



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

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**NOTICE OF OPEN MEETING**

**AGENDA**

**4<sup>th</sup> Meeting**

**DATE:** Tuesday, March 4, 2025

**TIME:** 9:00 a.m.

**PLACE:** Rhode Island Ethics Commission  
Hearing Room - 8<sup>th</sup> Floor  
40 Fountain Street  
Providence, RI 02903

**LIVESTREAM:** The Open Session portions of this meeting will be livestreamed at:  
<https://us02web.zoom.us/j/81394723110>

1. Call to Order.
2. Motion to approve minutes of Open Session held on February 11, 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.) Stephen H. Marsella, Esq., the former assistant solicitor for the Town of Narragansett, who is also an attorney in private practice, requests an advisory opinion regarding whether, and to what extent, he is prohibited by the Code of Ethics from representing clients before the Narragansett Planning Board, Zoning Board, Town Council, and Probate Court following the date of his official severance from the position of assistant solicitor. [Staff Attorney Radiches]
- b.) Daniel W. Patterson, a member of the Exeter Town Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself, whether individually or through an authorized representative, before one's own board and/or before an agency over which one has appointing authority, for purposes of representing himself first before the town planner over whom the town council has appointing authority, and then before the town council, for the purpose of making applications relating to his intended sale of property that he owns. [Staff Attorney Radiches]
- c.) Tim McNamara, a member of the Barrington School Committee, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from simultaneously serving as a volunteer assistant coach for the Barrington High School boys' varsity lacrosse team. [Staff Attorney Radiches]
- d.) Elizabeth Kinder, whose appointment to the East Providence Tree Commission, is currently pending, and who in her private capacity is the managing director of a tree farm and landscaping business in the Town of Bristol, requests an advisory opinion regarding whether she, upon accepting the appointment, would be prohibited by the Code of Ethics from bidding on projects to supply and plant trees for the City of East Providence. [Staff Attorney Papa]

5. Continuing discussion of potential rulemaking: Amending the Code of Ethics' Gift Rule at 520-RICR-00-00-1.4.2 to apply to gifts from all registered lobbyists. [Director Gramitt]

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

- a.) Motion to approve minutes of Executive Session held on February 11, 2025, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- b.) In re: Michael Colasante, Complaint No. 2023-10, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - c.) Motion to return to Open Session.
7. Motion to seal minutes of March 4, 2025 Executive Session.
  8. Report on actions taken in Executive Session.
  9. New Business proposed for future Commission agendas and general comments from the Commission.
  10. 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 27, 2025*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: March 4, 2025

**Re: Stephen H. Marsella, Esq.**

### **QUESTION PRESENTED:**

The Petitioner, the former assistant solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, requests an advisory opinion regarding whether, and to what extent, he is prohibited by the Code of Ethics from representing clients before the Narragansett Planning Board, Zoning Board, Town Council, and Probate Court following the date of his official severance from the position of assistant solicitor.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the former assistant solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, is prohibited by the Code of Ethics from representing clients before the Narragansett Planning Board and the Narragansett Zoning Board until the expiration of one year after the date of the appointment of his successor, which marked the Petitioner's official severance from the position of assistant solicitor. Further, the Petitioner is prohibited from representing clients before the Narragansett Town Council until the expiration of one year following his last appearance before that agency. Finally, the Petitioner is not prohibited from representing clients before the Narragansett Probate Court within one year after the date of his official severance from the position of assistant solicitor, because such representation pertains to matters of public record in a court of law and, therefore, the Petitioner's proposed actions fall within the exception found at R.I. Gen. Laws § 36-14-5(e)(4).

The Petitioner is an attorney who has been licensed to practice law in the State of Rhode Island since 1992. In 2017, he was appointed by the Narragansett Town Council to a two-year term as the assistant solicitor for the town and assigned to represent and provide counsel to the town's zoning board and planning board. The Petitioner states that he was reappointed to the same position in 2019 and 2021. The Petitioner further states that in January 2023, the town council voted to replace him as the assistant solicitor and appoint another attorney to that position. He explains that in February 2023, he prepared copies of his files and participated in transition meetings with the town manager, the town solicitor,

