



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

3rd Meeting

DATE: Tuesday, February 11, 2025

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

LIVESTREAM: The Open Session portions of this meeting will be livestreamed at:
<https://us02web.zoom.us/j/81981954040>

1. Call to Order.
2. Motion to approve minutes of Open Session held on January 28, 2025.
3. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) Financial disclosure;
 - e.) General office administration.

4. Advisory Opinions:

- a.) Lynn Underwood Ceglie, a member of the Newport City Council, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in city council discussions and decision-making relating to an application currently pending before the city council brought by the Newport Tourism Marketing Management Authority, seeking to create a tourism improvement district, given that the Petitioner serves as the city council's liaison to the Newport Tourism Marketing Management Authority. [Staff Attorney Radiches]
- b.) Catherine A. McMahon, the assistant director of financial and contract management for the Rhode Island Department of Administration, requests an advisory opinion regarding whether she is permitted by the Code of Ethics to participate in discussions and recommendations relating to the state's potential use of additional credit card features offered by JPMorgan Chase, given that the Petitioner and members of her family own shares of stock in JPMorgan Chase. [Staff Attorney Radiches]
- c.) Megan Gilbert, a social caseworker employed by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, who is currently on an education leave from her position in order to complete her master's degree, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from registering as a lobbyist for the Economic Progress Institute through the end of her internship with the institute, after which she plans to return to her state position. [Staff Attorney Papa]

5. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on January 28, 2025, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) Motion to return to Open Session.

6. Report on actions taken in Executive Session.

7. Preliminary discussion and voting on Petition for Adoption/Amendment of Regulations from Common Cause Rhode Island regarding gifts, financial disclosure, and procurement. [Director Gramitt]

8. New Business proposed for future Commission agendas and general comments from the Commission.
9. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on February 6, 2025

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 11, 2025

Re: Lynn Underwood Ceglie

QUESTION PRESENTED:

The Petitioner, a member of the Newport City Council, a municipal elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in city council discussions and decision-making relating to an application currently pending before the city council brought by the Newport Tourism Marketing Management Authority, a municipal agency, seeking to create a tourism improvement district, given that the Petitioner serves as the city council's liaison to the Newport Tourism Marketing Management Authority.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport City Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in city council discussions and decision-making relating to an application currently pending before the city council brought by the Newport Tourism Marketing Management Authority, a municipal agency, seeking to create a tourism improvement district, notwithstanding that the Petitioner serves as the city council's liaison to the Newport Tourism Marketing Management Authority.

The Petitioner is a member of the Newport City Council. Originally elected in November 2014, she is currently serving her sixth consecutive two-year term. She states that in 2017, pursuant to the provisions of the District Management Authorities Act enacted by the General Assembly in 2001,¹ the city council, assisted by Discover Newport,² created the

¹ R.I. Gen. Laws § 45-59-1, *et seq.*

² “Discover Newport is a non-profit destination management organization dedicated to the promotion of the City of Newport and its eight surrounding townships in Newport and Bristol Counties, Rhode Island including Barrington, Bristol, Jamestown, Little Compton, Middletown, Newport, Portsmouth, Tiverton and Warren as premiere destination for business and leisure travel.” See <https://www.discovernewport.org/about-us/> (last visited Jan. 30, 2025).

Newport Tourism Marketing Management District (district) and the Newport Tourism Marketing Management Authority (authority). The Petitioner explains that, at its inception, the district consisted of all lodging properties in Newport consisting of 20 rooms or more. She adds that in 2021, the district, which was originally established to exist for a three-year period, was renewed for a second three-year term. She informs that the district was also amended at that time to include all lodging properties in Newport consisting of 18 rooms or more. The Petitioner states that the authority is tasked with stimulating tourism in the district.

The Petitioner explains that the authority is composed of approximately 20 members, including representatives of the lodging properties constituting the district, plus two people from Discover Newport. She further explains that the authority funds the district's goal of stimulating tourism by assessing and collecting a flat fee of \$1.50 per room, per night, to be paid from the fees charged to guests by the lodging properties that constitute the district's membership. The Petitioner identifies the authority as a municipal agency.

The Petitioner states that in January 2023, she was appointed by the former chairperson of the city council, who also held the title of mayor, to be the city council's liaison to the authority. The Petitioner represents that she attends most of the authority's meetings, at which she makes note for the city council of the plans intended by the authority's members. She adds that she occasionally advocates for the city's interest, and offers by way of example her suggestion that a jitney bus run from the train station in Kingston through Newport. The Petitioner emphasizes that her role on the authority is limited to that of liaison to the city council and that she is not a voting member of the authority.

The Petitioner states that the members of the authority have decided that, rather than seek another three-year renewal of the district and the authority, they will instead allow it to be dissolved and seek permission from the city council to create a new tourism improvement district pursuant to the provisions of the Tourism Improvement Districts Act adopted by the General Assembly in 2022.³ She explains that when the terms of the district and the authority expire this year, so will the Petitioner's role as the city council's liaison to the authority. The Petitioner represents that, similar to the District Management Authorities Act, the Tourism Improvement Districts Act allows municipalities to create tourism improvement districts comprised of all lodging properties in a particular district consisting of 18 rooms or more. She further represents that, just as the authority did for the district under the District Management Authorities Act, an owners' association will be authorized to assess a fee to be paid from the nightly fees charged to guests by the lodging properties making up the tourism improvement district under the Tourism Improvement Districts Act. The Petitioner explains that the funds collected by the owners' association will be used to promote tourism, just like the funds previously collected by the authority were. The

³ R.I. Gen. Laws § 45-59.1-3, *et seq.*

Petitioner points out that, unlike districts and authorities created pursuant to the District Management Authorities Act which existed for a three-year term and were available to only certain Rhode Island municipalities, the tourism and improvement districts and owners' associations created pursuant to the Tourism Improvement Districts Act will exist for a ten-year term and be available to all Rhode Island municipalities. The Petitioner further represents that unlike the authority, which is a municipal agency, the owners' association that manages a tourism improvement district will be a private, non-profit corporation whose membership will not include municipal officials in the capacity of liaison, or otherwise.

The Petitioner states that there is currently pending before the city council an application brought by the authority seeking to create a tourism improvement district. She reiterates that she will not be a member of the private owners' association expected to manage the anticipated tourism improvement district. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in city council discussions and decision-making relating to the above-described application currently pending before the city council.

