



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

12th Meeting

DATE: Tuesday, September 24, 2024

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

LIVESTREAM: The Open Session portions of this meeting will be livestreamed at:

<https://us02web.zoom.us/j/83860347546>

1. Call to Order.
2. Administration of Oath of Office to Jill Harrison.
3. Motion to approve minutes of Open Session held on August 20, 2024.
4. 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.
5. Advisory Opinions:

- a.) Frederick M. Bodington, III, who has been offered the position of director of the Little Compton Department of Public Works, and who in his private capacity owns and operates a property management company for which he holds a trash hauler permit, collects trash for private clients, and disposes of it at the town's transfer station over which the Department of Public Works director has supervisory authority, requests an advisory opinion regarding whether he may accept the director position and continue to dispose of trash at the town's transfer station. [Staff Attorney Papa]
 - b.) Sagree Sharma, the Capital Projects Fund administrator in the Pandemic Recovery Office of the Rhode Island Department of Administration, requests an advisory opinion regarding whether the Code of Ethics prohibits her from becoming a member of the Providence Historic District Commission, a municipal appointed position, and from then serving simultaneously in both positions. [Staff Attorney Radiches]
 - c.) Joshua Berry, the Chief of Municipal Planning and Programming at the Rhode Island Department of Housing, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting other employment providing part-time town planner services on a contractual basis to the Town of New Shoreham. [Staff Attorney Radiches]
6. In re: James E. Thorsen, Complaint No. 2023-7 – Discussion and vote on Petition to Take Discovery.
 7. Discussion regarding Commission Regulation 520-RICR-00-00-3.30 and Fine Schedules for Financial Disclosure Complaints.
 8. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on August 20, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Santos Javier, Complaint No. 2024-10, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Anastasia Williams, Complaint No. 2024-11, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) In re: Olivia DeFrancesco, Complaint No. 2024-7, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - e.) Motion to return to Open Session.
 9. Motion to seal minutes of Executive Session held on September 24, 2024.

10. Report on actions taken in Executive Session.

11. New Business proposed for future Commission agendas and general comments from the Commission.

12. 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 September 19, 2024

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: September 24, 2024

Re: Frederick M. Bodington, III

QUESTION PRESENTED:

The Petitioner, who has been offered the position of director of the Little Compton Department of Public Works, a municipal employee position, and who in his private capacity owns and operates a property management company for which he holds a trash hauler permit, collects trash for private clients, and disposes of it at the town's transfer station over which the Department of Public Works director has supervisory authority, requests an advisory opinion regarding whether he may accept the director position and continue to dispose of trash at the town's transfer station.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, who has been offered the position of director of the Little Compton Department of Public Works, a municipal employee position, and who in his private capacity owns and operates a property management company for which he holds a trash hauler permit, collects trash for private clients, and disposes of it at the town's transfer station over which the Department of Public Works director has supervisory authority, may accept the director position and continue to dispose of trash at the town's transfer station.

The Petitioner is a resident of the Town of Little Compton who owns and operates Bodington Residential Services, Inc. (BRS), a private entity established in 2017 that provides property monitoring, maintenance, and management to Little Compton residents. He describes among the services provided by BRS the following: home monitoring while homeowners are away, opening and closing homes whose owners reside seasonally in the town, performing minor home repairs, and waste collection and disposal. The Petitioner states that the town does not provide municipal waste collection for its residents; thus, residents may bring their trash to the town transfer station personally or hire someone to do so. The Petitioner clarifies that he only performs waste collection for his private clients and that he does not have a contract with the town for waste collection. The Petitioner explains that BRS provides waste collection three times per week during the summer months, and two half days per week during the winter months. The Petitioner notes that although he sometimes hauls waste for his private company, his son-in-law is the one who mainly performs those duties.

The Petitioner represents that to use the transfer station, residents are required to obtain a sticker for waste disposal issued by the town clerk upon showing of proof of residency, vehicle registration, and then payment of an annual fee established by the town council. The Petitioner

further represents that as a business providing waste collection services, he is required to obtain a trash hauler permit from the town council on an annual basis. He explains that this is achieved by submitting a letter requesting the issuance of such permit, providing proof of vehicle registration and insurance, and then paying an annual fee to the town. The Petitioner states that the permit is then issued by the town clerk. The Petitioner further states that anyone can obtain a hauler permit, that there is no cap on the number of hauler permits issued by the town, and that currently there is one other company that also provides trash collection to residents of the town. The Petitioner notes that only trash generated in the town can be disposed of in the town transfer station and that there are certain requirements relative to the separation of the various types of trash that must be followed by everyone using the transfer station.

The Petitioner represents that he responded to an advertisement by the town soliciting applications for part-time employment in the position of director of the Little Compton Department of Public Works (DPW). He explains that he was interviewed during a town council meeting by the town council, the town administrator, and the town clerk.¹ The Petitioner states that he was offered the position pending receipt of an advisory opinion from the Ethics Commission regarding whether he may accept the position without running afoul of the provisions of the Code of Ethics, given that he currently holds a trash hauler permit and utilizes the town's transfer station.