and with the attorney who was expected to be sworn in as his replacement. The Petitioner informs that, later that month, the vote to appoint the newly selected assistant solicitor was tabled by the town council. He adds that, ultimately, the newly selected assistant solicitor was never sworn in and never attended any additional meetings. The Petitioner informs that his firm, though never officially voted on or reappointed, reassumed the position of counsel to the zoning board and the planning board and has been since billing the town for those services on a month-to-month basis. He states that no subsequent vote to reappoint him as assistant solicitor was ever taken by the town council.<sup>1</sup> The Petitioner informs that his representation of the planning board continued until December 17, 2024, and his representation of the zoning board continued until December 19, 2024. He represents that on January 6, 2025, the town council voted to appoint a new assistant solicitor.<sup>2</sup>

The Petitioner states that although his duties were limited to providing counsel to the planning and zoning boards, on June 11, 2024, he filled in for the town's solicitor at a town council meeting because the town solicitor was on vacation. The Petitioner further states that on June 27, 2024, he presided over the probate court for one session because both the probate judge and the town solicitor were on vacation. It is under this set of facts that the Petitioner seeks guidance regarding whether, and to what extent, he is prohibited by the Code of Ethics from representing clients before the probate court, town council, zoning board, and planning board following his severance from the position of assistant solicitor.

The Code of Ethics strictly prohibits a public official from representing himself, or another person, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1)&(2); 520-RICR-00-00-1.1.4(A)(1)&(2) Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). These prohibitions continue while the public official remains in office and for a period of one year thereafter; however, §36-14-5(e)(4) states that "this prohibition shall not pertain to a matter of public record in a court of law."

### Planning Board and Zoning Board

The Ethics Commission has consistently concluded that solicitors may represent private clients before municipal boards, courts, or other entities before which they do not represent their municipality or over which they do not have any official duties. See, e.g., A.O. 2015-23 (opining that a former assistant solicitor for the Town of Burrillville, whose duties consisted of prosecuting criminal complaints in the Providence County District Court and the Town of Burrillville's Municipal Court, was not prohibited from representing clients

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<sup>1</sup> The Petitioner represents that he did disclose his representation of the town in the role of assistant solicitor to the Ethics Commission on his 2023 Yearly Financial Statement.

<sup>2</sup> The assistant solicitor appointed by the town council on January 6, 2025, was not the individual selected to replace the Petitioner as assistant solicitor in January 2023.

before the Burrillville Planning Board and Burrillville Zoning Board within one year following the end of his tenure as assistant solicitor); A.O. 2013-24 (opining that a Providence assistant city solicitor, whose duties were limited to acting as legal counsel for the Providence School Board, was not prohibited from representing private clients before other Providence boards, courts, commissions, or entities before which he did not represent the City as assistant city solicitor and over which he exercised no authority or control, such as the city council, zoning board, planning board, probate court, municipal court, and board of tax appeal).

Here, the Petitioner last represented the planning board on December 17, 2024, and last represented the zoning board on December 19, 2024. However, a new assistant solicitor was not appointed by the town council until January 6, 2025. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing clients before both the planning board and the zoning board prior to the expiration of one year following the appointment of the new solicitor.

#### Town Council

Additionally, in other advisory opinions the Ethics Commission has considered circumstances in which municipal solicitors sought guidance on the propriety of serving as substitute legal counsel for other solicitors serving in the same municipality. For example, in Advisory Opinion 2023-20, a former solicitor for the Town of Narragansett, whose main responsibilities involved advising the town council and the town's staff on legal issues, on one occasion during his tenure as solicitor served as substitute counsel at a town zoning board meeting at the request of the assistant solicitor who could not attend. That petitioner sought advice regarding whether the Code of Ethics' revolving door restrictions prohibited him from representing clients before the zoning board within one year following the end of his service to the town as its solicitor. The Ethics Commission opined that the petitioner was prohibited from representing clients before the zoning board until the expiration of one year following his service as substitute counsel. Also, in Advisory Opinion 97-71, the Ethics Commission opined that the solicitor for the Town of New Shoreham, who also served as legal advisor once or twice per year when the Town of Foster's solicitor had a conflict of interest in a matter, was prohibited from representing clients before Foster's zoning board until the expiration of one year following the severance of his relationship with that zoning board. There, the Ethics Commission concluded that an ongoing relationship could include one in which an attorney represents a board once or twice per year, particularly if it is reasonably foreseeable that future representation would occur.