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 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 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). The Code of Ethics also prohibits a public official from participating in a matter when her business associate, or a person authorized by her 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). 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). 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." § 36-14-2(2).

The Ethics Commission has indicated that the Code of Ethics does not consider a public body to be a "business" or the relationship between a public official and a public body to be that of "business associates." Therefore, the Ethics Commission has in the past allowed public officials to participate in matters that would directly financially impact another public agency. For example, in Advisory Opinion 2024-27, the Ethics Commission opined that a member of the Middletown Planning Board, who was also a member of the Middletown Public Schools Building Committee, was not prohibited by the Code of Ethics from

participating in planning board discussions and decision-making on matters in which he had participated and voted on as a member of the building committee because he was not a business associate of either the planning board or the building committee. See also A.O. 2011-29 (opining that a member of the Portsmouth Planning Board, who was also a civil engineer for the Rhode Island Department of Transportation (RIDOT), could participate and vote on a development proposal pending before the planning board, notwithstanding that in her capacity as a RIDOT civil engineer she had been reviewing the same property to ensure that the state's property interests were protected); A.O. 2007-14 (opining that a member of the North Kingstown Town Council, who was also a member of the Quonset Development Corporation (QDC), both public bodies, could participate in and vote on a development proposal pending before the QDC, even though he had previously considered and voted on the same matter when it was before the town council).

Here, the Petitioner represents that the current authority is a municipal agency which, as noted above, does not fit within the definition of "business associate" under the Code of Ethics. Further, even if the authority was a private organization, the Petitioner's role as its city council liaison does not amount to a "business association" because the Petitioner's non-voting liaison position affords her no ability to affect the authority's financial objectives. See, e.g., A.O. 2023-11 (opining that a member of the Woonsocket City Council, who in his private capacity was a non-voting, ex officio member of the board of directors of the Downtown Woonsocket Collaborative, a private non-profit organization, was not prohibited from participating in the city council's discussions and decision-making relative to the collaborative, because the petitioner, as a non-voting member of the collaborative's board of directors, was not in a position to affect the financial objectives of that organization and, therefore, was not a business associate of the collaborative). Accordingly, based on the Petitioner's representations, and consistent with the applicable provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in city council discussions and decision-making relating to an application currently pending before the city council brought by the authority.

This Draft 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)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2024-27

A.O. 2023-11

A.O. 2014-14

A.O. 2011-29

A.O. 2007-14

Keywords:

Business Associate

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 11, 2025

Re: Catherine A. McMahon

QUESTION PRESENTED:

The Petitioner, the assistant director of financial and contract management for the Rhode Island Department of Administration, a state employee position, requests an advisory opinion regarding whether she is permitted by the Code of Ethics to participate in discussions and recommendations relating to the state's potential use of additional credit card features offered by JPMorgan Chase, given that the Petitioner and members of her family own shares of stock in JPMorgan Chase.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the assistant director of financial and contract management for the Rhode Island Department of Administration, a state employee position, is permitted by the Code of Ethics to participate in discussions and recommendations relating to the state's potential use of additional credit card features offered by JPMorgan Chase, notwithstanding that the Petitioner and members of her family own shares of stock in JPMorgan Chase.

The Petitioner has been employed by the Rhode Island Department of Administration for 35 years. She holds a master's degree in business administration with concentrations in accounting and finance. For approximately the past two years, the Petitioner has served in the position of assistant director of financial and contract management. She is currently assigned to the development of the new state financial system, which has a projected launch date of July 1, 2025. The Petitioner identifies among her duties in that capacity serving as one of the lead contacts for the integration of the current state credit card program with Workday, a computer software company and state vendor. She explains that Workday provides the software that the state will use to develop new human resources and finance programs for use by all state employees, estimated to be 14,000 – 15,000 people. The Petitioner informs that the state contracts with JPMorgan Chase for all credit card services. She explains that the contract was awarded by the state's Division of Purchases and has been in place for many years.

The Petitioner represents that the state is considering the use of additional features available through Chase's credit card program. Specifically, the state may elect to replace the physical purchasing cards¹ (credit cards) currently used by state employees exclusively for out-of-state business travel and/or state purchases under \$500 (small purchases) with virtual credit cards to be used for the same purposes. The Petitioner states that she is one in a group of four people who will determine whether to recommend to the state's controller, and possibly the director of administration, whether the state's current contract with Chase should be extended to include the provision and use of virtual credit cards.² The Petitioner states that, ultimately, the decision of whether to replace the physical credit cards with virtual ones will be made by the controller and/or the director of administration, and will depend upon whether Chase can successfully integrate the change with Workday. The Petitioner informs that the focus of her responsibility would be the integration of a virtual credit card system into the new state financial system, which is still in the development phase.

The Petitioner represents that there will be no change to the value of Chase's contract with the state as a result of replacing the physical credit cards used by state employees exclusively for out-of-state travel and small purchases with virtual ones. The Petitioner further represents that there will be no cost to the state in the event that the replacement of physical credit cards with virtual credit cards is implemented. She explains that the state will continue to earn a percentage of the credit card fees generated during use, regardless of whether physical or virtual credit cards are used to generate those fees.

The Petitioner states that she was one of seven siblings who each inherited 1,022 shares of Chase stock from their mother in 2010. She further states that at least one of her siblings has since enhanced his Chase stock portfolio, but that she does not know, nor is she in a position to determine, by how much. The Petitioner explains that she is unsure of which of her other siblings, if any, have since purchased additional Chase stock shares and/or sold or traded any of stock shares they inherited from their mother. The Petitioner informs that one of her siblings is now deceased and that she is in no position to know or determine whether any of her deceased sibling's heirs or familial legatees own Chase stock. The Petitioner represents that Chase stock shares are valued at \$239 each, and that she is paid annual quarterly dividends of approximately \$1,200 on her shares. The Petitioner's reported holdings in Chase stock constitute approximately .0000003624% of its

¹ The Petitioner explains that purchasing cards, also known as procurement cards, are used by companies to make business purchases.