The Petitioner represents that the DPW director is appointed by the town council and that the position is subordinate to the town administrator, carries flexible work hours, and requires a 20-hour work week. He further represents that the DPW director's duties include oversight and maintenance of town streets, roads and highways, snowplowing of municipal properties, maintenance of school and town buildings, and performance of the duties of a tree warden. The Petitioner states that a minor part of the responsibilities of the DPW director includes oversight of the transfer station, management of its day-to-day operations, conducting a risk management assessment, and supervision of the employees of the transfer station. The Petitioner explains that the DPW director oversees four department employees, one of whom is part-time employee who works solely at the transfer station. The Petitioner clarifies that the other three are full-time employees, two of whom work at the transfer station when needed and a third who does not have any responsibilities relative to the transfer station. The Petitioner states that if he is permitted by the Code of Ethics to accept the position of PDW director while continuing to operate BRS and deliver trash to the town's transfer station, in the unlikely event that a conflict of interest should occur relative to his oversight of the transfer station, he will recuse from participation in such an event, which will instead be addressed by the town administrator.

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 or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of his official duties if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of the public official's activity, to the public official, his family member, his business associate, or any business by which he is employed or which he represents. R.I. Gen. Laws § 36-14-7(a).

¹ The Petitioner clarifies that the town clerk is a municipal elected position that is not subordinate to the DPW director position.

Further, a public official is prohibited from using his public office, or confidential information received through his public office, to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d).

Finally, no person subject to the Code of Ethics shall represent himself, or any other person or entity, before any state or municipal agency of which he is a member, by which he is employed, or over which he has appointing authority. § 36-14-5(e); 520-RICR-00-00- 1.1.4 Representing Oneself or Others, Defined (36-14-5016); R.I. Gen. Laws § 36-14-2(7). This prohibition applies while the public official is employed by the agency and for one year thereafter. § 36-14-5(e)(4). To represent oneself or another before such agency is defined as participating in the presentation of evidence or arguments before the agency for the purpose of influencing the judgment of that agency in his or her own favor or in favor of that other person. § 36-14-2(12); § 36-14-2(13); 520-RICR-00-00- 1.1.4. However, interactions with a former or current agency that are ministerial in nature and do not involve agency decision-making are not prohibited. See, e.g., A.O. 2013-28 (opining that a former Principal Policy Associate for the Rhode Island Office of the Health Insurance Commissioner (OHIC) could accept private employment with Neighborhood Health Plan of Rhode Island during the year following his severance from state employment, provided that he did not represent his private employer before OHIC during that year and any contacts that he had with OHIC were purely ministerial in nature, such as hand delivering documents, reviewing public records, and requesting public information).

Here, the Petitioner represents that the DPW director has no jurisdiction over the approval and the issuance of the trash hauler permit or over the fees for such permits. Further, the town does not provide municipal waste collection to its residents, and everyone brings their waste to the town's transfer station and follows the same requirements for disposal of the trash. Finally, the Petitioner's disposal of waste at the transfer station does not amount to representation of himself before his own agency as the term is defined under the Code of Ethics. Accordingly, based on the Petitioner's representations, and review of the relevant provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from accepting the position of DPW director, while continuing to dispose of trash at the town's transfer station.

The Petitioner is advised, however, that if he accepts the DPW director position, he is to conduct his private duties on his own time, outside of his normal working hours as DPW director, and without the use of public resources. Further, the Petitioner shall not be afforded any other privileges not available to the town residents or other businesses utilizing the transfer station such as disposing of waste outside the normal working hours of the transfer station. The Petitioner will be prohibited from using his public position to promote his private employment and shall not list his public position as part of the advertisement of his private work. Also, the Petitioner shall not solicit as clients of his private business any persons who have financial interests in his public duties. Finally, the Petitioner is advised to either recuse himself or seek further guidance from the Ethics Commission if matters relating to his private business or any of his clients come before him in his public position. Any 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:

§ 36-14-2(7)

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-7(a)

§ 36-14-5(d)

§ 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. 2013-28

Keywords:

Private Employment

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: September 24, 2024

Re: Sagree Sharma

QUESTION PRESENTED:

The Petitioner, the Capital Projects Fund administrator in the Pandemic Recovery Office of the Rhode Island Department of Administration, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from becoming a member of the Providence Historic District Commission, a municipal appointed position, and from then serving simultaneously in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Capital Projects Fund administrator in the Pandemic Recovery Office of the Rhode Island Department of Administration, a state employee position, is not prohibited by the Code of Ethics from becoming a member of the Providence Historic District Commission, a municipal appointed position, and from then serving simultaneously in both positions.

