



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

40 Fountain Street

Providence, RI 02903

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<https://ethics.ri.gov>

**NOTICE OF OPEN MEETING**

**AGENDA**

**6<sup>th</sup> Meeting**

**DATE:** Tuesday, April 8, 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/82511807450>.

1. Call to Order.
2. Administration of Oath of Office to Major General Christopher P. Callahan (RET).
3. Motion to approve minutes of Open Session held on March 25, 2025.
4. 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; and
  - f.) Legislative Update: Discussion of 2025 S0927 regarding Gifts and 2025 H6166 regarding Sexual Harassment.

## 5. Advisory Opinions:

- a.) Jane Duran, a member of the Bonnet Shores Fire District Council, who is also a member of the Bonnet Shores Charter Revision Committee, and who in her private capacity owns a condominium unit at the Bonnet Shores Beach Club, seeks guidance from the Ethics Commission regarding whether she may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that she participated in the charter committee's discussions and recommendations to the fire district council regarding potential changes to the voting franchise, and is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of Beach Club condominium owners. [Staff Attorney Papa]
- b.) Faith LaSalle, a member of the Bonnet Shores Fire District Council, who is also the chairperson of the Bonnet Shores Charter Revision Committee, seeks guidance from the Ethics Commission regarding whether she may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that she participated in the charter committee's discussions and recommendations to the fire district council regarding potential changes to the voting franchise. [Staff Attorney Papa]
- c.) Carol O'Donnell, the chairperson of the Bonnet Shores Fire District Council, who in her private capacity owns several condominium units at the Bonnet Shores Beach Club, a private condominium association located in the fire district, seeks guidance from the Ethics Commission regarding whether she may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that she is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners. [Staff Attorney Papa]
- d.) Anthony Girardi, a member of the Bonnet Shores Fire District Council, who in his private capacity owns a condominium unit at the Bonnet Shores Beach Club, a private condominium association located in the fire district, seeks guidance from the Ethics Commission regarding whether he may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that he is required to pay a special

assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners. [Staff Attorney Papa]

- e.) Cynthia Roberts, a member of the North Smithfield Planning Board, who is also a member of the North Smithfield Groundwater Protection Committee, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating as a member of both municipal agencies' discussions and recommendations to the North Smithfield Town Council concerning an application for a mining overlay district that is currently pending before the town council. [Staff Attorney Radiches]
  - f.) Shawn J. Brown, the Town Administrator for the Town of Middletown, who in his private capacity is the trustee and sole beneficiary of a trust that owns a piece of property in Middletown, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from appearing, in his private capacity, before the Middletown Zoning Board in response to an application for a special-use permit filed by the owner of a piece of property that abuts the trust property. [Staff Attorney Radiches]
6. 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]
7. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on March 25, 2025, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - b.) In re: Heidi Weston Rogers, Complaint No. 2024-12, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - c.) Motion to return to Open Session.
8. Motion to seal minutes of Executive Session held on April 8, 2025.
9. Report on actions taken in Executive Session.
10. New Business proposed for future Commission agendas and general comments from the Commission.
11. 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 April 3, 2025*

# Legislative Update

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LC002321  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

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A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- CODE OF ETHICS

Introduced By: Senators Ciccone, Burke, Raptakis, Rogers, de la Cruz, Tikoian, Gallo,  
DiPalma, Urso, and Acosta  
Date Introduced: March 28, 2025

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 36-14-2 and 36-14-5 of the General Laws in Chapter 36-14 entitled  
2 "Code of Ethics" are hereby amended to read as follows:

3           **36-14-2. Definitions.**

4           As used in this chapter:

5           (1) "Any person within his or her family" means a spouse and any dependent children of  
6 any public official or public employee as well as a person who is related to any public official or  
7 public employee, whether by blood, adoption or marriage, as any of the following: father, mother,  
8 son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law,  
9 mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother,  
10 stepson, stepdaughter, stepbrother, stepsister, halfbrother or halvesister;

11           (2) "Business" means a sole proprietorship, partnership, firm, corporation, holding  
12 company, joint stock company, receivership, trust, or any other entity recognized in law through  
13 which business for profit or not for profit is conducted;

14           (3) "Business associate" means a person joined together with another person to achieve a  
15 common financial objective;

16           (4) "Employees of state and local government, of boards, commissions and agencies"  
17 means any full time or part time employees in the classified, nonclassified and unclassified service  
18 of the state or of any city or town within the state, any individuals serving in any appointed state or  
19 municipal position, and any employees of any public or quasi-public state or municipal board,

1 commission, or corporation;

2 (5) “Governmental function” means any action that is public in nature and is performed for

3 the common good of all the people;

4 (6) "Interested person" means a person or a representative of a person or business that has

5 a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to

6 make, or to participate in the making of, as part of their official duties.

7 ~~(6)~~(7) “Open and public process” means the open solicitation for bids or proposals from

8 the general public by public announcement or public advertising followed by a public disclosure

9 of all bids or proposals considered and contracts awarded;

10 ~~(7)~~(8) “Person” means an individual or a business entity;

11 (9) "Single interested person" shall include all employees or representatives of an

12 individual, business, organization or entity.

13 ~~(8)~~(10)(i) “State agency” means any department, division, agency, commission, board,

14 office, bureau, authority, or quasi-public authority within Rhode Island, either branch of the Rhode

15 Island general assembly, or an agency or committee thereof, the judiciary, or any other agency that

16 is in any branch of Rhode Island state government and which exercises governmental functions

17 other than in an advisory nature;

18 (ii) “Municipal agency” means any department, division, agency, commission, board,

19 office, bureau, authority, quasi-public authority, or school, fire or water district within Rhode Island

20 other than a state agency and any other agency that is in any branch of municipal government and

21 exercises governmental functions other than in an advisory nature;

22 ~~(9)~~(11) “State or municipal appointed official” means any officer or member of a state or

23 municipal agency as defined herein who is appointed for a term of office specified by the

24 constitution or a statute of this state or a charter or ordinance of any city or town or who is appointed

25 by or through the governing body or highest official of state or municipal government;

26 ~~(10)~~(12) “State or municipal elected official” means any person holding any elective public

27 office pursuant to a general or special election;

28 ~~(11)~~(13) A person’s natural child, adopted child, or stepchild is his or her “dependent child”

29 during a calendar year if the person provides over fifty percent (50%) of the child’s support during

30 the year;

31 ~~(12)~~(14) A person “represents” him or herself before a state or municipal agency if he or

32 she participates in the presentation of evidence or arguments before that agency for the purpose of

33 influencing the judgment of the agency in his or her own favor;

34 ~~(13)~~(15) A person “represents” another person before a state or municipal agency if he or

1 she is authorized by that other person to act, and does in fact act, as that other person's attorney at  
2 law or his or her attorney in fact in the presentation of evidence or arguments before that agency  
3 for the purpose of influencing the judgment of the agency in favor of that other person.

4 ~~(14)~~(16) "Major decision-making position" means the executive or administrative head or  
5 heads of a state agency, whether elected or appointed or serving as an employee and all members  
6 of the judiciary, both state and municipal. For state agencies, a "major decision-making position"  
7 shall include the positions of deputy director, executive director, assistant director and chief of  
8 staff.

9 **36-14-5. Prohibited activities.**

10 (a) No person subject to this code of ethics shall have any interest, financial or otherwise,  
11 direct or indirect, or engage in any business, employment, transaction, or professional activity, or  
12 incur any obligation of any nature, which is in substantial conflict with the proper discharge of his  
13 or her duties or employment in the public interest and of his or her responsibilities as prescribed in  
14 the laws of this state, as defined in § 36-14-7.

15 (b) No person subject to this code of ethics shall accept other employment which will either  
16 impair his or her independence of judgment as to his or her official duties or employment or require  
17 him or her, or induce him or her, to disclose confidential information acquired by him or her in the  
18 course of and by reason of his or her official duties.

19 (c) No person subject to this code of ethics shall willfully and knowingly disclose, for  
20 pecuniary gain, to any other person, confidential information acquired by him or her in the course  
21 of and by reason of his or her official duties or employment or use any information for the purpose  
22 of pecuniary gain.

