

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-36

Approved: December 10, 2024

Re: Shelley Peterson

QUESTION PRESENTED:

The Petitioner, a member of the Providence City Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from accepting private employment with a state vendor in a position that works with the Rhode Island Emergency Management Agency on municipal grant management while continuing to serve on the city council.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of Providence City Council, a municipal elected position, is not prohibited by the Code of Ethics from accepting private employment with a state vendor in a position that works with the Rhode Island Emergency Management Agency on municipal grant management while continuing to serve on the city council.

The Petitioner is a member of the Providence City Council, having served in this position since her election to a four-year term in November 2022. The Petitioner explains that the city council conducts its meetings during the evenings on the first and third Thursdays of each month. She represents that 22nd Century Technologies, Inc. recently offered her private employment in the position of grants manager/grant specialist,¹ which she tentatively accepted pending the receipt of the instant advisory opinion. She explains that 22nd Century Technologies is a private entity that holds a third-party human resources contract with the Rhode Island Emergency Management Agency (RIEMA). The Petitioner further explains that as a grants manager/grant specialist, she would be assigned to RIEMA with specific duties relative to cybersecurity grant management. She notes that her normal working hours would be Monday through Friday, 8 a.m. to 4 p.m. During a telephone conversation with staff of the Ethics Commission, the director of RIEMA noted that the Petitioner would be working in RIEMA's Grants Management Department and performing administrative duties relative to cybersecurity grant management of federal funds received by the state through the United States Department of Homeland Security. The RIEMA director states that the Petitioner would be assisting municipalities, state agencies, and non-profit organizations with post-disbursement grant management but would not be involved with any decision-making relative to the awarding of such grants to those entities.

¹ The Petitioner explains that in her private capacity, she owns and operates a firm engaged in grant writing, management, and consulting. She further explains that, currently, she has Massachusetts and New Hampshire clients who are working in the areas of environmental sustainability and workforce development, respectively.

The Petitioner explains that federal grant funding carries with it many requirements and deadlines that the state is obligated to follow. She further explains that part of her duties would be to make sure that municipalities comply with any conditions imposed by a cybersecurity grant. The RIEMA director represents that, in order to avoid any potential conflicts of interest in light of the Petitioner's service on the city council, if any cybersecurity grant were to be awarded to the City of Providence, the Petitioner's supervisor will delegate any grant management duties associated with that grant to another employee and not the Petitioner.

The Petitioner states that the city council is not involved in the solicitation of grants or the review and approval of grant applications. She explains that the individual city departments apply for grants available to their specific areas of jurisdiction, and then disburse any grant awards received without participation or involvement by the city council. Further, the Petitioner is not certain whether 22nd Century Technologies currently has any contractual relationship with the city. However, the Petitioner represents that during her tenure on the city council, 22nd Century Technologies has never appeared before the city council. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may accept and hold the position of grants manager/grant specialist while she simultaneously serves on the city council.

The Code of Ethics provides that a public official or 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 her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official or employee has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. R.I. Gen. Laws § 36-14-7(a). Also, no person subject to the Code of Ethics shall accept other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of and by reason of her official duties. § 36-14-5(b). Further, no person subject to the Code of Ethics shall use 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 opined that public officials and employees are not inherently prohibited from holding other employment that is secondary to their 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 of interest regarding other employment. These factors include, but are not limited to, the nexus between the public official or employee's public duties and other employment; whether the public official or employee completes such other work outside of normal working hours and without the use of public resources; whether the public official or employee is required to appear before her own agency as part of her other employment; whether such other work is to be conducted outside of the areas over which the public official or employee has decision-making jurisdiction; and

whether the public official or employee uses her public position to solicit business or customers. See General Commission Advisory No. 2009-4.

Most recently, for example, in Advisory Opinion 2024-31, the Ethics Commission opined that the chief of municipal planning and programming at the Rhode Island Department of Housing was not prohibited by the Code of Ethics from accepting part-time employment providing town planner services on a contractual basis to the Town of New Shoreham. There, the petitioner's consulting work for New Shoreham would be completed outside of his normal working hours for the state and without the use of Housing Department resources. That petitioner's work for the town would not require him to represent the town before the Housing Department. Further, any town matters before the Housing Department, such as those relating to grant management, long-range planning, and policy work, were to be handled by New Shoreham's town planner and not the petitioner. Additionally, any services that the petitioner was to provide to the town were going to be conducted outside of areas over which he had decision-making jurisdiction in his role with the Housing Department. Also, in Advisory Opinion 2021-51, the Ethics Commission opined that the Supervising Forensic Scientist for the Rhode Island Department of Health (RIDOH) was not prohibited by the Code of Ethics from working as a private consultant on matters outside of and with no relation to the State of Rhode Island, provided that all of the work was performed on his own time and without the use of public resources or confidential information obtained as part of his employment at the RIDOH. Nor could that petitioner use his public employment to recruit or obtain potential clients or advertise or promote his private work. See also A.O. 2019-27 (opining that a Motor Vehicle Operator Examiner for the Division of Motor Vehicles (DMV) was not prohibited by the Code of Ethics from accepting employment as a course administrator for the Driver Retraining Program at the Community College of Rhode Island (CCRI), given that there was no evidence that the petitioner's employment with the CCRI would either impair his independence of judgment or create an interest in substantial conflict with his public duties at the DMV).

Here, as an employee of 22nd Century Technologies, the Petitioner would not be working with the City of Providence because any such duties would be assigned by the Petitioner's supervisor to another employee. Further, the Petitioner represents that the city council does not solicit grants, or review or approve applications for grants. Based on all of the above representations, and the review of the relevant provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that there is no evidence that the Petitioner's employment with 22nd Century Technologies performing work on behalf of RIEMA would either impair her independence of judgment or create an interest in substantial conflict with her public duties as a city council member. Accordingly, the Code of Ethics does not prohibit the Petitioner from simultaneously holding employment with 22nd Century Technologies as a grants manager/grant specialist and providing services to RIEMA, provided that all work is performed on her own time and without the use of public resources or confidential information obtained as part of her service on the city council.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner while holding both positions. Thus, the Petitioner is encouraged to seek additional advice from the Ethics Commission if any specific questions regarding potential conflicts of interest arise. The Petitioner is advised that, in the event her responsibilities with the

city council or the 22nd Century Technologies change, she should seek further guidance 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:

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

G.C.A. 2009-4

A.O. 2024-31

A.O. 2021-51

A.O. 2019-27

Keywords:

Secondary Employment