

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2025-4

Approved: January 7, 2025

**Re: Andy Andujar**

### **QUESTION PRESENTED:**

The Petitioner, a member-elect of the Cranston City Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from privately retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting various proposed municipal ordinances to be then submitted to the city council for its consideration.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member-elect of the Cranston City Council, a municipal elected position, is not prohibited by the Code of Ethics from privately retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting various proposed municipal ordinances to be then submitted to the city council for its consideration, consistent with the provisions set forth herein.

The Petitioner was elected to serve as a member of the Cranston City Council on November 5, 2024. He is scheduled to be sworn in on January 7, 2025. The Petitioner states that he would like to draft one or more municipal ordinances for consideration by the city council. He specifically identifies ordinances relating to the creation of a city housing court, homestead tax relief for homeowners, and tax relief for business owners. The Petitioner explains that he would like to retain the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting the ordinances. He emphasizes that he would retain the services of the consultant(s) in his private capacity and pay for those services using his own personal funds. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether he may do so.

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 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, his family member, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). 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 Code of Ethics also prohibits a public official from representing himself, or any other person, before a municipal agency of which he is a member or for which he is the appointing authority. § 36-14-5(e)(1) & (2); 520-RICR-00-00-1.1.4(A)(1)(c) & (2)(c) Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). A person represents himself or another person before an agency when he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in his favor or in favor of another person. § 36-14-2(12) & (13); Regulation 1.1.4(A)(1) & (2). Under the Code of Ethics, a public official must also recuse from participation in a matter when his business associate, or a person authorized by his business associate, appears or presents evidence or arguments before the public official’s municipal agency. 520-RICR-00-00-1.2.1(A)(2) & (3) Additional Circumstances Warranting Recusal (36-14-5002). All notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6.

Here, the Petitioner has asked whether the Code of Ethics prohibits him from engaging in conduct in his private capacity; specifically, retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner’s personal use when drafting various proposed municipal ordinances which the Petitioner then intends to submit to the city council for its consideration. It is the opinion of the Ethics Commission that the Code of Ethics does not prohibit this proposed private conduct. However, the Petitioner is advised to remain aware that the relationship between him and any consultant whose services he retains will constitute a business associate relationship between them under the Code of Ethics, in which case the Petitioner must remain mindful of the prohibitions listed above.

In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines the nature of the association and the scope of the business dealings between the parties and looks to, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, or there exists an anticipated future relationship between them. See, e.g., A.O. 2015-49 (opining that a zoning official who had done private electrical work for the Fort Adams Trust in the past, and who planned to bid on future work, was a business associate of the Trust); A.O.

2015-12 (opining that ongoing handyman work for a private individual, which was reasonably foreseeable to continue, constituted a business associate relationship).

In past advisory opinions, the Ethics Commission has required a public official to recuse from consideration of a matter if the public official had an ongoing business relationship with an individual or entity appearing before his public body. See, e.g., A.O. 2016-45 (opining that a member of the Tiverton Planning Board was prohibited from participating in the planning board's discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects, often referred work and clients to each other, and would continue to refer work and clients to each other).

Therefore, the Petitioner will be required by the Code of Ethics to recuse from participating in matters before the city council that involve or will directly financially impact a consultant he has hired in his private capacity. Also, the Petitioner is prohibited from using his public office, or confidential information received through his public office, to obtain financial gain for his business associate. Nor is the Petitioner permitted under the Code of Ethics to represent the interests of his business associate before the city council. Further, the Petitioner will be required to recuse if a consultant he has hired, or an authorized representative of a consultant he has hired, appears before the city council to present evidence or argument, including in a matter unrelated to the work performed on behalf of the Petitioner.<sup>1</sup> 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,**

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<sup>1</sup> The Petitioner would not be required to recuse himself if his business associate is before the city council during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the business associate is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion. See 520-RICR-00-00-1.2.1(B)(2) Additional Circumstances Warranting Recusal (36-14-5002).

**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)

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

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

Related Advisory Opinions:

A.O. 2016-45

A.O. 2015-49

A.O. 2015-12

Keywords:

Business Associate

Recusal