The Petitioner is employed as the Capital Projects Fund (CPF) administrator in the Pandemic Recovery Office (PRO) of the Rhode Island Department of Administration (DOA), a position she has held since May 20, 2022. She states that the PRO serves as the central office for policy coordination and compliance relating to the State of Rhode Island's receipt and distribution of federal COVID-19 stimulus funds. The Petitioner informs that the State of Rhode Island is deploying \$112.3 million in American Rescue Plan Act (ARPA) funds by investing \$81.7 million in the construction or renovation of multipurpose community facilities and \$25 million in high-quality broadband infrastructure. She identifies among her responsibilities as administrator the appropriate and efficient allocation and spending of CPF money, including oversight of the work of the Rhode Island Commerce Corporation in its deployment of the \$25 million invested by the state to develop broadband fiber infrastructure.

The Petitioner represents that, in her official capacity with the state, she manages a municipal formula grant program for the construction or renovation of multipurpose community facilities called Community Learning Centers that will provide programs for at least five years to improve education and student performance, provide workforce training, and help residents better monitor their physical and mental health. She further represents that the PRO conducted an application process starting in August 2023 through which the state, as the original recipient of the ARPA

funds, then made subawards with a majority of those funds to 19 municipalities for use on 22 Community Learning Center projects. The Petitioner informs that eligibility for the subawards was determined based on the adoption of the Governor's Learn365RI compact and the U.S. Department of the Treasury's requirements for the project. She explains that the funding amount for each eligible municipality was determined through a Treasury-approved formula that factored in population and per capita income as key criteria. The Petitioner further explains that the eligibility and funding methods were transparently shared with all 39 municipalities in Rhode Island to ensure that no single applicant would be favored over another based on subjective reasoning. She adds that all of the determinations and communications were made by the PRO team, including herself.

The Petitioner states that in her capacity as the CPF administrator on the PRO team, she developed and implemented an application process for the grant program, provided guidance on eligibility requirements, and reviewed applications for compliance and eligibility. She further states that based on her review, in concert with that of the PRO's director, applications were recommended for subaward agreements which the Petitioner then drafted and initiated for final execution between the state and the qualifying municipalities, including the City of Providence. The Petitioner represents that she is the financial manager of the subgrants and that, in that role, she reviews and approves all funding requests to ensure the appropriate use of the funds for their intended purpose as indicated in the subrecipients' application and subaward agreement. She further represents that she conducts monthly reviews of subrecipients' spending reports and quarterly reviews of the projects' progress to ensure compliance with state and federal rules and regulations. The Petitioner adds that all of her work on the CPF programs is overseen and subject to review by the PRO's director.

The Petitioner informs that the City of Providence has been awarded \$16 million in CPF subaward funds to be used for three Community Learning Center projects through the ARPA program. Those awards, projects and subaward dates include the following: \$4,884,000 for the Elmwood Community Center (March 25, 2024); \$3,665,000 for the Joslin Recreation Center (March 27, 2024); and \$7,765,000 for the Davey Lopes Recreation Center (July 22, 2024).

The Petitioner states that she was recently contacted by a representative of the City of Providence and invited to apply to be considered for potential appointment by the mayor to a vacancy on the Providence Historic District Commission (HDC).¹ She further states that she is indeed interested in serving as a member of the HDC and has since applied for appointment. The Petitioner offers that she is trained and experienced in architecture and urbanism and that she served on similar boards when she lived in Ohio. She adds that the mayor is seeking to fill the vacancy on the HDC by the end of September 2024. The Petitioner informs that members of the HDC serve as volunteers and receive no remuneration and that the HDC typically meets once per month outside of her work hours for the state. The Petitioner states that she possesses the qualifications, skills, and experience to provide the city with informed and insightful opinions on the future of its built environment, and that this opportunity would allow her to serve the city in a meaningful way.

¹ The Petitioner explains that a certain number of appointments to the HDC are made by the city council and a certain number of appointments are made by the mayor.

The Petitioner represents that none of the PRO's three CPF grant project locations in Providence lie within a historic district and, therefore, would not be subject to review by the HDC. She further represents that the City of Providence does not have any new applications in process with the PRO and has currently capped its funding request at the \$16 million total of the aforementioned three projects.² The Petitioner states that the potential for overlap in her position as CPF administrator in the PRO with that of her prospective membership on the HDC is highly improbable under the circumstances. She explains that the CPF projects must be completed by October 26, 2026, and that all CPF grant funds must be expended by December 31, 2026. The Petitioner adds that federal funds for COVID relief are expected to cease at that time and that no new grants will be distributed to anyone after that. The Petitioner expects that the PRO office will cease to exist soon after April 2027 following the completion of her reporting duties to the federal government as to the ARPA funds distributed by the close of 2026. She informs that she has received permission from the PRO Director to accept appointment to the HDC, if offered, and that she is seeking this advisory opinion at the suggestion of the DOA's chief legal counsel. It is under this set of facts that the Petitioner seeks guidance regarding whether the Code of Ethics would prohibit her from becoming a member of the HDC and then serving simultaneously in both positions.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of her public duties if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of the public official's activity, to the public official, her family member, her business associate, or any business by which she is employed or which she represents. R.I. Gen. Laws § 36-14-7(a). 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." R.I. Gen. Laws § 36-14-2(2). 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). Further, a public official is prohibited from using her public office, or confidential information received through her public office, to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. § 36-14-5(d).

