

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-29

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

Code Citations:

§ 36-14-2(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