

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-28

Approved: 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

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

Code Citations:

§ 36-14-5(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