23 (d) No person subject to this code of ethics shall use in any way his or her public office or  
24 confidential information received through his or her holding any public office to obtain financial  
25 gain, other than that provided by law, for him or herself or any person within his or her family, any  
26 business associate, or any business by which the person is employed or which the person represents.

27 (e) No person subject to this code of ethics shall:

28 (1) Represent him or herself before any state or municipal agency of which he or she is a  
29 member or by which he or she is employed. In cases of hardship, the ethics commission may permit  
30 such representation upon application by the official provided that he or she shall first:

31 (i) Advise the state or municipal agency in writing of the existence and the nature of his or  
32 her interest in the matter at issue;

33 (ii) Recuse him or herself from voting on or otherwise participating in the agency's  
34 consideration and disposition of the matter at issue; and

1 (iii) Follow any other recommendations the ethics commission may make to avoid any  
2 appearance of impropriety in the matter.

3 (2) Represent any other person before any state or municipal agency of which he or she is  
4 a member or by which he or she is employed.

5 (3) Act as an expert witness before any state or municipal agency of which he or she is a  
6 member or by which he or she is employed with respect to any matter the agency's disposition of  
7 which will or can reasonably be expected to directly result in an economic benefit or detriment to  
8 him or herself, or any person within his or her family, or any business associate of the person, or  
9 any business by which that person is employed or which the person represents.

10 (4) Shall engage in any of the activities prohibited by subsection (e)(1), (e)(2), or (e)(3) of  
11 this section for a period of one year after he or she has officially severed his or her position with  
12 said state or municipal agency; provided, however, that this prohibition shall not pertain to a matter  
13 of public record in a court of law.

14 (f) No business associate of any person subject to this code of ethics shall represent him or  
15 herself or any other person, or act as an expert witness before the state or municipal agency of  
16 which the person is a member or by which the person is employed unless:

17 (1) He or she shall first advise the state or municipal agency of the nature of his or her  
18 business relationship with the person subject to this code of ethics; and

19 (2) The person subject to this code of ethics shall recuse him or herself from voting on or  
20 otherwise participating in the agency's consideration and disposition of the matter at issue.

21 (g) No person subject to this code of ethics, or spouse (if not estranged), dependent child,  
22 or business associate of the person, or any business by which the person is employed or which the  
23 person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of  
24 future employment based on any understanding that the vote, official action, or judgment of the  
25 person would be influenced thereby.

26 (h) No person subject to this code of ethics, or any person within his or her family or  
27 business associate of the person, or any business entity in which the person or any person within  
28 his or her family or business associate of the person has a ten percent (10%) or greater equity  
29 interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract  
30 with any state or municipal agency unless the contract has been awarded through an open and public  
31 process, including prior public notice and subsequent public disclosure of all proposals considered  
32 and contracts awarded; provided, however, that contracts for professional services which have been  
33 customarily awarded without competitive bidding shall not be subject to competitive bidding if  
34 awarded through a process of public notice and disclosure of financial details.

1 (i) No person shall give or offer to any person covered by this code of ethics, or to any  
2 candidate for public office, or to any person within his or her family or business associate of any  
3 person, or to any business by which the person is employed or which the person represents, any  
4 gift, loan, political contribution, reward, or promise of future employment based on any  
5 understanding or expectation that the vote, official action, or judgment of the person would be  
6 influenced thereby.

7 (j) No person shall use for any commercial purpose information copied from any statements  
8 required by this chapter or from lists compiled from the statements.

9 (k) No person shall knowingly and willfully make a false or frivolous complaint under this  
10 chapter.

11 (l) No candidate for public office, or any person within his or her family, business associate  
12 of the candidate, or any business by which the candidate is employed or which the candidate  
13 represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future  
14 employment based on any understanding that the vote, official action, or judgment of the candidate  
15 would be influenced thereby.

16 (m) No person subject to this code of ethics shall, either directly or indirectly, through any  
17 government agency, or through a business associate, or through any other person, threaten or  
18 intimidate any complainant or witness or any family member of any complainant or witness in any  
19 proceeding before the state ethics commission.

20 (1) In addition to any rights a complainant or witness may have under the Rhode Island  
21 Whistleblowers' Protection Act, chapter 50 of title 28 or under any other statute, a complainant or  
22 witness may bring a civil action in superior court for appropriate injunctive relief, or actual  
23 damages, or both and attorney's fees within three (3) years after the occurrence of the alleged  
24 violation of subsection (m) above.

25 (2) The initiation of litigation by a complainant or witness pursuant to subsection (m)(1)  
26 shall not constitute a violation of any confidentiality provisions of this chapter.

27 (n)(1) No state elected official, while holding state office and for a period of one year after  
28 leaving state office, shall seek or accept employment with any other state agency, as defined in §  
29 36-14-2(8)(i), other than employment which was held at the time of the official's election or at the  
30 time of enactment of this subsection, except as provided herein.

31 (2) Nothing contained herein shall prohibit any general officer or the general assembly  
32 from appointing any state elected official to a senior policy-making, discretionary, or confidential  
33 position on the general officer's or the general assembly's staff, and in the case of the governor, to  
34 a position as a department director; nor shall the provisions herein prohibit any state elected official

1 from seeking or accepting a senior policy-making, discretionary, or confidential position on any  
2 general officer's or the general assembly's staff, or from seeking or accepting appointment as a  
3 department director by the governor.

4 (3) Nothing contained herein shall prohibit a state elected official from seeking or being  
5 elected for any other constitutional office.

6 (4) Nothing contained herein shall prohibit the Rhode Island ethics commission from  
7 authorizing exceptions to this subsection where such exemption would not create an appearance of  
8 impropriety.

9 (o)(1) No person holding a senior policy-making, discretionary, or confidential position on  
10 the staff of any state elected official or the general assembly shall seek or accept any other  
11 employment by any state agency as defined in § 36-14-2(8)(i), while serving as such policy-  
12 making, discretionary, or confidential staff member and for a period of one year after leaving that  
13 state employment as a member of the state elected official's or the general assembly's senior policy-  
14 making, discretionary, or confidential staff.

15 (2) Notwithstanding the foregoing, a person holding a senior policy-making, discretionary,  
16 or confidential staff position who has a minimum of five (5) years of uninterrupted state service  
17 shall be exempt from the provisions of this section. "State service" as used herein means service in  
18 the classified, unclassified and nonclassified services of the state, but shall not include service in  
19 any state elective office.

20 (3) Nothing contained herein shall prohibit any general officer or the general assembly  
21 from appointing any such senior policy-making, discretionary, or confidential member of the staff  
22 of any state elected official or the general assembly to any other senior policymaking, discretionary,  
23 or confidential position on any general officer's or the general assembly's staff, and in the case of  
24 the governor, to a position as a department director; nor shall the provisions hereof prohibit any  
25 senior policy-making, discretionary, or confidential member of the staff of any state elected official  
26 or the general assembly from seeking or accepting any other senior policy-making, discretionary,  
27 or confidential position on any general officer's or the general assembly's staff, or from seeking or  
28 accepting appointment as a department director by the governor.

29 (4) Nothing contained herein shall prohibit a person holding a senior policy-making,  
30 discretionary, or confidential staff position from seeking or being elected for any constitutional  
31 office.

32 (5) Nothing contained herein shall prohibit the Rhode Island ethics commission from  
33 authorizing exceptions to this subsection where such exemption would not create an appearance of  
34 impropriety.

1           (p) No person subject to the code of ethics, either directly or as the beneficiary of a gift or  
2           other thing of value given to a spouse or dependent child, shall accept or receive any gift of cash,  
3           forbearance or forgiveness of indebtedness from an interested person, as defined herein, without  
4           the interested person receiving lawful consideration of equal or greater value in return.

5           (q) No person subject to the code of ethics, either directly or as the beneficiary of a gift or  
6           other thing of value given to a spouse or dependent child, shall accept or receive any gift(s) or other  
7           thing(s) having either a fair market value or actual cost greater than fifty dollars (\$50.00), but in no  
8           case having either an aggregate fair market value or aggregate actual cost greater than two hundred  
9           fifty dollars (\$250) in any calendar year including, but not limited to, gifts, loans, rewards, promises  
10          of future employment, favors or services, gratuities of special discounts, from a single interested  
11          person, as defined herein, without the interested person receiving lawful consideration of equal or  
12          greater value in return.