² The Petitioner states that the group met on December 16, 2024, at which time the Petitioner was present, yet recused from participation pending receipt of an advisory opinion from the Ethics Commission regarding whether she could participate and remain in conformance with the Code of Ethics.

outstanding shares, of which there are more than 2.8 billion. She states that she has not engaged in the sale or lending of any of the Chase stock shares that she inherited in 2010, and that she has not otherwise engaged in the purchase or trading of Chase stock.

The Petitioner represents that a decision by the state to replace the physical credit cards now being used by state employees for out-of-state travel and small purchases with virtual credit cards under the state's contract with Chase will not impact the value of Chase stock. She explains that Chase is an international company and that the potential changes being contemplated by the state would be miniscule in comparison to the size of the corporation. It is under this set of facts that the Petitioner seeks guidance regarding whether she is permitted by the Code of Ethics to participate in discussions and recommendations relating to the state's potential extension of its contract with Chase to include the issuance of virtual credit cards to replace the physical credit cards that are currently being used by state employees exclusively for out-of-state business travel and small purchases.

A person subject to the Code of Ethics may not participate in any matter in which she has an interest, financial or otherwise, 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 occurs if the 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, 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). A public official or employee has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," that is, when the probability is greater than "conceivably," but the conflict of interest is not necessarily certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, a public official or employee may not use her office for pecuniary gain, other than as provided by law, 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). A person within her family includes the Petitioner's siblings. R.I. Gen. Laws § 36-14-2(1). 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 business entity." § 36-14-2(7).

In 2008, the Ethics Commission issued three advisory opinions providing guidance on the question of whether a public official's stock holdings in a publicly traded entity triggered a recusal requirement under the provisions of the Code of Ethics cited above. In Advisory Opinion 2008-53, the Ethics Commission opined that while it may be a fair presumption that most, if not all, shareholders of a *privately* held business are capable of influencing the business's financial objectives, this presumption would not accurately describe the relationship between a large, *publicly* traded corporation and its average shareholders. The petitioner in Advisory Opinion 2008-53 was a member of the Tiverton Zoning Board of Review who had inquired about her ability to participate in discussions and voting on a petition for a land use variance brought by CVS Caremark Corporation. The petition

related to allowable signage and the implementation of a drive-thru pharmacy window at one of CVS's retail locations. The petitioner owned 450 shares of CVS common stock, or .0000003125% of CVS's 1.44 billion outstanding shares. The Ethics Commission determined that it would be incorrect to assert that the petitioner was a "business associate" of CVS as that term is defined in the Code of Ethics. Instead, the Ethics Commission's analysis turned on whether the market value of the petitioner's CVS stock, regardless of what it was, would likely be impacted by the decision of the zoning board. If so, then §§ 36-14-5(a) and (d) of the Code of Ethics would require her recusal.

In Advisory Opinion 2008-53, the Ethics Commission employed a "totality of the circumstances" analysis and looked at a number of factors, including the predictable change in market value of the petitioner's financial interest given the governmental decision to be made; the nature and importance of the petitioner's role in the matter, including the amount of discretion involved; and other relevant factors such as the importance of the petitioner's participation, and whether adjustments could be made to her duties to reduce any appearance of impropriety. Applying these factors to that case, the Ethics Commission determined that it was unlikely that CVS's stock price would be impacted by the petitioner's participation in the zoning board's decision relative to signage and a drive-thru pharmacy window at one of CVS's approximately 6,200 retail stores. Thus, considering the totality of the circumstances, the Ethics Commission opined that it was not reasonably foreseeable that the decision of the zoning board relative to CVS's variance application would financially impact the petitioner. Nor was the petitioner's interest in CVS so substantial as to be deemed likely to affect the integrity of her public service or the decision of the zoning board. Accordingly, it was the opinion of the Ethics Commission that the Code of Ethics did not require the petitioner to recuse from the zoning board's consideration of CVS's request for a variance. See also A.O. 2008-59 (opining that the zoning officer for the City of Woonsocket could participate in a hearing before the city's zoning board on a petition for a variance brought by CVS Caremark Corporation, notwithstanding that the petitioner owned 400 shares of CVS common stock); A.O. 2008-57 (opining that a member of the Woonsocket Zoning Board of Review could participate in discussions and voting on a petition for a variance brought by CVS Caremark Corporation, notwithstanding that the petitioner owned 200 shares of CVS common stock).

Applying the "totality of the circumstances" analysis above, the instant Petitioner is a member of a small group of people who will meet to determine what recommendation to make to the state's controller, and possibly the director of administration, regarding whether to extend the state's use of Chase services to include the issuance of virtual credit cards to state employees to replace the physical credit cards that are currently being used by those employees exclusively for out-of-state business travel and small purchases. The Petitioner states that there will be no change to the value of Chase's contract with the state as a result of replacing the physical credit cards with virtual ones. The Petitioner owns 1,022 shares of Chase stock, valued at \$239 each, and is paid annual quarterly dividends on the stock of approximately \$1,200. The Petitioner's holdings in Chase stock constitute

approximately .0000003624% of its outstanding shares, which total more than 2.8 billion. The Petitioner represents that she has not engaged in the sale or lending of any of the Chase stock shares that she inherited in 2010, and that she has not otherwise engaged in the purchase or trading of Chase stock. She adds that a decision by the state to replace physical credit cards with virtual ones under the state's contract with Chase will not impact the value of Chase stock because Chase is an international company and the potential changes being contemplated by the state would be miniscule in comparison to the size of the corporation.

Under these circumstances, it is not reasonably foreseeable that Chase's stock share price will be impacted by the state's ultimate decision about whether to have Chase replace the physical credit cards which are currently issued to Rhode Island state employees to be used exclusively for out-of-state travel and for small purchases, with virtual credit cards to be used for the same purposes. Additionally, based on the facts as represented, it is similarly not reasonably foreseeable that any of the Petitioner's remaining living siblings or her deceased sibling's heirs or familial legatees would be directly financially impacted by the Petitioner's proposed official activity. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is permitted by the Code of Ethics to participate in discussions and recommendations relating to the state's potential use of additional Chase services to issue virtual credit cards to state employees in place of the physical credit cards currently being used for out-of-state business travel and small purchases.

