mayor of the City of Providence, was not prohibited from soliciting and receiving campaign contributions from persons who were not state employees or vendors, provided that the persons solicited were not

---

<sup>1</sup> The Petitioner seeks to be elected to the position of State Representative for District 16 in Cranston.

otherwise the petitioner's subordinates as defined under the Code of Ethics; there was no understanding that the campaign contributions would affect any official action by the petitioner; and that no public time or resources would be utilized by the petitioner in furtherance of his campaign. See also A.O. 2021-34 (opining that the administrative captain for the Town of Lincoln Police Department was not prohibited from continuing to serve in that position while seeking election to the position of Lincoln's town administrator, provided that: no public time or resources would be utilized by the petitioner in furtherance of his campaign; the petitioner did not solicit, directly or through a surrogate, campaign contributions from his subordinates as defined under the Code of Ethics; and there was no understanding that the campaign contributions would affect any official action by the petitioner); A.O. 2005-68 (opining that a petitioner contemplating candidacy for the elected position of mayor of the City of Cranston was neither required to resign nor take a leave of absence from his appointed position as a judge of the Cranston Municipal Court, under circumstances where the petitioner expressly represented that he would not use public resources or time for his political activity and that he would not solicit political contributions from his subordinates or from persons appearing before him).

Here, because the Petitioner represents that he will not solicit or request any political contributions from lobbyists, either directly or through a surrogate, the Ethics Commission will not address the Code of Ethics' prohibitions, if any, against soliciting such contributions from lobbyists. Moreover, the Code of Ethics does not prohibit or limit the right of a subordinate to make unsolicited political contributions, which are subject to the protections of the First Amendment of the U.S. Constitution. The Petitioner also states that he will recuse from participation in his capacity as a public employee for the Department of State in all matters involving lobbyists for which he would be in a position to exercise discretion, regardless of whether that particular lobbyist had contributed to his campaign. He clarifies that this would include, but not be limited to, investigating complaints against lobbyists and recommending appropriate dispositions to the public information director.

Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with past advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from receiving unsolicited campaign contributions from lobbyists. All recusals by the Petitioner must be made consistent with the provisions of R.I. Gen. Laws § 36-14-6. The Petitioner is further advised that no public time or resources may be utilized in furtherance of his campaign and there must be no understanding that campaign contributions would affect any official action by the Petitioner. The Petitioner is encouraged to seek additional advice from the Ethics Commission if additional questions regarding his candidacy arise.

Finally, public officials and employees are encouraged by the Rhode Island Constitution to hold themselves to ethical principles that go beyond the legal requirements of the Code of Ethics by "adher[ing] to the highest standards of ethical conduct, respect[ing] the public trust and . . . avoid[ing] the appearance of impropriety[.]" R.I. Const. art. III, sec. 7. The Code of Ethics does not prohibit the creation of an appearance of impropriety; however, like the Rhode Island Constitution, it advises public officials and employees to voluntarily avoid conduct that creates such an appearance. Here, the Ethics Commission acknowledges and supports the Petitioner's willingness to not solicit political contributions from lobbyists, and his decision to recuse from

participation in his public capacity from all matters involving lobbyists for which he would be in a position to exercise discretion, regardless of whether that particular lobbyist had contributed to his campaign, given the appearance of impropriety that could accompany such actions.

**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)

§ 36-14-5(g)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011)

Related Advisory Opinions:

A.O. 2021-34

A.O. 2020-45

A.O. 2005-68

Keywords:

Campaign Contributions