Here, the Petitioner filled in for the solicitor as counsel to the town council on one occasion, which occurred on June 11, 2024. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing clients before the town council prior to the expiration of one year after that date.

## Probate Court

In prior advisory opinions, the Ethics Commission has recognized that the one-year waiting period set forth in § 36-14-5(e)(4) does not extend to individuals who wish to represent clients within one year following the date of their official severance from public service when such representation pertains to matters of public record in a court of law. More specifically, the Ethics Commission has consistently opined that probate courts are courts of public record, and have allowed petitioners to represent clients before probate courts within one year after leaving public office. See, e.g., A.O. 2021-1 (opining that a former member of the Cranston City Council, who was privately employed as an attorney, was not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court within one year following the date of his official severance from the Cranston City Council, because such representation would pertain to matters of public record in a court of law and, therefore, the petitioner's proposed actions fell within the exception found at § 36-14-5(e)(4)); A.O. 2015-1 (opining that a former member of the East Providence City Council and other members of his law firm were not prohibited by the Code of Ethics from representing clients before the East Providence Probate Court or the East Providence Municipal Court within one year from the date of the petitioner's official severance from the city council, because such representation pertained to matters of public record in a court of law and, therefore, were not subject to the one-year probationary period).

Here, the Petitioner presided over the Narragansett Probate Court at its session held on June 27, 2024, in the absence of both the town's probate judge and solicitor, which would generally implicate the revolving door prohibitions in § 36-14-5(e). However, the instant matter falls squarely within the exception found at § 36-14-5(e)(4) of the Code of Ethics relating to matters of public record in a court of law. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from representing clients before the Narragansett Probate Court within one year after June 27, 2024.

## Summary

In consideration of the facts as represented, 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 prohibited by the Code of Ethics from representing clients before the planning board and the zoning board until the expiration of one year after the date of the appointment of his successor, which marked the Petitioner's official severance from the position of assistant solicitor. The Petitioner is further prohibited from representing clients before the town council until the expiration of one year following his last appearance before that agency. Finally, the Petitioner is not prohibited from representing clients before the probate court within one year after the date of his having presided over the probate court, because such representation pertains to matters of public

record in a court of law and, therefore, the Petitioner's proposed actions fall within the exception found at R.I. Gen. Laws § 36-14-5(e)(4).

**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:

§ 36-14-5(e)

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

Related Advisory Opinions:

A.O. 2023-20

A.O. 2021-1

A.O. 2015-23

A.O. 2015-1

A.O. 2013-24

A.O. 97-71

Keywords:

Private Employment

Revolving Door



# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: **March 4, 2025**

**Re: Daniel W. Patterson**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Exeter Town Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself, whether individually or through an authorized representative, before one's own board and/or before an agency over which one has appointing authority, for purposes of representing himself first before the town planner over whom the town council has appointing authority, and then before the town council, for the purpose of making applications relating to his intended sale of property that he owns.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Exeter Town Council, a municipal elected position, does not qualify for a hardship exception to the Code of Ethics' prohibition against representing oneself, whether individually or through an authorized representative, before one's own board and/or before an agency over which one has appointing authority, for purposes of representing himself first before the town planner over whom the town council has appointing authority, and then before the town council, for the purpose of making applications relating to his intended sale of property that he owns.

The Petitioner is a member of the Exeter Town Council and currently serves as its president. He was first elected to the town council in 2012, and this is his seventh consecutive two-year term as a member of that agency. The Petitioner states that he presently owns a 50-acre farm located in Exeter that he purchased in 1996, and that he and his family have lived on that farm continuously since 2000 in a home that the Petitioner built. He further states that Christmas trees are the farm's major crop production, adding that other crops include nursery stock, annuals, and perennials. The Petitioner explains that a retail building was built in 2005 for plants, gifts, and nursery sales. The Petitioner represents that the property is currently zoned as residential, with a special use permit for retail sales. He further represents that due to the COVID-19 pandemic and inflation, it is no longer feasible for him to continue the operation of his retail building.