The Ethics Commission has consistently determined that the Code of Ethics does not create an absolute bar against simultaneous service for two different governmental entities. Rather, the Ethics Commission has opined that determination must be made on a case-by-case basis regarding whether a substantial conflict of interest exists in either public role with respect to a petitioner carrying out her public duties.

The Ethics Commission has also consistently determined that the Code of Ethics does not consider public entities to be "businesses," or the relationship between a public official and a public body,

² The Petitioner explains that, while other grant subrecipients have received a formula-based proportionate increase in their grant amounts as more funds become available, the City of Providence has maintained its CPF allocation at the same amount since the announcement of the grant in August 2023.

such as a state or municipal agency, to be that of “business associates.” For example, in Advisory Opinion 2021-41, the Ethics Commission opined that the school building authority finance officer for the Rhode Island Department of Education (RIDE), a state employee position, was not prohibited by the Code of Ethics from accepting an appointment to fill a vacancy on the Town of Lincoln School Committee, a municipal appointed position, and from then serving simultaneously in both positions. There, the Ethics Commission determined that neither RIDE (a state agency) nor the school committee (a municipal agency) was considered a “business entity” under the Code of Ethics. Therefore, neither the petitioner’s employment by RIDE, nor his prospective membership on the school committee, constituted a “business association” with either of those public bodies under the Code of Ethics. Accordingly, any impact upon the school committee by virtue of the petitioner’s activity as a RIDE employee would not be considered impact upon a “business associate” under the Code of Ethics. It was likewise determined that any impact upon RIDE by virtue of the petitioner’s activity as a member of the school committee would not be considered impact upon a “business associate” under the Code of Ethics. See also A.O. 2014-23 (opining that neither the Rhode Island Board of Education Council on Elementary and Secondary Education (“CESE”) nor Trinity Academy for the Performing Arts (TAPA) was considered a “business” under the Code of Ethics and, therefore, the petitioner’s memberships on CESE and TAPA did not constitute business associations with those bodies).

Here, there is no substantial conflict of interest apparent in the Petitioner simultaneously holding the positions of CPF administrator in the PRO of the DOA and membership on the Providence HDC. Neither the DOA (a state agency) nor the HDC (a municipal agency) is considered a “business entity” under the Code of Ethics. Therefore, neither the Petitioner’s employment by the DOA, nor her prospective membership on the HDC, constitutes a “business association” with either of those public bodies under the Code of Ethics. Accordingly, any impact upon the HDC by virtue of the Petitioner’s activity as the CPF administrator would not be considered impact upon a “business associate.” Likewise, any impact upon the DOA by virtue of the Petitioner’s activity as a member of the HDC would not be considered impact upon a “business associate” under the Code of Ethics. Furthermore, the Petitioner states that none of the PRO’s three CPF grant project locations in Providence lie within a historic district and, therefore, would not be subject to review by the HDC. She adds that, for that reason, the potential for overlap between her state employment with the DOA and her public service as a member of the HDC, if appointed, is highly improbable under the circumstances. Absent some direct financial impact upon herself, any person within her family, her business associate or a private employer as a result of the Petitioner’s actions in either public role, no inherent conflict of interest would preclude her simultaneous service in these roles.

In conclusion, absent any other relevant fact that would implicate the Code of Ethics, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from simultaneously serving as the CPF administrator in the PRO of the DOA and as a member of the Providence HDC. The Petitioner is advised that, if any matters should come before her as she is carrying out her duties in either of her public roles that may present any other potential conflict of interest that is not otherwise contemplated in this advisory opinion, or circumstances in which it is reasonably foreseeable that there will be a financial impact upon the Petitioner personally, any person within her family, her business associate, or a private employer, she should either exercise the recusal provision found at R.I. Gen. Laws § 36-14-6 or request further advice 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(2)
§ 36-14-2(3)
§ 36-14-2(7)
§ 36-14-5(a)
§ 36-14-5(d)
§ 36-14-6
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-41
A.O. 2014-23

Keywords:

Dual Public Roles

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: September 24, 2024

Re: Joshua Berry

QUESTION PRESENTED:

The Petitioner, the Chief of Municipal Planning and Programming at the Rhode Island Department of Housing, a state employee position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting other employment providing part-time town planner services on a contractual basis to the Town of New Shoreham.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chief of Municipal Planning and Programming at the Rhode Island Department of Housing, a state employee position, is not prohibited by the Code of Ethics from accepting other employment providing part-time town planner services on a contractual basis to the Town of New Shoreham, consistent with the conditions set forth herein.