13           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- CODE OF ETHICS

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- 1           This act would increase for persons subject to the Code of Ethics the maximum value of  
2   an acceptable gift to fifty dollars (\$50.00) from a single interested person, but in no case can the  
3   gift have an aggregate value of more than two hundred fifty dollars (\$250) in any calendar year.  
4           This act would take effect upon passage.

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2025 -- H 6166

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LC002649  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

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A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- CODE OF ETHICS

Introduced By: Representatives Tanzi, and Ajello

Date Introduced: April 02, 2025

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

- 1           SECTION 1. Chapter 36-14 of the General Laws entitled "Code of Ethics" is hereby  
2 amended by adding thereto the following section:
- 3           **36-14-22. Prohibiting sexual harassment.**
- 4           (a) Sexual harassment is prohibited. For purposes of this section, "sexual harassment"  
5 means any sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical  
6 contact of a sexual nature, that a reasonable person would find inappropriate.
- 7           (b) This section applies to all of the following individuals, while they are actively engaged  
8 in activities that involve legislative business:
- 9           (1) Senators and representatives;
- 10           (2) Regular, full-time, part-time, temporary or contractual employees of the general  
11 assembly;
- 12           (3) Volunteers, interns, and pages; and
- 13           (4) Lobbyists.
- 14           (c) Complaints under this section, shall be made to the Rhode Island ethics commission  
15 established pursuant to the provisions of § 36-14-8, and will be investigated, in accordance with  
16 the provisions of § 36-14-12. To the extent practicable, the investigation shall respect the privacy  
17 of all individuals involved.
- 18           (d) If the investigation supports a finding of a violation of the provisions of this section,  
19 the ethics commission shall order prompt and effective remedial action including, but not limited

1 to, a warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary  
2 suspension without pay, termination or other appropriate punishment the commission deems  
3 appropriate.

4 (e) Each individual covered by this section shall complete an annual education and training  
5 program on sexual harassment, consistent with the aims and purposes of this section. Program  
6 completion records shall be maintained by the Rhode Island ethics commission and be made  
7 available to the public. Failure to comply, shall result in disciplinary action including, but not  
8 limited to, any penalty available under subsection (d) of this section.

9 (f) On or before December 1, 2026, the Rhode Island ethics commission shall issue rules  
10 effectuating this section.

11 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- CODE OF ETHICS

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- 1           This act would create a new law to address the issue of "sexual harassment" involving those  
2 individuals that are actively involved in legislative business.  
3           This act would take effect upon passage.

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# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 8, 2025

**Re: Jane Duran**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who is also a member of the Bonnet Shores Charter Revision Committee, a quasi-municipal appointed position, and who in her private capacity owns a condominium unit at the Bonnet Shores Beach Club, seeks guidance from the Ethics Commission regarding whether she may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that she participated in the charter committee's discussions and recommendations to the fire district council regarding potential changes to the voting franchise, and is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who is also a member of the Bonnet Shores Charter Revision Committee, a quasi-municipal appointed position, and who in her private capacity owns a condominium unit at the Bonnet Shores Beach Club, may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote, notwithstanding that she participated in the charter committee's discussions and recommendations to the fire district council regarding potential changes to the voting franchise, and is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners.

The Petitioner is a member of the Bonnet Shores Fire District Council (council or fire district council), having been elected to that position in August 2024. She explains that the council governs the Bonnet Shores Fire District (BSFD) and consists of seven members who are

ordinarily elected to a three-year term<sup>1</sup> at the BSFD's annual meeting. The Petitioner represents that the scope of her duties consists of the general supervision and management of BSFD affairs, including the development and recommendation of charter changes to the Rhode Island General Assembly.

The Petitioner states that the BSFD is a quasi-municipal agency that was incorporated by an Act of the General Assembly in 1932. Although the BSFD originally provided fire protection services for its summer residents, it no longer offers such services.<sup>2</sup> The BSFD is located in the Town of Narragansett and offers recreational opportunities revolving around its two scenic beaches, mooring area, and community center.<sup>3</sup> The BSFD has been granted taxation authority for various purposes.<sup>4</sup>

The Petitioner represents that she owns a residential property in the fire district, but that she does not reside there. The Petitioner states that several of her family members, including her brother, her niece and nephew, and her sister and her two children, are also non-resident property owners in the BSFD. The Petitioner further states that she also owns a bathhouse condominium unit at the Bonnet Shores Beach Club. The beach club is a private condominium association located in the BSFD community and consists of 930 privately owned condominium units available for seasonal use, the majority of which are non-residential bathhouses and none of which are year-round residences.<sup>5</sup> All beach club unit owners are considered to be "property owners" within the BSFD, and are therefore both tax-paying and voting members of the BSFD.

The Petitioner explains that there have been multiple legal actions brought against the BSFD relative to the interpretation of the BSFD charter and its definition of who is eligible to vote in BSFD elections. The initial lawsuit, which challenged both the exclusion from the voting rolls of non-property-owning residents (renters) and the inclusion in the voting rolls of beach club condominium owners, concluded in 2022 with a Superior Court Decision and Consent Judgment that expanded the voting franchise to include all permanent BSFD residents,

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<sup>1</sup> The Petitioner explains that, although council members are ordinarily elected to three-year terms, those elected during the last election in 2024 are serving staggered terms of one, two, or three years.

<sup>2</sup> See <https://bonnetshores.org/about/> (last visited April 2, 2025).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> The 930 units are broken down as follows: 2 deluxe live-in units; 4 live-in units; 285 cabanas; 26 double bathhouse units; 206 mini-double bathhouse units; and 407 bathhouse units. See <https://www.bonnetshoresbeachclub.com/> (last visited April 2, 2025).

including non-property-owning renters. While the Decision and Consent Judgement did not order any other changes to the voting franchise, such as removing the voting rights of non-resident property owners (which would include beach club condominium owners), the BSFD was ordered to create a charter committee to propose amendments to the BSFD charter relating to the voting franchise.

The Petitioner represents that in January 2025, she was appointed by the council to the Bonnet Shores Charter Revision Committee (charter committee), and is currently serving as its vice chairperson. The Petitioner states that the charter committee, like all of the other committees appointed by the council, is strictly advisory in nature and was established to consider and make recommendations to the council on potential changes to the voting franchise in the BSFD. She further states that the charter committee consists of five members, including: a beach club representative; a council member who is also a permanent resident and homeowner in the BSFD; a council member who is a non-resident homeowner in the BSFD; a permanent resident homeowner in the BSFD; and a designated representative of the plaintiffs in the prior voting rights lawsuits (plaintiff representative).

The Petitioner states that the charter committee conducted six meetings<sup>6</sup> and ultimately forwarded four proposals to the council suggesting different options for the composition of the fire district's voting franchise. Those proposals, identified as Scenarios 1, 3, 4, and 5, are as follows:<sup>7</sup>

- **Scenario 1:** Current state – BSFD Narragansett registered voters (permanent residents), and all property owners who are currently eligible to vote under the existing charter (including non-resident property owners such as beach club condominium owners).
- **Scenario 3:** BSFD Narragansett registered voters, non-resident property owners, and one person designated per unit from the beach club as a voter (taxpayer).
- **Scenario 4:** BSFD Narragansett registered voters, BSFD residents and non-resident property owners, no eligibility to vote from beach club, and appoint a beach club seat as one of the seven seats on the BSFD council.

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<sup>6</sup> The Petitioner informs that the designated plaintiff representative seat on the charter committee remained empty at all meetings.

<sup>7</sup> The Petitioner notes that there were originally more scenarios considered by the charter committee, but that they were eliminated earlier in the process, including Scenario 2.

- **Scenario 5:** BSFD balanced/weighted voting proposal- Narragansett registered voters, people on deed of residential property, one beach club owner per unit who is not part of the other stakeholders. Beach club votes capped at 11%.

The Petitioner describes the charter amendment process as follows: The charter committee forwards its recommendations to the fire district council. The fire district council then reviews the recommendations and, if it votes to endorse one or more proposed charter amendments, may vote to adopt a resolution asking the General Assembly to enact enabling legislation authorizing the BSFD to hold an election to allow the district's voters to decide whether to adopt or reject the proposed charter amendments.