The Petitioner states that he would like to subdivide a four-acre lot from the farm on the portion of his property where his retail building is located. He further states that to accomplish this, he must make two successful applications for administrative subdivisions. The Petitioner informs that administrative subdivisions are performed by the town planner, who is appointed by a majority vote of the town council. He explains that the first application would seek the approval of a land swap between the Petitioner and the owner of a neighboring parcel in order for the Petitioner to obtain the road frontage required to subdivide the proposed lot. He further explains that the second application would be for the actual creation of the four-acre lot. If these two steps are successful, the Petitioner would then like to apply to the town council for a zone change for the newly created lot from residential (with a special use permit for retail sales) to commercial. The Petitioner would then like to sell the new four-acre lot and the retail building that is located on it, which would leave him with a 46-acre parcel.

The Petitioner states that he plans to invest the proceeds from the sale of the new lot and commercial building in the farm. He further states that his investment would take the form of first paying off the mortgage on his own residence, followed by creating a rural residential compound for his family consistent with the provisions of the town's subdivision ordinances. The Petitioner explains that the town's rural residential compound ordinance was adopted to allow housing, while still protecting farmland and open space properties. He further explains that 50% of a parcel intended for subdivision must be deeded as open space in perpetuity and used only for agricultural and recreational purposes, and that one lot is allowed per every ten acres of the remaining 50% of the parcel.

The Petitioner states that he is prepared to deed 23-acres of his remaining 46-acre parcel as open space, which he would continue to use to produce Christmas tree and nursery stock in conformance with municipal law. He explains that he seeks to create from the 23 remaining acres a four-lot subdivision that would include his current dwelling and three new lots on which each of his three children will build their homes.<sup>1</sup> The Petitioner represents that he intends to use the funds from the sale of the new four-acre lot and retail building to pay off his mortgage. He further represents that he intends to use the remaining funds to contribute to the expenses of engineering, surveying, and legal fees associated with the proposed subdivision, which he estimates will be between \$120,000 and \$140,000, adding that there will be an additional expense of constructing a private roadway in accordance with municipal and state standards. The Petitioner emphasizes that the purpose of this project is to enable his three children, who grew up on the farm, to be able to have homes they can afford, and to allow his property to maintain its farm status for generations to come.

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<sup>1</sup> The Petitioner informs that his three adult children are finding it impossible to afford housing in Rhode Island.

The Code of Ethics prohibits a public official from representing himself, or authorizing another person to appear on his behalf, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). While many conflicts can be avoided under the Code of Ethics by recusing from participation and voting in certain matters, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, § 36-14-5(e)'s prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5 (e)(1) & (4). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. § 36-14-5(e)(1)(i-iii). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review permitting him to appear before the zoning board to request a dimensional variance for his personal residence, but requiring him to recuse himself from participating and voting during the zoning board's consideration of his request for relief).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency of which he is a member and before an agency for which he has appointing authority. Having determined that § 36-14-5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will now consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to represent himself before the town planner and/or the town council.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors, and no single factor is determinative.

In some prior advisory opinions, the Ethics Commission has granted hardship exceptions allowing elected and appointed officials to appear before agencies of which they were a member, or for which they were the appointing authority. For example, in Advisory Opinion 2020-20, a member of the South Kingstown Planning Board was granted a hardship exception allowing him to represent himself before his own board in order to seek approval to subdivide property that he had owned for seven years before joining the planning board and on which a residence was located that his daughter occupied. That petitioner wished to subdivide his property into two lots and construct a second residential

structure on the newly created lot. The petitioner envisioned that, after the subdivision, his daughter would continue to occupy the current residential structure and one of his other children would occupy the new structure on the newly created lot. That particular subdivision was described by the petitioner as personal in nature and in no way related to a commercial use or venture as he planned to transfer the subdivided lots to his children. See also A.O. 2017-6 (granting a hardship exception to a member of the Hopkinton Planning Board, allowing him to represent himself before his own board in order to establish a family residential compound on property that had been owned by his family for 60 years, that the petitioner himself had owned for 17 years, and under circumstances where the petitioner wished to provide land to his children to build their own homes and where the petitioner had no intention or plans to expand his small business or put any lots up for sale); A.O. 2012-16 (granting a hardship exception to a member of the Foster Town Council, allowing him to represent himself before the Foster Zoning Board and the Foster Planning Board in his pursuit of establishing a residential compound on his personal property, his ownership of which predated his appointment to the town council, under circumstances where he was seeking to subdivide the property in order to provide land to his children to build their own homes, which was not a commercial transaction).