This Draft 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(1)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2008-59

A.O. 2008-57

A.O. 2008-53

Keywords:
Business Associate
Financial Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: February 11, 2025

Re: Megan Gilbert

QUESTION PRESENTED:

The Petitioner, a social caseworker employed by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, a state employee position, who is currently on an education leave from her position in order to complete her master's degree, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from registering as a lobbyist for the Economic Progress Institute through the end of her internship with the institute, after which she plans to return to her state position.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a social caseworker employed by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities & Hospitals, a state employee position, who is currently on an education leave from her position in order to complete her master's degree, is not prohibited by the Code of Ethics from registering as a lobbyist for the Economic Progress Institute through the end of her internship with the institute, after which she plans to return to her state position.

The Petitioner is employed as a social caseworker with the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH). The Petitioner explains that BHDDH is responsible for providing and overseeing services and programs related to behavioral healthcare, developmental disabilities, and hospitals. The Petitioner represents that she has been employed as a social caseworker at BHDDH for approximately 13 years; however, she clarifies that she has been employed by the state for more than 18 years. The Petitioner explains that her current duties include providing support and services to individuals with behavioral health needs, developmental disabilities, and other related conditions. She states that she is assigned to the Developmental Disabilities Department where she manages caseloads of adults with developmental disabilities.

The Petitioner states that, currently, she is on a full-time education leave from her position in order to pursue a master's degree in macro level social work at Rhode Island College.

The Petitioner represents that she plans to return to her state position after the spring-2025 semester ends in mid-April. She states that as part of her studies she is completing an internship with the Economic Progress Institute. The Petitioner describes the institute as a private, non-profit advocacy entity whose goal is to ensure the economic progress of all low- and moderate-income Rhode Islanders. She states that the institute seeks to achieve its goal through research, analysis, advocacy, and education. The Petitioner would like, as part of her internship, to register as a legislative lobbyist for the institute. She explains that, as a lobbyist, she would publicly advocate for policies and initiatives that align with the mission of the institute at hearings and other events before the General Assembly during its legislative session. The Petitioner represents that the internship and its related lobbying would be unpaid. The Petitioner further represents that upon the completion of her internship and her return to her state position, she would no longer lobby on behalf of the institute. The Petitioner clarifies that she would not be lobbying BHDDH or the executive branch of Rhode Island government. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from serving as a lobbyist for the institute through the end of her internship.

Under the Code of Ethics, a state employee may not accept other employment that will either impair her independence of judgment as to her official duties or require her to disclose confidential information acquired by her in the course of her official duties. R.I. Gen. Laws § 36-14-5(b). Further, a public employee may not represent herself or any other person before any state agency of which she is a member or by which she is employed. § 36-14-5(e)(1) & (2). A “person” is defined as an individual or business entity. R.I. Gen. Laws § 36-14-2(7). A public employee is also prohibited from using her public position or confidential information received through her position to obtain financial gain, other than that provided by law, 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). Additionally, a public employee may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. § 36-14-5(a). A substantial conflict of interest occurs if the public 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).

The facts as represented are somewhat similar to those in Advisory Opinion 2003-42, where the Ethics Commission opined that an employee of the Rhode Island State Budget Office could act on his own time before the General Assembly as an unpaid registered lobbyist for various organizations and social causes. See also A.O. 2003-67 (opining that a part-time attorney with the Rhode Island Department of Labor could, in her private capacity, lobby on behalf of the Rhode Island Right to Life Committee because there was no indication that the lobbying was in substantial conflict with her public duties, nor would it impair her independence of judgment as to her official duties, and given that she would

not be representing herself or any other person or business before her own agency); A.O. 2003-28 (opining that a part-time attorney for the Rhode Island Department of Administration was not prohibited by the Code of Ethics from accepting private work as a legislative lobbyist before the General Assembly on behalf of Spielo Gaming International).

In the instant matter, the Petitioner would like to serve as an unpaid legislative lobbyist for the institute as part of her internship there. She represents that she would not be lobbying or appearing before BHDDH or the executive branch but, rather, would only engage in lobbying before the General Assembly. The Petitioner further represents that her lobbying activities would only last until the end of her internship in mid-April 2025, at which time she will be returning to her position with BHDDH. Based on all of the Petitioner's representations there is no indication that the Petitioner's unpaid service as a lobbyist on behalf of the institute would either impair her independence of judgment or create an interest in substantial conflict with her public duties as a social caseworker. Accordingly, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from registering as a lobbyist for the institute during the time period described above.

This Draft 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(7)
36-14-5(a)
36-14-5(b)
36-14-5(d)
36-14-5(e)
36-14-7(a)

Related Advisory Opinions:

A.O. 2003-67
A.O. 2003-42
A.O. 2003-28

Keywords:

Lobbying

VIA ELECTRONIC MAIL

February 4, 2025

Rhode Island Ethics Commission
40 Fountain Street, 8th Floor
Providence, RI 02903

Dear Members of the Rhode Island Ethics Commission:

This letter is following up on the testimony I delivered on behalf of Common Cause Rhode Island at your January 7, 2025, meeting. At that meeting I presented the case for our petition for rulemaking submitted on December 18, 2024.

The purpose of this letter is to provide further background about, and argument for, Common Cause Rhode Island's petition. At the Commission's January meeting I was questioned by members of the Commission about why we filed our petition, and what it had to do with a controversy stemming from the awarding of a state contract to the ILO Group. I will begin with some background about that controversy and how it led us to this point.

In early 2021 as then-Lieutenant Governor Daniel McKee transitioned to become governor upon the resignation of Governor Gina Raimondo he initiated a process for awarding a contract for services related to reopening schools closed by the COVID-19 pandemic.¹ News reporting from later in 2021 showed that Governor McKee took steps to steer the contract to the ILO Group, a business that was formed seemingly for the sole purpose of receiving the contract.² The ILO Group was founded by Julia Raphael-Baer, an executive of a nonprofit called Chiefs for Change that had long advised McKee, first when he was Mayor of Cumberland, and later when he was Lieutenant Governor.³ Raphael-Baer's boss at Chiefs for Change, Mike McGee lobbied McKee to issue a request for proposals (RFP) for a school reopening contract, largely drafting the document. He also lobbied McKee to award the contract to the ILO Group after the RFP yielded two bids, with the price of the ILO Group bid being significantly higher

¹ This summary is taken primarily from "Report on the Investigation of Governor Daniel J. McKee in Connection with the Award of the School Reopening Contract to the ILO Group, LLC" (herein "Report") which can be found at: <https://riag.ri.gov/ilo>

² The initial reporting was done by WPRI. See, for example, here: <https://www.wpri.com/target-12/brand-new-consulting-firm-picked-for-5-million-state-contract-to-reopen-ri-schools/>

³ The ILO Group, LLC was incorporated by Raphael-Baer at the same time the incoming McKee administration was considering how to bring on a consultant for a school reopening contract, but also remained an employee of Chiefs for Change for several more months.

than its competitor. McKee ultimately ordered the procurement process changed to a master price agreement so that both bidders were awarded contracts, with the ILO Group receiving the bulk of the state's business.