The Petitioner states that the beach club condominium owners have been notified that, in addition to their regular annual assessment fee, this year the beach club has assessed each beach club unit a special fee to be used as necessary to contribute to the costs associated with potential legal expenses to protect the BSFD voting rights of beach club owners. The Petitioner represents that she is required to pay the additional assessment in order to keep her account current and to avoid liens being placed on her bathhouse unit. The Petitioner states that there is currently no such legal action pending, and that any future legal action is hypothetical at this time depending upon which proposals from the charter committee are adopted.

Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in council discussions and decision-making relative to the proposed amendments to the charter and its definition of who is eligible to vote, given that she participated in the charter committee's discussions and recommendation to the council regarding potential changes to the voting franchise, and is required to pay a special assessment by the beach club to be used for any future legal expenses incurred by the beach club associated with potential litigation involving changes to the voting franchise of the fire district.

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 a 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). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," meaning that the probability of the conflict of interest is greater than "conceivably," but the conflict of interest need not be certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). 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). Finally, under 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter if her business associate appears or presents evidence or arguments before the public official's state or municipal agency.

Any person within a public official's family includes the official's brother, sister, niece, and nephew. See R.I. Gen. Laws § 36-14-2(1); 520-RICR-00-00-1.3.1(A)(2) Prohibited Activities – Nepotism (36-14-5004). 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 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).

### **1. Impact of dual service on the BSFD council and the charter committee.**

The Ethics Commission has consistently opined that the Code of Ethics does not prohibit a public official from voting on a matter as a member of one public body and then considering and/or voting on the same matter as a member of another public body, provided that the above-cited provisions of the Code of Ethics were not otherwise implicated. For example, in Advisory Opinion 2021-37, the Ethics Commission opined that a member of the Smithfield Town Council could participate in town council discussions and voting on the disposition of certain property, a matter in which she had previously participated and voted on as a member of the Smithfield Land Trust, and which had been referred to the town council by the land trust. See also A.O. 2024-27 (opining that a Middletown Planning Board member was not prohibited by the Code of Ethics from participating in planning board discussions and voting on matters in which he had previously participated as a member of the Middletown Public Schools Building Committee); A.O. 2011-29 (opining that a Portsmouth Planning Board member, who was also a civil engineer for the Rhode Island Department of Transportation (DOT), could participate in and vote on a development proposal pending before the planning board notwithstanding that in her capacity as a DOT engineer she had reviewed the same property to ensure that the state's property interests were protected); A.O. 2002-1 (opining that a Coastal Resources Management Council (CRMC) member was not prohibited by Code of Ethics from participating in the CRMC's review of a matter previously reviewed by the Newport Water Commission, on which the petitioner also served).

Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior advisory opinion issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from participating in fire district council discussions and voting on matters in which she participated as a charter committee member, provided that the Petitioner's participation in either of her public capacities would not otherwise directly

financially impact her, any member within her family, her business associate, or a business by which she is employed or which she represents.

## **2. Impact of ownership by Petitioner and her family members of property within the fire district.**

The Petitioner represents that she and several of her family members are non-resident property owners within the fire district. The Petitioner explains that she owns but does not reside at a house in the fire district and she also owns a beach club bathhouse condominium unit, both of which currently qualify her as a voter in the BSFD. She further explains that several of her family members own, but do not reside in, houses in the fire district, which currently qualifies them as voters in the BSFD. As a result, their voting rights in the fire district could potentially be impacted by changes to the voting rights for non-resident-property owners and, in her case, beach club condominium owner.

The Ethics Commission reviewed a nearly identical fact pattern in Advisory Opinion 2023-18 involving changes to the BSFD charter and the voting franchise. There, a legislator serving in the Rhode Island House of Representatives requested an advisory opinion regarding whether she was prohibited by the Code of Ethics from participating in the House's consideration of enacting legislation to enable the BSFD to hold an election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter proposed by a previous charter committee, given that the legislator was an eligible voter in the BSFD as both the owner of a vacation home in the BSFD and a bathhouse condominium unit at the beach club. The Ethics Commission opined that the official legislative activity contemplated by that petitioner would not impact her voting rights in the BSFD because, although it was conceivable that the petitioner's voting rights in the BSFD might eventually be impacted, that scenario was not reasonably foreseeable. The Ethics Commission noted that even if voting rights for beach club condominium owners were eliminated, the petitioner also owned a home within the BSFD which afforded her voting rights in the fire district, and it was therefore not reasonably foreseeable that the petitioner would not continue to meet the voting residency requirements. Also, even if the legislator's voting rights were somehow ultimately impacted, there is no financial benefit or detriment attached to one's right to vote, standing alone. Finally, the Ethics Commission opined that, even if there were some financial impact attached to the petitioner's right to vote, such a financial impact would only be indirectly related to her legislative activity, given the intervening activity of the eligible BSFD voters who would decide whether to approve or reject any proposed charter amendments. Based on those reasons, the Ethics Commission concluded that the legislator was not prohibited by the Code of Ethics from participating in adopting legislation that would enable the BSFD to hold an annual meeting or special election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter.

Here, similar to the facts in Advisory Opinion 2023-18, the Petitioner or her family members will not be financially impacted by the proposed changes, because under each of the four

scenarios sent to the council from the charter committee, they would all still be allowed to vote as non-resident property owners. Further, even if it were reasonably foreseeable that the Petitioner's official activity relative to the charter changes could somehow impact her or her family members' voting rights in the BSFD, there is no financial impact attached to their right to vote, standing alone. Finally, even if there was a financial impact attached to the Petitioner's or her family members' right to vote, such a financial impact would be *indirect*, as opposed to direct, given the intervening activities required by both the General Assembly and the eligible BSFD voters who would decide whether to approve or reject the proposed amendments.

Further, six years ago the Ethics Commission reviewed four ethics complaints filed against members of the fire district council who owned condominium units at the beach club.<sup>8</sup> There, the Ethics Commission ultimately found that all of the respondents were business associates of the beach club, given that they all owned condominium units at the beach club and were obligated to pay annual assessments to the beach club for property maintenance. Consistent with the findings in those complaints, the instant Petitioner is also a business associate of the beach club. However, the beach club as an entity does not have voting rights in the BSFD, the individual condominium unit owners do. Therefore, there would be no financial impact upon the beach club as a result of the Petitioner's official actions relative to changes in the voting franchise of the fire district.

For all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to the changes to the voting rights in the BSFD, notwithstanding that she and several family members own property in the fire district.

**3. Impact of paying a required fee to the Bonnet Shores Beach Club to fund potential litigation to protect condominium owners' voting rights in the fire district.**

In prior advisory opinions the Ethics Commission has required public officials to recuse from participating in *pending* litigation matters that were likely to financially impact the public officials, their family members, or their business associates. See, e.g., A.O. 2019-4 (opining that a member of the Little Compton Town Council was prohibited from participating in the town council's discussions and decision-making relative to a pending litigation matter, given that it was reasonably foreseeable that he could be financially impacted by it due to the likelihood of being added as a third party defendant); A.O. 2013-14 (opining that those members of the Retirement Board of the Employees' Retirement System of the State of Rhode Island who held leadership positions in an organization that initiated litigation against

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<sup>8</sup> In re Janice McClanaghan, Complaint No. 2019-15; In re Michael Vendetti, Complaint No. 2019-16; In re Chris Mannix, Complaint No. 2019-17; and In re Natalie McDonald, Complaint No. 2019-18.

the Retirement Board were required to recuse from Retirement Board matters, including discussions and decision-making, relative to the litigation); A.O. 2012-8 (opining that a Charleston Town Council member, who was the plaintiff in a wrongful termination lawsuit against the town, was required to recuse from any town council matters pertaining to her lawsuit); A.O. 2011-37 (opining that a member of the Charlestown Town Council was required to recuse from town council discussions and decision-making relative to a pending litigation matter which were likely to result in a financial benefit or detriment to her); A.O. 2010-59 (opining that a Tiverton Town Council member was prohibited from participating in any town council discussions or decisions involving any litigation in which he or his spouse was currently a party); A.O. 95-37 (opining that a Westerly Town Council member was required to recuse from participation in any town council matter that affected her pending litigation against the town).

