

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-15

Approved: 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 130 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(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

Keywords:

Private Employment