

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-30

Approved: 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).<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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,

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<sup>2</sup> 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 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(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