Here, the Petitioner is required to pay a special assessment to be used by the beach club in a potential legal action that may or may not be needed to protect condominium owners' voting rights in the BSFD. Currently, unlike the advisory opinions cited above, there is no such legal action pending. It is unclear if or when the beach club condominium owners' voting rights will be impacted, or whether a legal action in which the beach club or the Petitioner is expected to participate in or be impacted by would ever come to fruition. Thus, any legal action on the part of the beach club is hypothetical at this time. In the event that the beach club initiates or becomes involved in litigation involving the BSFD, the Petitioner is encouraged to seek further guidance as to her ability to participate in BSFD council decision-making relative to such litigation.

Accordingly, based on all of the Petitioner's representations, and review of the relevant provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that, notwithstanding that the Petitioner is required to pay a special assessment to the beach club to fund potential litigation, the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to changes in the composition of the voting franchise in the BSFD, and asking the General Assembly to pass enabling legislation allowing the BSFD voters to approve or reject any potential changes to the BSFD charter relative to voting rights in the BSFD.

The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that she, or any person within her family, her business associate, or any business by which she is employed or which she represents would be directly financially impacted by her participation in council activities, she must recuse from participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further guidance from the Ethics Commission.

**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(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

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

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2024-27

A.O. 2023-18

A.O. 2021-37

A.O. 2019-4

A.O. 2013-14

A.O. 2012-8

A.O. 2011-37

A.O. 2011-29

A.O. 2010-59

A.O. 2002-1

A.O. 95-37

Other Related Authority:

In re Natalie McDonald, Complaint No. 2019-18

In re Chris Mannix, Complaint No. 2019-17

In re Michael Vendetti, Complaint No. 2019-16

In re Janice McClanaghan, Complaint No. 2019-15

Keywords:

Dual Public Roles

Financial Interest

Litigation

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 8, 2025

**Re: Faith A. LaSalle**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who is also the chairperson of the Bonnet Shores Charter Revision Committee, a quasi-municipal appointed position, seeks guidance from the Ethics Commission regarding whether she may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that she participated in the charter committee's discussions and recommendations to the fire district council regarding potential changes to the voting franchise.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who is also the chairperson of the Bonnet Shores Charter Revision Committee, a quasi-municipal appointed position, may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, notwithstanding that she participated in the charter committee's discussions and recommendations to the fire district council regarding potential changes to the voting franchise.

The Petitioner is a member of the Bonnet Shores Fire District Council (council or fire district council), having been elected to that position in August 2024. She explains that the council governs the Bonnet Shores Fire District (BSFD) and consists of seven members who are ordinarily elected to a three-year term<sup>1</sup> at the BSFD's annual meeting. The Petitioner represents that the scope of her duties consists of the general supervision and

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<sup>1</sup> The Petitioner explains that, although council members are ordinarily elected to three-year terms, those elected during the last election in 2024 are serving staggered terms of one, two, or three years.

management of BSFD affairs, including the development and recommendation of charter changes to the Rhode Island General Assembly.

The Petitioner states that the BSFD is a quasi-municipal agency that was incorporated by an Act of the General Assembly in 1932. Although the BSFD originally provided fire protection services for its summer residents, it no longer offers such services.<sup>2</sup> The BSFD is located in the Town of Narragansett and offers recreational opportunities revolving around its two scenic beaches, mooring area, and community center.<sup>3</sup> The BSFD has been granted taxation authority for various purposes.<sup>4</sup>

The Petitioner explains that there have been multiple legal actions brought against the BSFD relative to the interpretation of the BSFD charter and its definition of who is eligible to vote in BSFD elections. The initial lawsuit challenged both the exclusion from the voting rolls of non-property-owning residents (renters) and the inclusion in the voting rolls of Bonnet Shores Beach Club<sup>5</sup> condominium owners. The aforementioned lawsuit concluded in 2022 with a Superior Court Decision and Consent Judgment that expanded the voting franchise to include all permanent BSFD residents, including non-property-owning renters. While the Decision and Consent Judgment did not order any other changes to the voting franchise, such as removing the voting rights of non-resident property owners (which would include beach club condominium owners), the BSFD was ordered to create a charter committee to propose amendments to the BSFD charter relating to the voting franchise.

The Petitioner represents that in December 2024, she was appointed by the council to the Bonnet Shores Charter Revision Committee (charter committee), and currently serves as its chairperson. The Petitioner states that the charter committee, like all of the other committees appointed by the council, is strictly advisory in nature and was established to consider and make recommendations to the council on potential changes to the voting franchise in the BSFD. She further states that the charter committee consists of five

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<sup>2</sup> See <https://bonnetshores.org/about/> (last visited April 2, 2025).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> The beach club is a private condominium association located in the BSFD community and consists of 930 privately owned condominium units broken down as follows: 2 deluxe live-in units; 4 live-in units; 285 cabanas; 26 double bathhouse units; 206 mini-double bathhouse units; and 407 bathhouse units. See <https://www.bonnetshoresbeachclub.com/> (last visited April 2, 2025). These units are available for seasonal use, the majority of them are non-residential bathhouses, and none of them are year-round residences. All beach club unit owners are considered to be “property owners” within the BSFD, and are therefore both tax-paying and voting members of the BSFD under the BSFD charter.

members, including: a beach club representative; a council member who is also a permanent resident and homeowner in the BSFD; a council member who is a non-resident homeowner in the BSFD; a permanent resident homeowner in the BSFD; and a designated representative of the plaintiffs in the prior voting rights lawsuits (plaintiff representative).

The Petitioner states that the charter committee conducted six meetings<sup>6</sup> and ultimately forwarded four proposals to the council suggesting different options for the composition of the fire district's voting franchise. Those proposals, identified as Scenarios 1, 3, 4, and 5, are as follows:<sup>7</sup>

- **Scenario 1:** Current state – BSFD Narragansett registered voters (permanent residents), and all property owners who are currently eligible to vote under the existing charter (including non-resident property owners such as beach club condominium owners).
- **Scenario 3:** BSFD Narragansett registered voters, non-resident property owners, and one person designated per unit from the beach club as a voter (taxpayer).
- **Scenario 4:** BSFD Narragansett registered voters, BSFD residents and non-resident property owners, no eligibility to vote from beach club, and appoint a beach club seat as one of the seven seats on the BSFD council.
- **Scenario 5:** BSFD balanced/weighted voting proposal- Narragansett registered voters, people on deed of residential property, one beach club owner per unit who is not part of the other stakeholders. Beach club votes capped at 11%.

The Petitioner describes the charter amendment process as follows: The charter committee forwards its recommendations to the BSFD council. The BSFD council then reviews the recommendations and, if it votes to endorse one or more proposed charter amendments, may vote to adopt a resolution asking the General Assembly to enact enabling legislation authorizing the BSFD to hold an election to allow the district's voters to decide whether to adopt or reject the proposed charter amendments.

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<sup>6</sup> The Petitioner informs that the designated plaintiff representative seat on the charter committee remained empty at all meetings.

<sup>7</sup> The Petitioner notes that there were originally more scenarios considered by the charter committee, but that they were eliminated earlier in the process, including Scenario 2.

The Petitioner represents that she owns two homes in the fire district. One of the homes is her primary residence where she lives with her spouse, and the other she jointly owns with her brother. The Petitioner further represents that she, her spouse, and her brother do not own property in the beach club. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in council discussions and decision-making relative to the proposed amendments to the charter and its definition of who is eligible to vote, given that she participated in the charter committee's discussions and recommendations to the council regarding potential changes to the voting franchise.

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 a 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). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," meaning that the probability of the conflict of interest is greater than "conceivably," but the conflict of interest need not be certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). 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). Finally, under 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter if her business associate appears or presents evidence or arguments before the public official's state or municipal agency.

Any person within a public official's family includes the official's spouse and brother. See 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 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).