After news of McKee's interference with the contracting process emerged in the media, the State Police and then the Attorney General initiated investigations. On October 29, 2024, the State Police issued a report of their investigation and the Attorney General released a legal analysis evaluating whether McKee could be charged under the state's bribery statute, the Code of Ethics, or the state's campaign finance laws.

The State Police's investigatory report, and the Attorney General's legal analysis, revealed facts that had not been reported on by the media. Most notably it showed that Chiefs for Change had paid a public relations firm named SKDK tens of thousands of dollars to provide communications consulting services to Governor McKee. It also revealed that the contract for the services was specifically designed to skirt the gift rule in the Code of Ethics.⁴

The Attorney General concluded that the services of SKDK paid for by Chiefs for Change could not be successfully prosecuted as a bribe under the criminal code. Nor could it be successfully prosecuted as an illegal in-kind contribution to McKee's gubernatorial campaign under the state's campaign finance law.⁵ The Attorney General also concluded that the governor's interference with the contract did not violate § 36-14-5(d) of the Code of Ethics because there was no financial nexus between the governor and the ILO Group.

Common Cause Rhode Island noted that the Attorney General's legal analysis did not examine whether Governor McKee violated portions of the Code of Ethics besides 5(d) which deals with the use of official position and confidential information. When we did examine whether the gift rule of the Code of Ethics might be implicated, we concluded, similar to the Attorney General, that while Governor McKee took tens of thousands of dollar's worth of free consulting services from SKDK, it could not be determined if the free services were provided to the McKee administration, the McKee for Governor campaign, or Daniel McKee personally. The gift rule is clear that the government can receive gifts.⁶ Furthermore, the Code of Ethics limits gifts to

⁴ When negotiating the contract with SKDK on behalf of Chiefs for Change, Rafal-Baer is reported to have rejected a first draft because it would "look like a gift," and instructed SKDK to "be sure there is nothing sketchy or illegal in this" and "make sure nothing in the scope would be construed as lobbying or gifts." Report, page 9.

⁵ Campaign finance law limits the receipt of in-kind contributions, but only if they are contributions to the campaign. Rhode Island campaign finance limits "in-kind contributions" from people to \$2,000 annually. They are defined in § 36-25-3(16): "'In-kind contributions' means the monetary value of other things of value or paid personal services donated to, or benefiting, any person required to file reports with the board of elections."

⁶ RICR 36-14-5009(B)(2): "The prohibitions in this section do not apply if the gift or other thing of value is: ... (b) services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation and services to constituents."



persons subject to the Code only if they are from an “interested person.”⁷ Because Chiefs for Change did not have a “direct financial interest” in awarding of the school reopening contract, the gift rule likely didn’t prohibit the gift of the consulting services from SKDK.

After reviewing the results of the investigations, Common Cause Rhode Island took three actions. One was to file the petition you are considering. A second was to file a complaint with the Secretary of State alleging that Mike Magee failed to register as a lobbyist.⁸ Finally, we are introducing legislation that would clarify the campaign finance laws with respect to in-kind contributions.⁹ Nothing we can propose, to the Ethics Commission or the legislature, could change the fact that the consulting services provided by SKDK were not clearly given to Daniel McKee personally.¹⁰ However, those same facts exposed parts of our campaign finance and ethics laws that could be clearer and better serve the public interest. Our desire to clarify the Code of Ethics is what led us to file our petition in December.

But even if the facts were clear and Chiefs for Change provided a gift of free consulting services from SKDK to Daniel McKee personally, the gift rule might not have prohibited him from taking the services because Chiefs for Change was not an “interested person” as defined in the Code of Ethics. Chiefs for Change is a 501(c)3 nonprofit organization. Although its CEO Mike Magee clearly lobbied Governor McKee to award the contract to the ILO Group, Chiefs for Change did not have a “direct financial interest” in the awarding of the contract, which is the current standard under the “interested person” analysis.¹¹

There are many nonprofit organizations that lobby the government, including Common Cause, who might not meet the definition of an interested person. Nonetheless, we believe their lobbying creates a conflict of interest and their gifts should be limited under the terms of the gift rule. As an employee of Common Cause if I am successful at passing legislation, or getting the Ethics Commission to adopt a rule, the organization I represent may benefit in numerous ways, including positive press coverage. I too may benefit personally on my yearly performance evaluation. None of that may make me, or the organization I represent, an “interested person” as defined in the Code. That is why we are asking you to amend the gift rule so that it categorically applies to lobbyists.

⁷ RICR 36-14-5009(C) “‘Interested person,’ for purposes of this section, means a person or a representative of a person or business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participation in the making of, as part of his or her official duties.”

⁸ You can find a copy of that letter here: <https://www.commoncause.org/rhode-island/wp-content/uploads/2024/12/2024-12-18-Lobbying-Complaint.pdf>

⁹ As of this letter the legislation has not yet received bill numbers.

¹⁰ For a detailed legal analysis of whether the consulting services provided by SKDK were provided to Governor McKee personally see pages 8-10 of Report.

¹¹ The Attorney General describes Magee’s activity as lobbying on page 13 of his report: “Magee had a hand in drafting the RFP in a way that would directly benefit Rafal-Baer and ILO, and he forcefully lobbied the Governor and his staff to engage Rafal-Baer.”



As we stated in our original petition, at least 22 states categorically include lobbyists in their gift rules.¹² Of those 22 states, 12 *also* have limits that depend on the application of a test, similar to the “interested person” analysis.¹³ If Rhode Island were to do this, we would not be alone. We also believe that categorically including lobbyists would make the gift rule clearer. Lobbyists would be on notice that regardless of who employs them they are subject to the gift rule.

