

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-11

Approved: 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(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