### **1. Impact of dual service on the BSFD council and the charter committee.**

The Ethics Commission has consistently opined that the Code of Ethics does not prohibit a public official from voting on a matter as a member of one public body and then considering and/or voting on the same matter as a member of another public body, provided that the above-cited provisions of the Code of Ethics were not otherwise implicated. For example, in Advisory Opinion 2021-37, the Ethics Commission opined that a member of

the Smithfield Town Council could participate in town council discussions and voting on the disposition of certain property, a matter in which she had previously participated and voted on as a member of the Smithfield Land Trust, and which had been referred to the town council by the land trust. See also A.O. 2024-27 (opining that a Middletown Planning Board member was not prohibited by the Code of Ethics from participating in planning board discussions and voting on matters in which he had previously participated as a member of the Middletown Public Schools Building Committee); A.O. 2011-29 (opining that a Portsmouth Planning Board member, who was also a civil engineer for the Rhode Island Department of Transportation (DOT), could participate in and vote on a development proposal pending before the planning board, notwithstanding that in her capacity as a DOT engineer she had reviewed the same property to ensure that the state's property interests were protected); A.O. 2002-1 (opining that a Coastal Resources Management Council (CRMC) member was not prohibited by Code of Ethics from participating in the CRMC's review of a matter previously reviewed by the Newport Water Commission, on which the petitioner also served).

Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior advisory opinion issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from participating in fire district council discussions and voting on matters in which she participated as a charter committee member, provided that the Petitioner's participation in either of her public capacities would not otherwise directly financially impact her, any member within her family, her business associate, or a business by which she is employed or which she represents.

## **2. Impact of ownership by Petitioner and her family members of property within the fire district.**

The Petitioner represents that she and her spouse are full-time residents of the BSFD and that she also co-owns a second home in the BSFD with her brother, who does not reside full-time in that home. They are all currently qualified as voters in the BSFD. As a result, their voting rights in the fire district could potentially be impacted by changes to the voting rights set forth in the BSFD charter.

The Ethics Commission reviewed a similar fact pattern in Advisory Opinion 2023-18 involving changes to the BSFD charter and the voting franchise. There, a legislator serving in the Rhode Island House of Representatives requested an advisory opinion regarding whether she was prohibited by the Code of Ethics from participating in the House's consideration of enacting legislation to enable the BSFD to hold an election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter proposed by a previous charter committee, given that the legislator was an eligible voter in the BSFD as both the owner of a vacation home in the BSFD and a bathhouse condominium unit at the beach club. The Ethics Commission opined that the official legislative activity contemplated by that petitioner would not impact her voting rights in the BSFD because,

although it was conceivable that the petitioner's voting rights in the BSFD might eventually be impacted, that scenario was not reasonably foreseeable. The Ethics Commission noted that even if voting rights for beach club condominium owners were eliminated, the petitioner also owned a home within the BSFD which afforded her voting rights in the BSFD, and it was therefore not reasonably foreseeable that the petitioner would not continue to meet the voting residency requirements. Also, even if the legislator's voting rights were somehow ultimately impacted, there was no financial benefit or detriment attached to her right to vote, standing alone. Finally, the Ethics Commission opined that, even if there were some financial impact attached to the petitioner's right to vote, such a financial impact would only be indirectly related to her legislative activity, given the intervening activity of the eligible BSFD voters who would decide whether to approve or reject any proposed charter amendments. Based on those reasons, the Ethics Commission concluded that the legislator was not prohibited by the Code of Ethics from participating in adopting legislation that would enable the BSFD to hold an annual meeting or special election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter.

Here, similar to the facts in Advisory Opinion 2023-18, the Petitioner, her spouse, or her brother will not be financially impacted by the proposed changes, because under each scenario they would still be allowed to vote, the Petitioner and her spouse as residents and her brother as a non-resident property owner. Further, even if it were reasonably foreseeable that the Petitioner's official activity relative to the charter changes could somehow impact her or her family members' voting rights in the BSFD, there is no financial impact attached to their right to vote, standing alone. Finally, even if there was a financial impact attached to the Petitioner's and her family members' right to vote, such a financial impact would be *indirect*, as opposed to direct, given the intervening activities required by both the General Assembly and the eligible BSFD voters who would decide whether to approve or reject the proposed amendments.

For all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to the changes to the voting rights in the BSFD, notwithstanding that she participated in the same matter as a charter committee member and notwithstanding that she and her family members own property in the fire district.

The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that she, or any person within her family, her business associate, or any business by which she is employed or which she represents would be directly financially impacted by her participation in council activities, she must recuse from participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further guidance from the Ethics Commission.

**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(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2024-27

A.O. 2023-18

A.O. 2021-37

A.O. 2011-29

A.O. 2002-1

Keywords:

Dual Public Roles

Financial Interest

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 8, 2025

**Re: Carol O'Donnell**

### **QUESTION PRESENTED:**

The Petitioner, the chairperson of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who in her private capacity owns several condominium units at the Bonnet Shores Beach Club, a private condominium association located in the fire district, seeks guidance from the Ethics Commission regarding whether she may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that she is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the chairperson of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who in her private capacity owns several condominium units at the Bonnet Shores Beach Club, a private condominium association located in the fire district, may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote, notwithstanding that she is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners.

The Petitioner is the chairperson of the Bonnet Shores Fire District Council (council or fire district council). She notes that she has been serving on the council since her initial election in 2019. She explains that the council governs the Bonnet Shores Fire District (BSFD) and consists of seven members who are ordinarily elected to a three-year term<sup>1</sup> at the BSFD's annual meeting. The Petitioner represents that the scope of her duties consists of the general

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<sup>1</sup> The Petitioner explains that, although council members are ordinarily elected to three-year terms, those elected during the last election in 2024 are serving staggered terms of one, two, or three years.

supervision and management of BSFD affairs, including the development and recommendation of charter changes to the Rhode Island General Assembly.

The Petitioner states that the BSFD is a quasi-municipal agency that was incorporated by an Act of the General Assembly in 1932. Although the BSFD originally provided fire protection services for its summer residents, it no longer offers such services.<sup>2</sup> The BSFD is located in the Town of Narragansett and offers recreational opportunities revolving around its two scenic beaches, mooring area, and community center.<sup>3</sup> The BSFD has been granted taxation authority for various purposes.<sup>4</sup>

The Petitioner represents that she and her spouse own several properties in the BSFD. She explains that one of the properties is their primary home, where they reside full-time; their son lives full-time in another property; one of the properties is vacant; and the remaining properties are rented out. The Petitioner represents that she and her spouse also own several condominium units of various sizes at the Bonnet Shores Beach Club. The beach club is a private condominium association located in the BSFD community and consists of 930 privately owned condominium units available for seasonal use, the majority of which are non-residential bathhouses and none of which are year-round residences.<sup>5</sup> All beach club unit owners are considered to be “property owners” within the BSFD, and are therefore both tax-paying and voting members of the BSFD.

The Petitioner explains that there have been multiple legal actions brought against the BSFD relative to the interpretation of the BSFD charter and its definition of who is eligible to vote in BSFD elections. The initial lawsuit, which challenged both the exclusion from the voting rolls of non-property-owning residents (renters) and the inclusion in the voting rolls of beach club condominium owners, concluded in 2022 with a Superior Court Decision and Consent Judgment that expanded the voting franchise to include all permanent BSFD residents, including non-property-owning renters.

While the Decision and Consent Judgement did not order any other changes to the voting franchise, such as removing the voting rights of non-resident property owners (which would include beach club condominium owners), the BSFD was ordered to create a charter

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<sup>2</sup> See <https://bonnetshores.org/about/> (last visited April 2, 2025).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> The 930 units are broken down as follows: 2 deluxe live-in units; 4 live-in units; 285 cabanas; 26 double bathhouse units; 206 mini-double bathhouse units; and 407 bathhouse units. See <https://www.bonnetshoresbeachclub.com/> (last visited April 2, 2025).

committee to propose amendments to the BSFD charter relating to the voting franchise. The Petitioner represents that the Bonnet Shores Charter Revision Committee (charter committee), like all of the other committees appointed by the council, is strictly advisory in nature and was established to consider and make recommendations to the council on potential changes to the voting franchise in the BSFD. She further represents that the charter committee consists of five members, including: a beach club representative; a council member who is also a permanent resident and homeowner in the BSFD; a council member who is a non-resident homeowner in the BSFD; a permanent resident homeowner in the BSFD; and a designated representative of the plaintiffs in the prior voting rights lawsuits (plaintiff representative).