The Petitioner was hired by the Rhode Island Department of Housing in May 2024 and currently serves as that agency's Chief of Municipal Planning and Programming. He identifies among his duties the following: (1) to plan, organize, and direct the work of the strategic planning unit and to integrate statewide strategic planning activities with budgetary master plans; (2) to serve as a senior liaison with municipal officials involved in planning, zoning and development roles to promote housing development and preservation; and (3) to provide assistance to municipalities in order to leverage opportunities for housing development enabled by statutory and regulatory changes (collectively, essential duties). He states that he reports directly to the Deputy Secretary of Housing and that his regular work hours are Monday through Friday, from 7:30 a.m. to 3:00 p.m.¹

The Petitioner represents that his responsibilities also include managing the following Housing Department programs: the Municipal Fellows Program; the Transit Oriented Development Technical Assistance Program; the Transit Oriented Development Pilot Program; the Municipal Capacity Building Training Program; and the Municipal Infrastructure Grant Program (collectively, the programs). He further represents that all but the Municipal Fellows Program are technical assistance and training programs that utilize consultant services which the Petitioner oversees. The Petitioner states that he also contributes to the following other Housing Department projects: the statewide housing planning process; the Vacant Schools Program; the Adaptive Reuse

¹ The Petitioner states that these hours are flexible and that he has the option to work remotely. He adds that he intends to eventually exercise that option one to two days per week.

Feasibility Study Initiative; and legislation and policy direction/recommendations. He adds that he represents the Housing Department on the Metro Connector Technical Working Group (collectively, other projects).

The Petitioner states that, prior to joining the Housing Department, he learned of an opportunity through his work in municipal planning which would involve assisting the New Shoreham town planner on a part-time, contractual basis. He outlines the scope of work involved as follows: providing professional planning expertise and support to New Shoreham's town council, planning board, and other municipal departments, as required; reviewing development proposals, zoning regulations, and land use applications for compliance with local ordinances and regulations; and reviewing and evaluating all site plans and subdivision applications to determine conformance and compliance with established regulations and their overall impact on the town's municipal services (collectively, contractual duties).

The Petitioner informs that he has been offered, and would like to accept, this part-time consultant position with the town. He represents that the position would require him to work 20-25 hours per month, or approximately four to five hours per week. The Petitioner further represents that all of the work would be completed remotely, outside of his normal work hours for the state, with the occasional requirement that he attend important New Shoreham planning board meetings in-person after 4:00 p.m. He adds that his secondary employment would be completed without the use of Housing Department resources.

The Petitioner represents that, due to its geographic location, the fact that it is an island, and its limited growth capacity, New Shoreham is somewhat of an outlier when compared to the other 38 Rhode Island municipalities impacted by the Petitioner's performance of his essential duties for the Housing Department. He further represents that, to the extent that New Shoreham's town planner were to communicate with the Housing Department relative to one of the essential duties with which the Petitioner is tasked in his official capacity as a state employee, the Petitioner would recuse from participation in the matter.

Similarly, the Petitioner explains that only one of the programs with which he is involved for the Housing Department would even apply to New Shoreham. He states that, should the town wish to avail itself of the staffing services available through the Municipal Fellows Program, he would recuse from participation and have another Housing Department employee assist the town in that regard. Regarding the other projects for which the Petitioner is responsible as a Housing Department employee, the Petitioner states that those other projects either do not apply to New Shoreham or apply to New Shoreham to no greater extent than any other Rhode Island municipality.

As to what his contractual duties to the town would be, the Petitioner represents that his planning expertise would be put to use by his review of local development proposals, zoning regulations, and land use applications. He further represents that he would perform technical site plan reviews, draft reports and provide analysis, and present his findings of fact to the planning board in an effort to guide its members through projects and navigate the permitting process with developers on behalf of the town. The Petitioner emphasizes that his contractual duties to the town would not involve the Housing Department. He clarifies that, to the extent that he is at a town planning board

meeting at which the topic of Housing Department policies or resources is raised, the matter would properly be addressed by the town planner and not the Petitioner. It is in the context of the representations that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited by the Code of Ethics from accepting secondary employment providing part-time town planner services on a contractual basis to the Town of New Shoreham.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity 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 public employee has an interest which is in substantial conflict with the proper discharge of his duties in the public interest if he 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). Additionally, the Code of Ethics provides that a public employee shall not use his public office or confidential information received through his holding 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). The Code of Ethics also provides that a public employee shall not accept other employment which will either impair his independence of judgment as to his official duties or employment, or require or induce him to disclose confidential information acquired by him in the course of, and by reason of, his official duties or employment. § 36-14-5(b).