While we cannot point definitively to evidence that lobbyists are exploiting this loophole in the gift rule other than what is laid out in the Attorney General’s report, Common Cause Rhode Island believes it is better to close this loophole now. We can point to public demand for this change. When Common Cause Rhode Island sent our petition to the Ethics Commission we also asked our members to sign a brief petition calling for the Commission to include lobbyists categorically into who is subject to the gift rule. Within hours 115 people signed that petition. Rhode Islanders support this proposed change.

The second part of our petition asks you to examine whether to add a question to the financial disclosure statement requiring disclosure of gifts given “but for” the fact that someone is a public official. Again, we feel the ILO Group investigations reveal that public officials are receiving gifts that currently are not limited by the gift rule but whose disclosure is in the public interest.¹⁴

At your last meeting you approved an advisory opinion for someone who will receive free out-of-state travel but for the fact that they are a public employee.¹⁵ As you mentioned in the advisory opinion you issued, they will have to disclose that under the travel disclosure question you adopted in 2012. If that person had been asking whether they could accept something other than travel, like tens of thousands of dollars of free consulting services, that person would not have been required to disclose the gift.

Currently the Code of Ethics requires reporting of gifts greater than \$100 received from an “interested person” § 36-14-17(b)(4). In other words, Rhode Island law requires reporting of illegal gifts--a useless exercise. Disclosure of legal gifts in other jurisdictions is quite common.

¹² Alabama, Alaska, Arizona, Arkansas, California, Colorado, Indiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and West Virginia. See: <https://www.ncsl.org/ethics/legislator-gift-restrictions> (Accessed on December 17, 2024). It is worth noting that all comparisons made in this letter are of legislative ethics rules. There are few states that have jurisdiction over all three branches of government as does the Rhode Island Ethics Commission. Legislative ethics rules are the most easily comparable.

¹³ Alabama, Arizona, California, Colorado, Maine, Maryland, Missouri, New Mexico, North Carolina, South Dakota, Utah, and West Virginia.

¹⁴ The SKDK contract was only revealed by a multi-year investigation by the Attorney General and State Police.

¹⁵ See AO 25-8: <https://ethics.ri.gov/2025-8>



At least twenty eight (28) other states require reporting of gifts, *other than travel*, that are legally given.¹⁶ We urge you to look at how you can amend the Code to make the gift reporting regime a useful one. The out-of-state travel rule you adopted in 2012 has been very successful at exposing gifts that are in the public interest.¹⁷ We believe revised rules for the disclosure of legal gifts would equally be in the public interest.

Finally, we asked you to examine the section of law that you are charged with enforcing that deals with procurement. While you might not have the ability to change that statute, you could examine whether the Code of Ethics, which you can amend, can be strengthened when it comes to procurement. Oversight of government contracts is part of your constitutional mandate.¹⁸ At the press conference where he announced the results of the investigation and legal analysis, Attorney General Peter Neronha pointed out that Rhode Island does not have a law against bid rigging for instance.¹⁹ We believe this is something the Commission should consider including in the Code of Ethics.

The ILO Group investigation has revealed a number of deficiencies in Rhode Island's public accountability laws. The Rhode Island Ethics Commission, uniquely among ethics commissions in the United States, has the power to amend the Code of Ethics you are also charged with enforcing.²⁰ You have exercised the power sparingly in recent decades. We believe the Ethics Commission should once again fulfill its constitutional mandate to make sure that public officials and employees "adhered to the highest standards of ethical conduct."

Sincerely,

John Marion
Executive Director

¹⁶ Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. See: <https://www.ncsl.org/ethics/financial-disclosures-gift-and-honoraria> (accessed February 3, 2025).

¹⁷ Local media has written dozens of stories using information gathered from the travel question on the financial disclosure statement. For one example see: <https://www.providencejournal.com/story/news/politics/state/2024/05/23/how-much-out-of-state-travel-time-have-ri-top-officials-logged-who-is-the-most-frequent-flyer-diossa/73808786007/>

¹⁸ Art. III, Sec. 8 begins, "The general assembly shall establish an independent non-partisan ethics commission which shall adopt a code of ethics including, but not limited to, provisions on conflicts of interest, confidential information, use of position, *contracts with government agencies* and financial disclosure." [Emphasis added]

¹⁹ See: <https://www.providencejournal.com/story/news/politics/state/2024/10/30/ri-attorney-general-neronha-scolds-mckee-over-ilo-contract-steering-what-he-said/75940201007/>

²⁰ The Commission's own website notes its extraordinary powers, "The Rhode Island Supreme Court has recognized the Ethics Commission's constitutional authority to adopt and enact the Code of Ethics." See: <https://ethics.ri.gov/code-ethics/constitutional-authority>



MEMORANDUM

To: Rhode Island Ethics Commission

From: Jason Gramitt, Executive Director

Date: December 31, 2024

Re: Petition for Adoption/Amendment of Regulations – Common Cause Rhode Island

Common Cause Rhode Island has filed the attached petition, asking the Ethics Commission to consider the following actions:

1. **Gifts.** Amending Commission Regulation 520-RICR-00-00-1.4.2 pertaining to “Gifts,” to expand the definition of an “interested person” from whom gifts are regulated/prohibited to *always* include registered lobbyists. Currently, a registered lobbyist may or may not be an “interested person” depending upon whether or not the lobbyist or their client “has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.” 520-RICR-00-00-1.4.2(C).
2. **Financial Disclosure.** Adopting or amending a financial disclosure regulation to require the *disclosure* of gifts worth \$25 or more that are NOT governed or prohibited by the above-referenced gift rule (because the gift is given by a non-interested person), *if* it is more likely than not that the gift would not have been given but for the fact that the person receiving the gift holds public office or employment. In practice, this would likely be an expansion of the “Out-of-State Travel” disclosure mandated by Commission Regulation 520-RICR-00-00-4.12, which requires disclosure of gifts of out-of-state travel to public officials from a non-interested person if it is more likely than not that the travel would not have been provided but for the public office or employment held by the person receiving the travel.
3. **Procurement.** Reviewing and examining R.I. Gen. Laws § 36-14.1-1 *et seq.* pertaining to procurement officials and vendors. This is a state statute enacted by the General Assembly that is *not* a part of the Code of Ethics, which regulates gifts of \$100 or more from state vendors to state procurement officials and authorizes fines of up to \$2,000 per offense. Although the General Assembly did authorize the Ethics Commission to enforce the statute’s requirements, any amendment to the statute must come from the General Assembly itself.