The Petitioner states that the charter committee conducted six meetings<sup>6</sup> and ultimately forwarded four proposals to the council suggesting different options for the composition of the fire district's voting franchise. Those proposals, identified as Scenarios 1, 3, 4, and 5, are as follows:<sup>7</sup>

- **Scenario 1:** Current state – BSFD Narragansett registered voters (permanent residents), and all property owners who are currently eligible to vote under the existing charter (including non-resident property owners such as beach club condominium owners).
- **Scenario 3:** BSFD Narragansett registered voters, non-resident property owners, and one person designated per unit from the beach club as a voter (taxpayer).
- **Scenario 4:** BSFD Narragansett registered voters, BSFD residents and non-resident property owners, no eligibility to vote from beach club, and appoint a beach club seat as one of the seven seats on the BSFD council.
- **Scenario 5:** BSFD balanced/weighted voting proposal- Narragansett registered voters, people on deed of residential property, one beach club owner per unit who is not part of the other stakeholders. Beach club votes capped at 11%.

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<sup>6</sup> The Petitioner informs that the designated plaintiff representative seat on the charter committee remained empty at all meetings.

<sup>7</sup> The Petitioner notes that there were originally more scenarios considered by the charter committee, but that they were eliminated earlier in the process, including Scenario 2.

The Petitioner describes the charter amendment process as follows: The charter committee forwards its recommendations to the fire district council. The fire district council then reviews the recommendations and, if it votes to endorse one or more proposed charter amendments, may vote to adopt a resolution asking the General Assembly to enact enabling legislation authorizing the BSFD to hold an election to allow the district's voters to decide whether to adopt or reject the proposed charter amendments.

The Petitioner states that the beach club condominium owners have been notified that, in addition to their regular annual assessment fee, this year the beach club has assessed each beach club unit a special fee to be used as necessary to contribute to the costs associated with potential legal expenses to protect the BSFD voting rights of beach club owners. The Petitioner represents that she and her spouse are required to pay the additional assessments in order to keep their accounts current and to avoid liens being placed on their beach club condominium units. The Petitioner states that there is currently no such legal action pending, and that any future legal action is hypothetical at this time depending upon which proposals from the charter committee are adopted.

Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in council discussions and decision-making relative to the proposed amendments to the charter and its definition of who is eligible to vote, given that she and her spouse are required to pay a special assessment by the beach club to be used for any future legal expenses incurred by the beach club associated with potential litigation involving changes to the voting franchise of the fire district.

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 a 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). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," meaning that the probability of the conflict of interest is greater than "conceivably," but the conflict of interest need not be certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). 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). Finally, under 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter if her business associate appears or presents evidence or arguments before the public official's state or municipal agency.

Any person within a public official's family includes the official's spouse and son. See 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 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).

**1. Impact of ownership by Petitioner and her spouse of property within the fire district and the residence of the Petitioner's son within the fire district.**

The Petitioner represents that she and her spouse own several properties in the BSFD. She explains that one of the properties is their primary residence where they reside full-time; their son lives full-time in another property; one of the properties is vacant; and the remaining properties are rented out. The Petitioner represents that she and her spouse also own several units of various sizes in the beach club. As a result, the Petitioner, her spouse, and her son are all voting members of the BSFD and their voting rights in the fire district could potentially be impacted by certain changes to the voting rights set forth in the BSFD charter.

The Ethics Commission reviewed a similar fact pattern in Advisory Opinion 2023-18 involving changes to the BSFD charter and the voting franchise. There, a legislator serving in the Rhode Island House of Representatives requested an advisory opinion regarding whether she was prohibited by the Code of Ethics from participating in the House's consideration of enacting legislation to enable the BSFD to hold an election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter proposed by a previous charter committee, given that the legislator was an eligible voter in the BSFD as both the owner of a vacation home in the BSFD and a bathhouse condominium unit at the beach club. The Ethics Commission opined that the official legislative activity contemplated by that petitioner would not impact her voting rights in the BSFD because, although it was conceivable that the petitioner's voting rights in the BSFD might eventually be impacted, that scenario was not reasonably foreseeable. The Ethics Commission noted that even if voting rights for beach club condominium owners were eliminated, the petitioner also owned a home within the BSFD, and it was therefore not reasonably foreseeable that the petitioner would not continue to meet the voting residency requirements. Also, even if the legislator's voting rights were ultimately impacted, there was no financial benefit or detriment attached to her right to vote, standing alone. Finally, the Ethics Commission opined that, even if there were a financial impact attached to the petitioner's right to vote, such a financial impact would only be indirectly related to her legislative activity, given the intervening activity of the eligible BSFD voters who would decide whether to approve or reject any proposed charter amendments. Based on those reasons, the Ethics Commission concluded that the legislator was not prohibited by the Code of Ethics from participating in adopting legislation that would enable the BSFD to

hold an annual meeting or special election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter.

Here, similar to the facts in Advisory Opinion 2023-18, the Petitioner or her family members will not be financially impacted by the proposed changes, because under each of the four scenarios sent to the council from the charter committee, they would all still be allowed to vote as residents and voters in the BSFD. Further, even if it were reasonably foreseeable that the Petitioner's official activity relative to the charter changes could impact her or her family members' voting rights in the BSFD, there is no financial impact attached to their right to vote, standing alone. Finally, even if there was a financial impact attached to the Petitioner's or her family members' right to vote, such a financial impact would be *indirect*, as opposed to direct, given the intervening activities required by both the General Assembly and the eligible BSFD voters who would decide whether to approve or reject the proposed amendments.

Further, six years ago the Ethics Commission reviewed four ethics complaints filed against members of the fire district council who owned condominium units at the beach club.<sup>8</sup> There, the Ethics Commission ultimately found that all of the respondents were business associates of the beach club, given that they all owned condominium units at the beach club and were obligated to pay annual assessments to the beach club for property maintenance. Consistent with the findings in those complaints, the instant Petitioner and her spouse are also business associates of the beach club. However, the beach club as an entity does not have voting rights in the BSFD, the individual condominium unit owners do. Therefore, there would be no financial impact upon the beach club as a result of the Petitioner's official actions relative to changes in the voting franchise of the fire district.

For all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to the changes to the voting rights in the BSFD, notwithstanding that she and her spouse own property and reside in the fire district, and that the Petitioner's son is a resident in the BSFD.

**2. Impact of paying a required fee to the Bonnet Shores Beach Club to fund potential litigation to protect condominium owners' voting rights in the fire district.**

In prior advisory opinions the Ethics Commission has required public officials to recuse from participating in *pending* litigation matters that were likely to financially impact the public officials, their family members, or their business associates. See, e.g., A.O. 2019-4

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<sup>8</sup> In re Janice McClanaghan, Complaint No. 2019-15; In re Michael Vendetti, Complaint No. 2019-16; In re Chris Mannix, Complaint No. 2019-17; and In re Natalie McDonald, Complaint No. 2019-18.

(opining that a member of the Little Compton Town Council was prohibited from participating in the town council's discussions and decision-making relative to a pending litigation matter, given that it was reasonably foreseeable that he could be financially impacted by it due to the likelihood of being added as a third party defendant); A.O. 2013-14 (opining that those members of the Retirement Board of the Employees' Retirement System of the State of Rhode Island who held leadership positions in an organization that initiated litigation against the Retirement Board were required to recuse from Retirement Board matters, including discussions and decision-making, relative to the litigation); A.O. 2012-8 (opining that a Charleston Town Council member, who was the plaintiff in a wrongful termination lawsuit against the town, was required to recuse from any town council matters pertaining to her lawsuit); A.O. 2011-37 (opining that a member of the Charlestown Town Council was required to recuse from town council discussions and decision-making relative to a pending litigation matter which were likely to result in a financial benefit or detriment to her); A.O. 2010-59 (opining that a Tiverton Town Council member was prohibited from participating in any town council discussions or decisions involving any litigation in which he or his spouse was currently a party); A.O. 95-37 (opining that a Westerly Town Council member was required to recuse from participation in any town council matter that affected her pending litigation against the town).

Here, the Petitioner and her spouse are required to pay a special assessment to be used by the beach club in a potential legal action that may or may not be needed to protect condominium owners' voting rights in the BSFD. Currently, unlike the advisory opinions cited above, there is no such legal action pending. It is unclear if or when the beach club condominium owners' voting rights will be impacted, or whether a legal action in which the beach club, or the Petitioner and/or her spouse, are expected to participate in or be impacted by would ever come to fruition. Thus, any legal action on the part of the beach club is hypothetical at this time. In the event that the beach club initiates or becomes involved in litigation involving the BSFD, the Petitioner is encouraged to seek further guidance as to her ability to participate in BSFD council decision-making relative to such litigation.