The Code of Ethics further prohibits a public official or employee from representing himself or any other person, or acting as an expert, before a state or municipal agency of which he is a member or by which he is employed. § 36-14-5(e)(1)-(3). A person “represents” himself before a state or municipal agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his favor or in favor of another person. R.I. Gen. Laws § 36-14-2(12) & (13); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). These prohibitions extend for a period of one year after the public official or employee has officially severed his position with the subject state or municipal agency. § 36-14-5(e)(4). Finally, a public employee must recuse from participation in any matter in which his business associate or employer appears or presents evidence or arguments before his state or municipal agency. 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding other employment that is secondary to their primary public positions, provided that the other employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties, and subject to certain other restrictions. The Ethics Commission examines several factors when considering potential conflicts regarding other employment. These factors include, but are not limited to, the nexus between the official’s public duties and other employment; whether the employee completes such other work outside of his normal working hours and without the use of public resources; whether the employee is required to appear before his own agency as part of his other employment; whether such other work is to be conducted outside of the areas over which the person has decision-making

jurisdiction; and whether the employee uses his public position to solicit business or customers. See General Commission Advisory No. 2009-4.

In Advisory Opinion 2024-13, the Ethics Commission opined that a social caseworker with the Rhode Island Department of Children, Youth, and Families (DCYF) was not prohibited by the Code of Ethics from accepting other employment as a clinician with The Inner You Counseling Center, a private entity, where she would perform therapeutic services to adolescents, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment and, further provided, that the petitioner did not use her public employment to advertise or promote her private work or to recruit or obtain potential clients for Inner You. Additionally, the petitioner could not appear before the DCYF in her capacity as a clinician for Inner You including, but not limited to, reporting to the DCYF on an Inner You client who became open to DCYF services following the start of therapy with the petitioner. The petitioner was further prohibited from representing the interests of Inner You and/or acting as an expert witness on behalf of Inner You before the DCYF. This included submission to the DCYF of documentation from Inner You that contained the petitioner's name, or which was identifiable as the petitioner's work product. Finally, for the duration of the petitioner's fee for service arrangement with Inner You, she was required to recuse from all DCYF matters in which Inner You or its authorized representative appeared or presented evidence or arguments and from all matters that would directly financially impact Inner You. See also A.O. 2019-27 (opining that a motor vehicle operator examiner for the Division of Motor Vehicles (DMV) could accept employment as a course administrator for the Driver Retraining Program at the Community College of Rhode Island, given that the petitioner's proposed private undertaking would neither impair his independence of judgement nor create an interest in substantial conflict with his public duties at the DMV; however, the petitioner was required to perform all of the work for the Driver Retraining Program on his own time and without the use of public resources or confidential information obtained as part of his state employment at the DMV).

Here, the Petitioner states he would complete his consulting work for New Shoreham outside of his normal working hours for the state and without the use of Housing Department resources. He also states that his performance of this part-time contractual work for the town would not require him to represent the town before the Housing Department. He clarifies that any town matters before the Housing Department, such as those relating to grant management, long-range planning, and policy work, would be handled by New Shoreham's town planner and not the Petitioner. The Petitioner states that any services that he would provide for the town as an independent contractor would be conducted outside of areas over which he has decision-making jurisdiction in his role with the Housing Department. He offers that, to date, the town has not applied for any program that the Petitioner manages or with which he is involved within the context of his state employment. The Petitioner represents that has not, nor would he ever, use his public position with the state to solicit business as a planning contractor. Finally, the Petitioner states that his contractual employment with the town would not impair his independence of judgment with regard to his Housing Department duties, nor would it require or induce him to disclose confidential state government information.

Based on the facts as represented by the Petitioner, there is no evidence to suggest that his performance of part-time town planner services on a contractual basis to the Town of New

Shoreham would impair his independence of judgment or create an interest that is in substantial conflict with his public duties at the Housing Department. Accordingly, the Petitioner is not prohibited by the Code of Ethics from accepting other employment providing part-time town planner services on a contractual basis for the town, consistent with his representations set forth herein, and provided that all of the work is performed on his own time and without the use of Housing Department resources or confidential information obtained as part of his state employment and, further provided, that the Petitioner does not use his state employment to advertise or promote his private work or to recruit or obtain potential clients. Additionally, the Petitioner may not appear before the Housing Department in his capacity as an assistant to the town planner including, but not limited to, reporting to the Housing Department on matters involving the town; representing the interests of the town; or acting as an expert witness on behalf of the town. This would also include the submission to the Housing Department of documentation from the town that contains the Petitioner's name, or which is identifiable as the Petitioner's work product. Further, for the duration of his contractual arrangement with New Shoreham, the Petitioner must recuse from all Housing Department matters in which the town or its authorized representative appears or presents evidence or arguments and from all matters that will directly financially impact the town to any greater extent than every other state municipality. All recusals must be made consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented herein. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest might arise.

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(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

G.C.A. 2009-4

A.O. 2024-14
A.O. 2019-27

Keywords:
Secondary Employment

DRAFT

Discussion Regarding Fine Schedules for Financial Disclosure Complaints

MEMORANDUM

TO: Rhode Island Ethics Commission

FROM: Jason Gramitt, Executive Director

DATE: September 16, 2024

RE: Financial Disclosure Complaints: Regulation 3.30 and Fine Schedules

HISTORY OF REGULATION 3.30 AND ESTABLISHMENT OF FINE SCHEDULES BY THE COMMISSION.

