

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion 2025-2

Approved: January 7, 2025

**Re: Scott A. Gibbs**

### **QUESTION PRESENTED:**

The Petitioner, the town administrator for the Town of North Smithfield, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting part-time work as a private consultant.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the town administrator for the Town of North Smithfield, a municipal elected position, is not prohibited by the Code of Ethics from accepting part-time work as a private consultant.

The Petitioner is the newly elected town administrator for the Town of North Smithfield. He represents that for the past 40 years he has served as the president of the Economic Development Foundation of Rhode Island (EDFRI). The Petitioner describes EDFRI as a private, non-profit organization that engages in real estate development and offers economic development advisory services to municipalities. The Petitioner explains that EDFRI is winding down its operations and is in the process of selling its real estate, including two buildings and a parcel of land located in the Highland Corporate Park in Cumberland. The Petitioner represents that he will be resigning from his position as president of EDFRI at the end of December 2024. He further represents that EDFRI's Board of Directors would like to reengage the Petitioner's services as a part-time consultant to assist them with the winding down of the organization and the disposition of EDFRI's real estate. The Petitioner clarifies that his potential consulting position with EDFRI would be expected to last until the dissolution of the organization has been completed; however, he is unable to predict how long that process will last.

The Petitioner represents that he, through EDFRI, has been assisting the Town of Burrillville with managing the development of Commerce Park, a 253-acre town-owned industrial park. The Petitioner states that the Burrillville town manager has indicated that if the Petitioner is able to accept the above consulting position with EDFRI, then Burrillville would like to continue utilizing the Petitioner's advisory services relative to the Commerce Park through the Petitioner's consultant relationship with EDFRI.

The Petitioner represents that his normal working hours as town administrator are Monday through Wednesday from 8:00 a.m. to 4:00 p.m., Thursday from 8:00 a.m. to 7:00 p.m., and Friday from 8 a.m. to 12 p.m. He adds that he will also be attending town council meetings, which are conducted every other Monday at 6:45 p.m. The Petitioner states that if permitted to accept the part-time consulting position with EDFRI, he would perform such duties outside of his normal working hours as town administrator, including nights and weekends, and without the use of public resources. He further states that neither he nor EDFRI has any real estate interest, except for his personal home, in North Smithfield. The Petitioner adds that neither he nor EDFRI has provided advisory services to the Town of North Smithfield. The Petitioner represents that the towns of North Smithfield and Burrillville have no contractual relationship with one another, with the exception of the Mutual Aid Agreement during emergencies, the parties to which are all of the municipalities in the state. Given this set of facts, the Petitioner seeks guidance regarding whether the Code of Ethics prohibits him from accepting part-time work as a private consultant.

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 his 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 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). Also, no person subject to the Code of Ethics shall accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. § 36-14-5(b). Further, no person subject to the Code of Ethics shall use 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 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 his own agency as part of his

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 his public position to solicit business or customers. See General Commission Advisory No. 2009-4.

In Advisory Opinion 2021-51, for example, 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 Rhode Island 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, 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 part-time work with EDFRI would either impair his independence of judgment or create an interest in substantial conflict with his public duties as town administrator. Accordingly, the Code of Ethics does not prohibit the Petitioner from simultaneously serving as town administrator and providing part-time consulting services to EDFRI in the manner described above, provided that all of work is performed on his own time and without the use of public resources or confidential information obtained as part of his duties as town administrator and, further provided, that the Petitioner does not use his public position to advertise or promote his private work or to recruit or obtain potential clients for his private employer.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner while serving as town administrator and engaging in other employment with EDFRI. Thus, the Petitioner is encouraged to seek additional advice from the Ethics Commission if any specific questions regarding potential conflicts of interest arise.

**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. 2021-51

A.O. 2019-27

Keywords:

Secondary Employment