A petition for rulemaking is authorized by the Rhode Island Administrative Procedures Act (R.I. Gen. Laws § 42-35-6) and by the Ethics Commission's own procedures (520-RICR-00-00-2.9 Petition for Adoption of Regulations). Upon receipt of such a petition, the Ethics Commission has 30 days to either deny the petition (stating the reasons for such denial) or to initiate rule-making procedures. Initiating rule-making procedures may involve such preliminary steps as directing staff to compile additional information for the Commission's consideration and discussion at a future meeting.

Common Cause's petition is on the Commission's January 7, 2025 agenda for discussion and a vote to either deny the petition or to initiate rulemaking. I will make a brief presentation at the start of this item and will be available throughout to answer questions. Common Cause has been notified of this agenda item and invited to make a brief oral presentation in support of its petition.

For your convenience and reference, I have attached to this memorandum a "Guide to Statutes and Regulations Referenced in Petition for Rulemaking."

GUIDE TO STATUTES AND REGULATIONS REFERENCED IN PETITION FOR RULEMAKING

R.I. Gen. Laws § 42-35-6. Petition for promulgation of rules.

Any person may petition an agency to promulgate a rule. An agency shall prescribe, by rule, the form of the petition and the procedure for its submission, consideration, and disposition. Not later than thirty (30) days after submission of a petition, the agency shall:

- (1) Deny the petition in a record and state its reasons for the denial; or
- (2) Initiate rulemaking.

520-RICR-00-00-2.9 Petition for Adoption of Regulations (1026)

- A. Any interested person may petition the Commission for the promulgation, amendment, repeal or adoption of any regulation. The petition shall be signed by the petitioner and shall state the specific reasons for the request. The Commission shall thereafter acknowledge receipt of the petition and advise the petitioner of the right to submit supporting data.
- B. Within thirty (30) days of receipt of the petition, the Commission shall either deny the petition in writing (stating its reasons for the denial) or initiate rule-making procedures in accordance with R.I. Gen. Laws § 42-35-3.
- C. The Commission shall notify the petitioner of the date the Commission intends to consider the petition and may, at its discretion, invite the petitioner or other interested parties to make oral or written presentation.

520-RICR-00-00-1.4.2 Gifts (36-14-5009)

A. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift of cash, forbearance or forgiveness of indebtedness from an interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

B. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift(s) or other thing(s) having either a fair market value or actual cost greater than twenty-five dollars (\$ 25), but in no case having either an aggregate fair market value or aggregate actual cost greater than seventy-five dollars (\$ 75) in any calendar year including, but not limited to, gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

1. For purposes of this regulation a "single interested person" shall include all employees or representatives of an individual, business, organization or entity.

2. The prohibitions in this section do not apply if the gift or other thing of value is:

a. a campaign contribution as defined by the laws of the state;

b. services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents; or

c. a plaque or other similar item given in recognition of individual or professional services in a field of specialty or to a charitable cause.

C. "**Interested person**," for purposes of this section, means a person or a representative of a person or business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.

D. The prohibitions in this section do not apply if the gift or thing of economic value is given:

1. because of the recipient's membership in a group, a majority of whose members are not persons subject to the Code of Ethics, and an equivalent gift is given or offered to other members of the group; or

2. by an interested person who is a person within the family of the recipient, unless the gift is given on behalf of someone who is not a member of said family.

E. For purposes of this regulation, a gift or other thing of value is considered received when it comes into the possession or control of the person subject to the Code of Ethics, or his or her spouse or dependent child, and is a gift or other thing of value subject to the requirements of this regulation unless it is immediately returned to the interested person or given to a bona fide charitable organization without benefit accruing to the person subject to the Code of Ethics.

4.12 Out-of-State Travel (36-14-17009)

A. Any public official or employee who is required to file a yearly financial statement pursuant to R.I. Gen. Laws § 36-14-16(a) shall disclose the source, value and description of any out-of-state travel and related transportation, lodging, meals and entertainment having an aggregate fair market value or actual cost greater than two hundred fifty dollars (\$250) provided by any person or entity, other than the state or municipal agency of which he or she is a member or by which he or she is employed or his or her regular private employer, if under the totality of the circumstances it is more likely than not that the person or entity would not have provided the travel but for the official's or employee's public office or position.

B. Circumstances indicating that the person or entity would not have provided the travel but for the official's or employee's public office or position may include, but are not limited to, one or more of the following:

1. The official or employee became acquainted with the provider through his or her public agency;
2. The official or employee was offered the out-of-state travel and related transportation, lodging, meals and entertainment through a communication sent to or through the public official's or employee's agency;
3. Other officials or employees in the same agency are offered, or have been offered, out-of-state travel and related transportation, lodging, meals and entertainment from the provider;
4. The official's or employee's counterparts in other public agencies or jurisdictions have been offered similar out-of-state travel and related transportation, lodging, meals and entertainment by the provider;
5. The provider is affiliated with any "interested person," as defined by § 1.4.2 of this Subchapter, or has allowed an interested person to underwrite expenses associated with the out-of-state travel and related transportation, lodging, meals and entertainment;
6. The provider is an entity whose membership is limited to, or is largely comprised of, public officials;
7. The official or employee had not received out-of-state travel and related transportation, lodging, meals and entertainment from the provider prior to attaining his or her public office or employment;
8. If the out-of-state travel and related transportation, lodging, meals and entertainment involves attendance at an event, any written references by the provider or affiliated persons relative to the public official's or employee's attendance or participation refer to his or her public office, duties or agency.
9. If the travel involves a conference or seminar, the subject matter of the conference or seminar directly pertains to the public official's or employee's official duties.

State Vendors Providing Goods or Services to Public Officials

R.I. Gen. Laws § 36-14.1-1. Definitions

As used in this chapter:

- (1) "Business entity" means 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 is conducted.
- (2) "Procurement official" means an elected or appointed state official or employee who has the authority to make decisions concerning the purchasing of goods or services for a state agency or who has supervisory authority over the person empowered to make decisions concerning the purchase of goods or services for the state agency.
- (3) "State agency" means a branch, department, division, agency, commission, board, office, bureau, or authority of the government of the state of Rhode Island.
- (4) "State vendor" means:
 - (i) A person or business entity that sells goods or provides services to any state agency,
 - (ii) A person or business entity which has an ownership interest of ten percent (10%) or more in a business entity that sells goods or provides services to any state agency, or
 - (iii) A business entity that is a parent or subsidiary of a business entity that sells goods or services to any state agency.