In contrast, the Ethics Commission has declined to grant a hardship exception for matters involving new commercial ventures. For example, in Advisory Opinion 2003-49, where the assistant solicitor for the Town of Lincoln wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board relative to the development of two parcels of real estate that he owned in Lincoln, a hardship exception was not granted because the petitioner's ownership of the lots did not predate his appointment as assistant solicitor, and it was uncertain as to whether either lot would be used as the petitioner's primary residence or simply resold in a commercial transaction after development. See also A.O. 2000-41 (declining to grant a hardship exception to a member of the Exeter Zoning Board who sought to generate additional income by entering into a contract to locate a cellular communications tower on his residential property because the proposed commercial venture served only to generate additional income for the petitioner); A.O. 97-146 (declining to grant a hardship exception to a member of the North Kingstown Zoning Board of Review who wished to appear before that board, personally or through legal counsel, in order to seek approval for certain variances relating to a residential subdivision in North Kingstown for which he was the developer).

In the present matter, the Petitioner wishes to appear before the town planner, over whom the town council has appointing authority, in order to seek two administrative subdivisions that will allow him to create a four-acre lot from of his 50-acre farm so that he may then sell that lot in a commercial transaction. The Petitioner also wishes to appear before the town council of which he is a member in order to request that the zoning designation for the new lot be changed from residential (with a special use permit for retail sales) to commercial. There are some similarities between the intention of the instant Petitioner, who after selling the newly created lot in a commercial transaction wishes to ultimately

create a residential compound for his family on his property, and the intention of the petitioners in Advisory Opinions 2020-20, 2017-26 and 2012-16 above, whose proposed family compounds did not rely on the creation and sale of a new commercial lot. For example, like those other petitioners, the instant Petitioner's ownership of his property predates his appointment to his public position by a number of years. However, here, the plans of the instant Petitioner include the sale of a portion of his property in a commercial transaction. This fact distinguishes the instant Petitioner from those to whom hardship exceptions were previously granted, and aligns him more closely with the petitioners in Advisory Opinions 2003-49, 2000-41, and 97-146 above, each of whom were denied hardship exceptions because their plans all involved a new commercial venture.

The instant Petitioner represents that Exeter's rural residential compound ordinance requires that 50% of a parcel be deeded as open space in perpetuity, and allows for one lot per ten acres of the remaining 50% of the parcel. The Petitioner's request to seek zoning relief and approval from both the town planner and the town council, whether personally or through his authorized representative, is directly tied to the Petitioner's desire to create and sell a four-acre commercial lot, which is not a necessary element of creating of the four-lot subdivision he described as his vision for the compound. The Petitioner's plan to sell the newly created four-acre lot would be a commercial transaction. That the Petitioner represents an intention to use some of the proceeds from that sale to fund the creation of a rural residential compound for his family does not erase or transform the commercial nature of the initial project-funding sale. Requests by public officials to appear before their own agencies, or before agencies over which they have appointing authority, are routinely denied under circumstances in which a new commercial transaction is involved or anticipated.

Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of Ethics Commission that the circumstances here do not justify the granting of a hardship exception. Therefore, the Petitioner may not appear before the planner or the town council, either individually or through legal counsel, for the purposes described above prior to the expiration of one year following his official severance from the town council.

**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:

§ 36-14-5(e)

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

Related Advisory Opinions:

A.O. 2020-20

A.O. 2017-6

A.O. 2014-26

A.O. 2012-16

A.O. 2003-49

A.O. 2000-41

A.O. 97-146

Keywords:

Hardship Exception

DRAFT

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: March 4, 2025

**Re: Tim McNamara**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Barrington School Committee, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from simultaneously serving as a volunteer assistant coach for the Barrington High School boys' varsity lacrosse team.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Barrington School Committee, a municipal elected position, is not prohibited by the Code of Ethics from simultaneously serving as a volunteer assistant coach for the Barrington High School boys' varsity lacrosse team.