Regulation 520-RICR-00-00-3.30 Procedure for Complaints Relating to Financial Disclosure (1023)¹ (hereinafter, “Regulation 3.30”) was originally enacted by the Ethics Commission in 1993 along with several other procedural regulations. It was amended in 2005 to correct errors of citation reference, but no substantive changes have been made to the regulation since its original enactment.

Regulation 3.30 directs the Commission to adopt a schedule of fines and penalties to which a respondent shall be subject *if* he or she consents to the entry of a finding of violation for filing a delinquent or deficient financial disclosure statement. The regulation also contains specific directions relating to financial disclosure complaints that are initiated by the Commission staff, as opposed to those complaints filed by third parties. In staff-initiated complaints, Regulation 3.30 specifies that the respondent may avoid a hearing before the Ethics Commission by signing a stipulation and agreement, waiving his or her right to appear, paying the appropriate fine set forth in the approved fine schedule, and properly filing or amending any delinquent or deficient financial disclosure statement. Regulation 3.30(A)(4).

The first paragraph of Regulation 3.30 states that complaints which “solely” relate to delinquent or deficient financial disclosure statements “shall be” processed pursuant to the procedures set forth in the Regulation 3.30 “unless otherwise determined by the Commission.” The underlined language seems to indicate that the Commission has discretion to process financial disclosure complaints outside of the procedures outlined in Regulation 3.30 if it so chooses.

A thorough search of Commission records reveals that at some point in the 1990s the Commission adopted a schedule of fines directing that respondents pay a fine of \$250 for each instance of failing to timely file a financial disclosure statement. This schedule is referenced by the Commission’s Executive Director in the open session minutes of August 17, 1999, but we have

¹ The regulation was originally titled, “Regulation 1023 – Procedure for Complaints Relating to Financial Disclosure.”

been unable to locate a copy of the actual schedule or to pinpoint when it was adopted, or whether the Commission had ever adopted prior fine schedules.

In 2001, a group known as “Operation Clean Government” filed 45 individual complaints against various public officials for failing to file financial disclosure statements for calendar year 1999. At the Commission’s July 10, 2001 meeting, the Commission voted: “To adopt a \$200 penalty for those individuals who do not contest the allegations that they failed to file 1999 financial statements, providing that those who contest shall be afforded a full hearing.”

At a Commission meeting on November 12, 2002, after being advised by the Executive Director that the staff intended to initiate several non-filing complaints relative to the 2001 filing year, the Commission voted: “To establish a \$500 penalty for those individuals who wish to settle their non-filing complaints without the necessity of a hearing.”

At a Commission meeting on April 29, 2003, upon the Executive Director’s request, the Commission voted: “To approve the staff recommended settlement guidelines of \$550-\$1,000, pre-probable cause, and allowing downward departures based upon the Prosecution finding unique circumstances.” Then, on May 27, 2003, upon the Executive Director’s request, the Commission voted: “To grant the staff post-probable cause settlement authority in the amount of \$750-\$1,500, with discretion for downward departures under special circumstances.”

Based on the Commission’s votes at its meetings held on November 12, 2002, April 29, 2003, and May 27, 2003, the Commission began publishing a “Non-Filing Fine Schedule” (attached) setting forth the following fines:

- Immediate Execution of Consent Form: \$500 penalty imposed upon submission of completed Consent Form and past due financial statements within # days of filing of Complaint;
- Execution of Consent Form pre-probable cause: Range of \$550-\$1,000 penalty imposed upon submission of completed Consent Form and past due financial statements prior to a probable cause hearing. Prosecutor has discretion for downward departures based on finding unique circumstances.
- Execution of Consent Form post-probable cause: Range of \$750-\$1,500 penalty imposed upon submission of completed Consent Form and past due financial statements prior to a probable cause hearing. Prosecutor has discretion for downward departures based on finding unique circumstances.

It is important to note that it has always been the Commission staff’s understanding that this fine schedule *only* applied to those financial disclosure complaints that were staff-initiated and that, while complaints filed by others may be influenced by the fine schedule, its application was not automatic or required.

On September 22, 2015, at the request of its staff, the Commission voted to adopt a new fine schedule (attached). The intent of the new schedule was to lower the amount of the fines in order to encourage faster and broader compliance. This schedule expressly noted that it only applied to “qualifying complaints,” defined in the schedule as those complaints “initiated by Commission staff that solely allege the late filing, or non-filing, of a financial disclosure statement for a single

calendar year.” For such qualifying complaints, the staff was authorized to enter into an informal disposition with respondents under the following circumstances:

- Within 10 business days of the filing of a qualifying complaint: A Respondent may informally resolve the complaint by filing any delinquent financial disclosure statements, executing a “consent to Finding of Violation” form, and paying a civil penalty of \$100.
- After 10 business days from the filing of a qualifying complaint: A Respondent may, with the consent of the Executive Director, informally resolve the complaint by filing any delinquent financial disclosure statements, executing a “consent to Finding of Violation” form, and paying a civil penalty of \$500.