R.I. Gen. Laws § 36-14.1-2. Prohibited conduct - Exceptions

- (a) No state vendor shall provide goods or services for less than fair market value for the personal use of a procurement official of a state agency if the vendor has sold goods and services during the preceding twenty-four (24) months to the state agency or if the vendor knows or has reason to know he or she will be submitting a bid or making a proposal for the sale of goods or services within the succeeding twenty-four (24) months to the state agency.
- (b) No procurement official of a state agency shall accept goods or services for his or her personal use for less than fair market value from a state vendor who has sold goods or services to the agency during the preceding twenty-four (24) months or who the procurement official knows or has reason to know will be submitting a bid or making a proposal for the sale of goods or services to the agency within the succeeding twenty-four (24) months.
- (c) The prohibition set forth in subsection (a) of this section shall not apply to goods or services having a fair market value of less than one hundred dollars (\$100).

R.I. Gen Laws § 36-14.1-3. Civil penalty

Every state vendor and every procurement official that knowingly and willfully violates the provisions of this chapter shall be subject to a civil penalty of not more than two thousand dollars (\$2,000) per offense.

R.I. Gen Laws § 36-14.1-4. Enforcement

(a) The Rhode Island Ethics Commission is hereby empowered to investigate and adjudicate allegations of violations of this chapter in accordance with the provisions of § 36-14-13 (a) through (f). Upon a finding of violation of this chapter, the adjudicatory panel of the ethics commission may issue an order requiring the violator to pay a civil penalty in accordance with § 36-14.1-3.

(b) Nothing contained in this section shall be construed to limit the authority of the attorney general to enforce the provisions of this chapter.



Rhode Island
Holding Power Accountable

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245 Waterman Street, #400A
Providence, RI 02906
401.861.2322

www.commoncause.org/ri

VIA ELECTRONIC MAIL

December 18, 2024

Lauren E. Jones, Chair
Rhode Island Ethics Commission
40 Fountain Street, 8th Floor
Providence, RI 02903

Dear Chair Jones:

On behalf of Common Cause Rhode Island, I write to petition that the Rhode Island Ethics Commission, pursuant to § 42-35-6 of the Administrative Procedures Act, engage in rule-making.

Gift Rule

Specifically, Common Cause Rhode Island requests that the definition of an “interested person” in 520-RICR-00-00-1.4.2 Gifts (36-14-5009)(C) be amended to include anyone registered as a lobbyist pursuant to § 42-139.1-4, or their principal or their agent. We strongly believe that the “gift rule” in the Rhode Island Code of Ethics should prohibit registered lobbyists from providing gifts in excess of the values outlined in the Code.

As you know, the Code currently places limits on gifts from those who have a “direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or participate in the making of, as part of his or her official duties.” 520-RICR-00-00-1.4.2 Gifts (36-14-5009)(C). Common Cause Rhode Island believes that the current requirement that there be a financial nexus for the “gift rule” to apply is insufficiently protective of the public interest. We ask the Commission to amend the gift rule to protect the public interest by including lobbyists as a class.

The Commission’s constitutional mandate is to ensure that “public officials and employees ... adhere to the highest standards of ethical conduct, *respect the public trust* and the rights of all persons, be open, accountable and responsive, *avoid the appearance of impropriety* and *not use their position for private gain* or advantage” (emphasis added). When registered lobbyists, who by definition are paid to influence public officials, are giving gifts to those same public



officials, it undermines “the public trust,” gives the “appearance of impropriety,” and suggests that public officials are using their official positions for “private gain.”

Including registered lobbyists in the definition of an “interested person” creates a bright-line rule that those subject to the Code can easily understand, and that the Commission can easily enforce.

While not comprehensive, our review of gift rules for state legislators in other states indicates that at least twenty-two (22) states have bars and other limits on gifts specifically from lobbyists, their principals, or their agents.¹ A cursory review of lobbying laws that apply to the executive branch reveals that bars on gifts from lobbyists are commonplace.²

Financial Disclosure

In addition to the above changes to the “gift rule,” we request additional rule-making to add a question to the financial disclosure form. Specifically, we seek a question that requires disclosure of gifts “if, under the totality of the circumstances, it is more likely than not that the person or entity would not have given the gifts but for the official’s or employee’s public office or position.” See 520-RICR-00-00-4.12 Out-of-State Travel (36-14-17009).

Common Cause Rhode Island last petitioned the Commission to engage in rule-making in 2012. The result of that petition was the current rule, 520-RICR-00-00-4.12 Out-of-State Travel (36-14-70009). This carefully-crafted rule has led to the disclosure of a significant number of instances of out-of-state travel of public officials provided by third parties. We believe such disclosure is in the public interest and furthers the Commission’s mission to promote transparency.

However, we also believe that there are gifts that fall outside of the category of Out-of-State Travel and are given by persons who are not an interested person as defined by the Code, yet whose disclosure is in the public interest. As in our 2012 petition, here we are not seeking to ban these gifts, but to shed sunlight on them. And again, like in 2012, we are not petitioning the Commission to adopt specific language, but are articulating our goal and asking the Commission and staff to craft a rule that achieves that goal in a way that is enforceable.

Procurement

¹ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Indiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and West Virginia. See: <https://www.ncsl.org/ethics/legislator-gift-restrictions> (Accessed on December 17, 2024).

² See: <https://www.naag.org/state-gift-laws/> (Accessed on December 17, 2024).



Finally, in light of recent events, we believe that the Commission should examine the section of the Code that applies to procurement. While we have no specific recommendations at this time with respect to R.I.G.L. § 36-14.1-1 et seq., this section of the Code has not been amended since 1993. We hope that a review of best practices from other jurisdictions will reveal policies that better protect the procurement process from political interference.

Common Cause Rhode Island looks forward to working with the Commission to craft language that will effectuate these changes to the Code of Ethics.

Sincerely,

John Marion
Executive Director

CC: Jason Gramitt, Executive Director