The Petitioner is a member of the Barrington School Committee, having been elected to serve in that position in November 2024. He represents that for the past 14 years, he has been deeply involved in the town's youth lacrosse league, both as a coach and as the boys' program director. The Petitioner states that the former president of the league, with whom the Petitioner remains in touch, is now the head coach for the Barrington High School boys' varsity lacrosse team. The Petitioner further states that the head coach, who usually has two to three assistant coaches each year, has no one to assist him this year. The Petitioner represents that, although the head coach receives compensation for his services in that capacity, there is no stipend or remuneration associated with the position of assistant coach for the boys' varsity lacrosse team.

The Petitioner states that the school committee does not advertise for the assistant coach position or participate in the selection of candidates to interview or in the final selection of an assistant coach or coaches; rather, the head coach finds people who are capable and willing to volunteer. The Petitioner informs that the varsity boys' lacrosse season begins in mid-March and runs through May. He further informs that the team practices from 4:00 p.m. until 5:30 p.m. every weekday, plus one weekend day, provided that no game is scheduled. The Petitioner states that games are usually held twice per week on Mondays and Thursdays. The Petitioner further states that he has informed the head coach that,

should the Petitioner become a volunteer assistant coach, in the event that a lacrosse game conflicts with a school committee meeting, usually held once or twice each month on a Thursday evening at 7:00 p.m., the Petitioner would be attending the school committee meeting and be unable to assist with the coaching that evening.

The Petitioner represents that should any matters related to the boys' varsity lacrosse team come before the school committee during his term, he would recuse himself from participation in the discussions and decision-making relating to such matters, or seek additional assistance from the Ethics Commission. He cites by way of example the issue of the head coach's salary. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited by the Code of Ethics from simultaneously serving as a member of the school committee and as a volunteer assistant coach for the boys' varsity lacrosse team.

Under the Code of Ethics, a municipal elected official or school committee member is prohibited from seeking or accepting employment in the same municipality in which that official serves, including services as an independent contractor or consultant, while serving in office and for a period of one year after leaving office. 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014) (Commission Regulation 1.5.4). Additionally, pursuant to 520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006) (Commission Regulation 1.5.1), no elected or appointed official may accept any appointment or election that requires approval by the body of which he is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one year after termination of his membership in or on such body.

Notably, the receipt of compensation is a necessary element in the application of both Regulation 1.5.4 and Regulation 1.5.1. See A.O. 2013-11 (opining that an elected member of the Pascoag Fire District Board of Commissioners could not seek or accept a position as a volunteer firefighter in the same district while holding office as a commissioner, and for one year after, because volunteer firefighters were paid for their services as independent contractors); A.O. 2004-36 (opining that a state employee who sat as a member of the Rhode Island Water Resources Board as the designee of the director of administration could not accept, if offered, employment in the position of general manager of the board).

However, the Ethics Commission has permitted public officials to accept certain positions within their municipality, provided that the officials agreed to waive receipt of any financial benefit or remuneration and serve in a volunteer capacity. For example, in Advisory Opinion 2018-7, the Ethics Commission opined that the chairperson of the West Warwick School Committee was not prohibited by the Code of Ethics from serving as a coach for the West Warwick High School girls' basketball team, provided that he waived the receipt of any financial compensation and/or benefits and served in a volunteer capacity. There, the petitioner expressly represented that neither he nor the school committee had participated in the job description development or the selection of the



candidates for the position, and that he would recuse from the school committee's discussions and decision-making related to the ratification of his appointment to the position. The Ethics Commission required that petitioner to also recuse from participating in any school committee discussions and decision-making relating to his position as a basketball coach. See also A.O. 2003-65 (opining that a Chariho School Committee member could officiate at sporting events involving the Chariho schools, given his representation that he would waive the receipt of a stipend for his services from the school's athletic department); A.O. 99-94 (opining that a member of the Coventry School Committee was not prohibited from accepting appointment to the position of head wrestling coach at the middle school, provided that he waived the receipt of compensation and benefits); A.O. 97-41 (opining that a member of the Warwick School Committee could apply for a coaching position in the Warwick School Department, given that he did not intend to accept compensation, benefits, or other financial remuneration for the position).

