

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-35

Approved: December 10, 2024

Re: Derrick Trombley

QUESTION PRESENTED:

The Petitioner, a member-elect of the Warren Town Council, a municipal elected position, who in his private capacity serves as a trustee of the George Hail Free Library in Warren, a private entity, requests an advisory opinion regarding the proper management of any conflicts of interest that might arise as a result of his simultaneous service in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member-elect of the Warren Town Council, a municipal elected position, who in his private capacity serves as a trustee of the George Hail Free Library in Warren, a private entity, should follow the Ethics Commission's guidelines as outlined below relative to the proper management of any conflicts of interest that might arise as a result of his simultaneous service in both positions.

The Petitioner was elected to serve as a member of the Warren Town Council on November 5, 2024. He is scheduled to be sworn in on December 10, 2024.¹ In his private capacity, the Petitioner serves as a trustee for the George Hail Free Library, a private non-profit corporation that serves as the Town of Warren's public library.² He states that he was elected by the existing membership of the library's board of trustees to serve a four-year term in that position in or about the summer of 2023. The Petitioner further states that the town council appoints two of the board's trustees and that, of the current seven trustees now serving, two were appointed by the town council. The Petitioner describes among his duties as a library trustee the hiring of a director to manage the day-to-day operations of the library, and managing the financial accountability of the library. He adds that the board of trustees meets once a month, and its members receive no stipend or other remuneration for their service. The Petitioner represents that there is a Friends of George Hail Library group that holds fundraising events on behalf of the library. He further represents that, while he has personally donated to the group, he has never participated in fundraising for the library. The Petitioner states that, during budget time, the board's president or treasurer will appear before the town council in order to request additional funding for the library. He further states that

¹ At the time of his election, the Petitioner was serving as a member of Warren's Economic Development Board, its Parks and Recreation Board, and its Tax Assessment Review Board. His service on each of these boards was the result of a town council appointment. The Petitioner states that, prior to December 10, 2024, he will have resigned from all three boards.

² <https://www.georgehail.org/trustees> (last accessed November 20, 2024).

the annual requests for additional funding for the library are regularly granted by the town council in the form of a line item in the town's budget included for that purpose.

The Petitioner represents that, in light of his recent election to the town council, he is prepared to recuse from participation in all discussions and decision-making regarding the appointment of trustees to the board. He further represents that he will recuse from discussions and decision-making when another trustee or authorized representative of the library board appears before the town council in order to request additional funding for the library, and from any town council discussions and decision-making relating to the budgetary line item from which funding for the library is awarded. The Petitioner states that he would like to continue to serve as a member of the library's board of trustees, notwithstanding his recent election to the town council. It is in the context of the foregoing representations that the Petitioner seeks guidance from the Ethics Commission regarding the proper management of any conflicts of interest that might arise as a result of his simultaneous service in both positions.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). The Code of Ethics further prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d).

The Code of Ethics also prohibits a public official from representing himself or any other person before a state or municipal agency of which he is a member or by which he is employed. § 36-14-5(e)(1) & (2). These prohibitions apply while the public official is in office and for one year thereafter. § 36-14-5(e)(4). Finally, pursuant to 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) (Regulation 1.2.1), a public official must recuse from participation in any matter in which his business associate appears or presents evidence or arguments or authorizes another person, on their behalf, to appear or to present evidence or arguments before the public official's state or municipal agency. A business associate is defined as "a person joined together with another person to achieve a common financial objective." R.I. Gen. Laws § 36-14-2(3). A person is defined as "an individual or a business entity." § 36-14-2(7).

The Ethics Commission has previously determined that a person is a business associate of an organization, including a non-profit organization, for which he serves as an officer or member of the board of directors, or in some other leadership position that permits him to direct and affect the financial objectives of the organization. Thus, the Ethics Commission has advised public officials to recuse from participation in matters before their public agencies that involved or directly financially impacted such organizations. See, e.g., A.O. 2023-39 (opining that a member of the Cumberland Town Council, who in his private capacity served as the interim president and registrar for the Cumberland Youth Soccer Association (CYSA), a nonprofit organization, was

prohibited from participating in any town council matter that would directly financially impact the CYSA; that the petitioner could not represent himself or the CYSA before the town council, or the recreation director over whom the town council had appointing authority; and was required to recuse from participating in any town council matter when the CYSA or its representative appeared to present evidence or argument); A.O. 2021-6 (opining that a member of the North Smithfield Planning Board was a business associate of the North Smithfield Heritage Association, a private non-profit organization of which he served as a member of the board of directors and as its president and, therefore, was required to recuse from participating in planning board matters when the heritage association appeared or presented evidence or argument). In addition to being a business associate of a private organization for which a public official serves in a leadership position he or she is also considered a business associate of the other leaders of that organization. See A.O. 2018-30 (opining that a member of the Coventry Town Council was prohibited by the Code of Ethics from participating in the town council's discussions and decision-making relative to the reappointment of Coventry's municipal court judge, given that both were members of the board of directors of Gabriel's Trumpet Christian Book Store, Inc., a non-profit corporation, and the existence of a financial component in the bookstore's operations was sufficient to qualify the fellow board members as business associates).

Here, the Petitioner is a member of the George Hail Free Library's Board of Trustees and, as such, is a business associate of not only that organization, but of each of the other members of the board of trustees. Therefore, the Petitioner is required by the Code of Ethics to recuse from participating in matters before the town council that involve or will directly financially impact himself, the library, or any of the other members of the library's board of trustees. Additionally, the Petitioner is prohibited from using his public office, or confidential information received through his public office, to obtain financial gain for himself, the library, and/or any of the other members of its board of trustees. Nor is the Petitioner permitted under the Code of Ethics to represent the library's interests before the town council. Also, barring an exception under the Code of Ethics, the Petitioner will be required to recuse if an authorized representative of the library, or another library trustee, appears before the town council to present evidence or argument. The Petitioner will likewise be required to recuse when other library trustees appear before the town council in matters unrelated to the library or its mission. All notices of recusal must be filed with the Ethics Commission 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 and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is advised to remain vigilant about identifying potential conflicts of interest and to either recuse or seek further guidance from the Ethics Commission in the future as warranted.

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(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2023-39

A.O. 2021-6

A.O. 2018-30

Keywords:

Business Associate

Conflict of Interest