In either case, the approved schedule notes that the Executive Director is authorized to accept payment of a reduced penalty in appropriate cases upon a finding of unique circumstances. The schedule also requires that the Commission be notified of informal dispositions entered into.

CURRENT STATUS OF FINE SCHEDULES

The 2015 fine schedule discussed above remains in effect for staff-initiated financial complaints alleging non-filing of a financial disclosure statement. This schedule is included in the complaint mailing that is sent to each respondent, and historically nearly every staff-initiated financial disclosure complaint is informally disposed of pursuant to the fine schedule’s terms and authority.

However, complaints filed by third parties that allege a delinquent or deficient financial disclosure statement are not included within the authority granted by the 2015 fine schedule, nor by any other existing schedule. Instead, third-party complaints follow the same procedures as any other complaint alleging a violation of the Code of Ethics, including hearings before the Ethics Commission for initial determination, probable cause findings, settlement approval, and/or adjudication at an administrative trial.

Regulation 3.30 clearly authorizes the Ethics Commission to establish a fine schedule for *all* financial disclosure complaints, whether initiated by the staff or by a third party. Furthermore, subsection (A)(1) of the regulation directs that the Commission “shall adopt” such a fine schedule, without differentiating between complaints initiated by staff or third parties. Nevertheless, subsection (A) notes that the regulation only applies “unless otherwise determined by the Commission.” Based on this language, and also upon the Commission’s historical practices, it is submitted that the Commission has the authority and ability to decline to adopt a fine schedule for complaints initiated by third parties.

However, the Commission may wish to consider adopting a new fine schedule for third-party complaints, or to amend the existing 2015 schedule to apply to all financial disclosure complaints regardless of origin. Today’s agenda item has been added to allow the Commission to discuss this issue and to provide the staff with direction as to proposing or amending financial disclosure regulations, policies, or fine schedules.

RHODE ISLAND ETHICS COMMISSION

SCHEDULE OF FINES AND PENALTIES FOR THE INFORMAL DISPOSITION OF QUALIFYING FINANCIAL DISCLOSURE COMPLAINTS

(Effective date: September 22, 2015)

In accordance with Commission Regulation 520-RICR-00-00-3.30(A)(1), the Rhode Island Ethics Commission hereby adopts the following schedule of fines and penalties for the informal disposition of complaints initiated by Commission staff that solely allege the late filing, or non-filing, of a financial disclosure statement for a single calendar year (hereinafter, “qualifying complaint”).

Informal Disposition within 10 Business Days of the Filing of a Qualifying Complaint.

A Respondent may informally resolve a qualifying complaint by delivering to the Ethics Commission, within 10 business days of the filing of the complaint, the following:

- 1) A completed and executed 2023 Financial Disclosure Statement and, if applicable, any other delinquent financial disclosure statement(s), as determined by the Executive Director;
- 2) A fully executed “Consent To Finding of Violation” form provided by the Ethics Commission; and
- 3) The payment of a civil penalty in the amount of One Hundred Dollars (\$100).

Informal Disposition more than 10 Business Days after the Filing of a Qualifying Complaint.

Thereafter, the Executive Director or his/her designee is authorized, but not required, to informally resolve a qualifying complaint upon the Respondent’s delivery to the Ethics Commission of the following:

- 1) A completed and executed 2023 Financial Disclosure Statement and, if applicable, any other delinquent financial disclosure statement(s), as determined by the Executive Director;
- 2) A fully executed “Consent To Finding of Violation” form provided by the Ethics Commission; and
- 3) The payment of a civil penalty in the amount of Five Hundred Dollars (\$500).

The Ethics Commission further authorizes the Executive Director or his/her designee to accept the payment of a reduced civil penalty at any time during the pendency of a qualifying complaint, in appropriate cases based upon a finding of unique circumstances.

The Ethics Commission shall be regularly notified of all informal dispositions made by Commission staff in accordance with this schedule.

NON-FILING FINE SCHEDULE

Settlement upon receipt

Immediate Execution of Consent Form **\$500**

\$500 penalty imposed upon submission of completed Consent Form & past due financial statement(s) within # days of filing of Complaint. Expiration date pre-printed on Consent Form.

Approved by RIEC November 12, 2002

Pre-probable cause

Execution of Consent Form pre-probable cause **\$550-1,000**

Range of \$550-1,000 penalties imposed upon submission of completed Consent Form & past due financial statement(s) prior to a probable cause hearing. Prosecutor has discretion for downward departures based on finding unique circumstances.

Approved by RIEC April 29, 2003

Post-probable cause

Execution of Consent Form post-probable cause **\$750-1,500**

Range of \$750-1,500 penalties imposed upon submission of completed Consent Form & past due financial statement(s) after issuance of probable cause findings. Prosecutor has discretion for downward departures based on finding unique circumstances.

Approved by RIEC May 27, 2003