As stated earlier, the receipt of compensation is a necessary element in the application of both Regulation 1.5.4 and Regulation 1.5.1. Here, the Petitioner represents that there is no stipend or remuneration associated with the position of assistant coach for the boys' varsity lacrosse team. Also, the Petitioner states that the school committee does not advertise for the assistant coach position or participate in the selection of candidates to interview or in the final selection of an assistant coach or coaches; rather, the head coach finds people who are capable and willing to volunteer. In the instant matter, there is no financial benefit or remuneration associated with the assistant coach position that the Petitioner would otherwise be required to waive. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner, a member of the school committee, from simultaneously serving as a volunteer assistant coach for the varsity lacrosse team. Also, the Petitioner may or may not be required to recuse from participating in school committee discussions and decision-making relating to the boys' lacrosse team, depending upon the nature of the matter that is pending. The Petitioner is encouraged to seek further guidance from the Ethics Commission if and when a matter involving the boys' lacrosse team is before the school committee.

**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:

520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006)

520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014)

Related Advisory Opinions:

A.O. 2018-7

A.O. 2013-11

A.O. 2004-36

A.O. 2003-65

A.O. 99-94

A.O. 97-41

Keywords:

Revolving Door

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# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: March 4, 2025

**Re: Elizabeth Kinder**

### **QUESTION PRESENTED:**

The Petitioner, whose appointment to the East Providence Tree Commission, a municipal appointed position, is currently pending, and who in her private capacity is the managing director of a tree farm and landscaping business in the Town of Bristol, requests an advisory opinion regarding whether she, upon accepting the appointment, would be prohibited by the Code of Ethics from bidding on projects to supply and plant trees for the City of East Providence.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, whose appointment to the East Providence Tree Commission, a municipal appointed position, is currently pending, and who in her private capacity is the managing director of a tree farm and landscaping business in the Town of Bristol, will not generally be prohibited by the Code of Ethics from bidding on projects to supply and plant trees for the City of East Providence while serving as a member of the Tree Commission, subject to the restrictions outlined herein.

The Petitioner represents that she was offered an appointment by the mayor of the City of East Providence to the East Providence Tree Commission; however, she has not yet been sworn in. During a telephone conversation with staff of the Ethics Commission, the chairperson of the tree commission explained that the tree commission held its first-ever meeting in 2020 and that the tree commission meets quarterly, at a minimum. The chairperson further explained that the tree commission is comprised of five regular members and three ex-officio members who currently include a member of the planning department, a member of the city council, and the tree warden.

Pursuant to the city ordinance, the duties of the tree commission include “the protection, maintenance, removal, and planting of trees on public property” and the hearing of appeals of decisions of the city forester. The chairperson noted that the majority of the duties of the tree commission are to identify potential locations for tree planting and to propose appropriate tree species to be planted at those locations. The Petitioner represents that tree-

planting projects that will cost the city more than \$2,500 are awarded by the city through a public bidding process and require review of a minimum of three bids. The Petitioner further represents that the tree commission is advisory in nature only, has no final decision-making authority relative to tree-related projects, and does not participate in the bid specification or the selection of companies who perform on a particular project. The tree commission's chairperson explained that when a tree-planting project does not require a bid process, the city purchases the trees directly from a tree farm or nursery and that, ordinarily, she in her capacity as the tree commission chairperson would personally visit the nursery to tag the trees to be purchased. The tree commission chairperson noted that the tree commission works closely with the parks department's director and the planning department's liaison to the tree commission. The chairperson explained that funding for various tree-planting projects comes from different sources including federal or state grants, and the city budget.

The Petitioner represents that, in her private capacity, she is the managing director of Samuel Kinder & Brother, Inc. (nursery), a nursery and landscaping business located in Bristol, Rhode Island. The Petitioner explains that the business sells the trees it grows and performs tree planting. The Petitioner states that the nursery has been a family business for 150 years. She further states that she became the managing director in 2021 and that since that time, the nursery has not provided services or trees to the City of East Providence. The Petitioner is unaware whether prior to her becoming the nursery's managing director the nursery has done business with City of East Providence. She represents that she would like to be able to bid on city projects to supply and plant trees, if and when such projects become available. The Petitioner further represents that she will recuse herself from participation in tree commission discussions, decision-making, and/or recommendations on matters in which she expects that the nursery will bid and/or be financially impacted. Finally, the Petitioner states that she does not expect to be required to recuse on a regular basis because the nursery specializes in offering mature large trees, which she anticipates that the city will not often seek to purchase and/or plant. The Petitioner notes that, to her knowledge, the city ordinarily purchases its trees and plants from a particular nursery each year. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from bidding on tree-related city projects while serving as a member of the tree commission.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official 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). Additionally, the Code of Ethics prohibits a public official from using her public office or

confidential information received through her public office to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. § 36-14-5(d).

Further, no person subject to this Code of Ethics, or any person within his or her family or business associate of the person, or any business entity in which the person or any person within his or her family or business associate of the person has a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract with any state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. § 36-14-5(h). Section 36-14-5(h) also provides that “contracts for professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details.” The professional services exception of § 36-14-5(h) typically relates to contracts for legal, medical, architectural, or accounting services. See A.O. 2000-35.

Additionally, even when a contract is to be awarded through an open and public bidding process, a public official may still need to recuse from participation in the planning and development of the request for bids or proposals. The Ethics Commission has previously determined that public officials who participate in the bid development process for a public entity place themselves, their family members, and their business associates in a privileged position with respect to other bidders. By so doing they contravene the “open and public process” required under the Code of Ethics. See § 36-14-5(h) and (d).

In Advisory Opinion 2000-40, for example, the Ethics Commission opined that the chief of the Nasonville Fire Department was prohibited from participating in the Nasonville Truck Committee’s bid selection and award of a contract for a new fire truck, given that his private employer had submitted a bid. Based upon that petitioner’s previous substantive participation in the process, specifically his role in the selection process by soliciting bids from three companies from which the fire district was to make its final selection, including his employer, the Ethics Commission opined that prospective recusal on truck committee matters was not sufficient to satisfy the requirements of the Code of Ethics. As a result, the Ethics Commission concluded that unless the Nasonville District initiated a process that neutralized the petitioner’s previous involvement in the bid process, thereby dissolving any potential conflicts of interest, the district could not, consistent with the Code of Ethics, award the contract to the petitioner’s employer. The Ethics Commission further explained that if the petitioner’s employer submitted a bid, but was not selected, the petitioner could then participate in truck committee matters concerning the contract for a new fire truck either after it was awarded or after his employer was eliminated from consideration for the award, whichever came first. Additionally, if the petitioner’s employer was awarded the contract through an appropriate open and public process, the petitioner could neither oversee, supervise, nor perform any discretionary act relating to the contract.

Also, in Advisory Opinion 98-86, the Ethics Commission opined that a Westerly town council member could not enter into a lease arrangement with the Westerly school department unless it was pursuant to an open and public process, nor could he submit a bid if he had participated in, or otherwise influenced, the bid development process. See also A.O. 2018-8 (opining that a member of the Lincoln Budget Board was prohibited from participating in the Lincoln High School Building Committee's selection of a construction manager for the high school renovation project, given that it was expected that his private employer would submit a bid and from participating in the oversight of the construction manager if the contract was awarded to his employer); A.O. 2000-11 (opining that special state contract employees were prohibited from participation in the preparation of requests for proposals, or the review of bids, if it was reasonably foreseeable that their regular private employer might respond to the requests for proposals at issue).

Here, the Petitioner may bid and enter into a contract on behalf of the nursery with the city to provide trees and tree-planting services, only if it is pursuant to an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. Additionally, the Petitioner cannot have otherwise participated in or influenced the bid development process including, but not be limited to, identifying locations and/or species of trees to be planted, and/or participating in the bid selection or award of the project.

Finally, the Petitioner may not allow her private business interests to interfere with her independence of judgment as to her public duties, and may not use non-public or confidential information received by reason of her public duties to obtain financial gain for herself or the nursery. Given the general and hypothetical nature of the Petitioner's request, the Ethics Commission is unable to provide the Petitioner with specific guidance at his time. The Petitioner is advised that this general guidance may not apply to the specific facts of any particular project on which the nursery may be expected to bid. Accordingly, the Petitioner is encouraged to seek further, more specific guidance from the Ethics Commission if and when she is considering bidding on behalf of the nursery on a specific project.

**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:  
§ 36-14-5(a)

§ 36-14-5(d)  
§ 36-14-5(h)  
§ 36-14-7(a)

Other Related Authority:  
R.I. Const. art. III, sec. 7

Related Advisory Opinions:  
A.O. 2018-8  
A.O. 2000-40  
A.O. 2000-35  
A.O. 2000-11  
A.O. 98-86

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