Accordingly, based on all of the Petitioner's representations, and review of the relevant provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that, notwithstanding that the Petitioner and her spouse are required to pay a special assessment to the beach club to fund potential litigation, the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to changes in the composition of the voting franchise in the BSFD, and asking the General Assembly to pass enabling legislation allowing the BSFD to hold an election to allow the BSFD voters to approve or reject any potential changes to the BSFD charter relative to voting rights in the BSFD.

The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that she, or any person within her family, her business

associate, or any business by which she is employed or which she represents would be directly financially impacted by her participation in council activities, she must recuse from participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further guidance from the Ethics Commission.

**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(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2023-18

A.O. 2019-4

A.O. 2013-14

A.O. 2012-8

A.O. 2011-37

A.O. 2010-59

A.O. 95-37

Other Related Authority:

In re Natalie McDonald, Complaint No. 2019-18

In re Chris Mannix, Complaint No. 2019-17

In re Michael Vendetti, Complaint No. 2019-16

In re Janice McClanaghan, Complaint No. 2019-15

Keywords:

Financial Interest

Litigation

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 8, 2025

**Re: Anthony Girardi**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who in his private capacity owns a condominium unit at the Bonnet Shores Beach Club, a private condominium association located in the fire district, seeks guidance from the Ethics Commission regarding whether he may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote in the district, given that he is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Bonnet Shores Fire District Council, a quasi-municipal elected position, who in his private capacity owns a condominium unit at the Bonnet Shores Beach Club, a private condominium association located in the fire district, may participate in fire district council discussions and decision-making relating to proposed amendments to the charter and its definition of who is eligible to vote, notwithstanding that he is required to pay a special assessment by the beach club to help cover any future legal expenses incurred by the beach club to protect the current voting rights of beach club condominium owners.

The Petitioner is a member of the Bonnet Shores Fire District Council (council or fire district council), having been elected to that position in August 2024. He explains that the council governs the Bonnet Shores Fire District (BSFD) and consists of seven members who are ordinarily elected to a three-year term<sup>1</sup> at the BSFD's annual meeting. The Petitioner represents that the scope of his duties consists of the general supervision and

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<sup>1</sup> The Petitioner explains that, although council members are ordinarily elected to three-year terms, those elected during the last election in 2024 are serving staggered terms of one, two, or three years.

management of BSFD affairs, including the development and recommendation of charter changes to the Rhode Island General Assembly.

The Petitioner states that the BSFD is a quasi-municipal agency that was incorporated by an Act of the General Assembly in 1932. Although the BSFD originally provided fire protection services for its summer residents, it no longer offers such services.<sup>2</sup> The BSFD is located in the Town of Narragansett and offers recreational opportunities revolving around its two scenic beaches, mooring area, and community center.<sup>3</sup> The BSFD has been granted taxation authority for various purposes.<sup>4</sup>

The Petitioner represents that he and his spouse own a home in the BSFD but they do not reside there full-time. The Petitioner represents that he and his spouse also own a bathhouse condominium unit at the Bonnet Shores Beach Club. Additionally, his sister also owns a bathhouse condominium unit at the beach club. The beach club is a private condominium association located in the BSFD community and consists of 930 privately owned condominium units available for seasonal use, the majority of which are non-residential bathhouses and none of which are year-round residences.<sup>5</sup> All beach club unit owners are considered to be “property owners” within the BSFD, and are therefore both tax-paying and voting members of the BSFD.

The Petitioner explains that there have been multiple legal actions brought against the BSFD relative to the interpretation of the BSFD charter and its definition of who is eligible to vote in BSFD elections. The initial lawsuit, which challenged both the exclusion from the voting rolls of non-property-owning residents (renters) and the inclusion in the voting rolls of beach club condominium owners, concluded in 2022 with a Superior Court Decision and Consent Judgment that expanded the voting franchise to include all permanent BSFD residents, including non-property-owning renters.

While the Decision and Consent Judgement did not order any other changes to the voting franchise, such as removing the voting rights of non-resident property owners (which would include beach club condominium owners), the BSFD was ordered to create a charter committee to propose amendments to the BSFD charter relating to the voting franchise.

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<sup>2</sup> See <https://bonnetshores.org/about/> (last visited April 2, 2025).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> The 930 units are broken down as follows: 2 deluxe live-in units; 4 live-in units; 285 cabanas; 26 double bathhouse units; 206 mini-double bathhouse units; and 407 bathhouse units. See <https://www.bonnetshoresbeachclub.com/> (last visited April 2, 2025).

The Petitioner represents that the Bonnet Shores Charter Revision Committee (charter committee), like all of the other committees appointed by the council, is strictly advisory in nature and was established to consider and make recommendations to the council on potential changes to the voting franchise in the BSFD. He further represents that the charter committee consists of five members, including: a beach club representative; a council member who is also a permanent resident and homeowner in the BSFD; a council member who is a non-resident homeowner in the BSFD; a permanent resident homeowner in the BSFD; and a designated representative of the plaintiffs in the prior voting rights lawsuits (plaintiff representative).

The Petitioner states that the charter committee conducted six meetings<sup>6</sup> and ultimately forwarded four proposals to the council suggesting different options for the composition of the fire district's voting franchise. Those proposals, identified as Scenarios 1, 3, 4, and 5, are as follows:<sup>7</sup>

- **Scenario 1:** Current state – BSFD Narragansett registered voters (permanent residents), and all property owners who are currently eligible to vote under the existing charter (including non-resident property owners such as beach club condominium owners).
- **Scenario 3:** BSFD Narragansett registered voters, non-resident property owners, and one person designated per unit from the beach club as a voter (taxpayer).
- **Scenario 4:** BSFD Narragansett registered voters, BSFD residents and non-resident property owners, no eligibility to vote from beach club, and appoint a beach club seat as one of the seven seats on the BSFD council.
- **Scenario 5:** BSFD balanced/weighted voting proposal- Narragansett registered voters, people on deed of residential property, one beach club owner per unit who is not part of the other stakeholders. Beach club votes capped at 11%.

The Petitioner describes the charter amendment process as follows: The charter committee forwards its recommendations to the fire district council. The fire district council then

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<sup>6</sup> The Petitioner informs that the designated plaintiff representative seat on the charter committee remained empty at all meetings.

<sup>7</sup> The Petitioner notes that there were originally more scenarios considered by the charter committee, but that they were eliminated earlier in the process, including Scenario 2.

reviews the recommendations and, if it votes to endorse one or more proposed charter amendment, may vote to adopt a resolution asking the General Assembly to enact enabling legislation authorizing the BSFD to hold an election to allow the district's voters to decide whether to adopt or reject the proposed charter amendments.

The Petitioner states that the beach club condominium owners have been notified that, in addition to their regular annual assessment fee, this year the beach club has assessed each beach club unit a special fee to be used as necessary to contribute to the costs associated with potential legal expenses to protect the BSFD voting rights of beach club owners. The Petitioner represents that he, his spouse, and his sister are required to pay the additional assessment in order to keep their accounts current and to avoid liens being placed on their bathhouse units. The Petitioner states that there is currently no such legal action pending, and that any future legal action is hypothetical at this time depending upon which proposals from the charter committee are adopted.

Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in council discussions and decision-making relative to the proposed amendments to the charter and its definition of who is eligible to vote, given that he and his family members are required to pay a special assessment by the beach club to be used for any future legal expenses incurred by the beach club associated with potential litigation involving changes to the voting franchise of the fire district.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or a business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," meaning that the probability of the conflict of interest is greater than "conceivably," but the conflict of interest need not be certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, the Code of Ethics prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). Finally, under 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter if his business associate appears or presents evidence or arguments before the public official's state or municipal agency.

Any person within a public official's family includes the official's spouse and sister. See 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 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).

**1. Impact of ownership by Petitioner, his spouse, and his sister of property within the fire district.**

The Petitioner represents that he and his spouse own a home within the BSFD but they do not reside full-time there. He further represents that he, his spouse, and his sister own bathhouse units in the beach club. As a result, the Petitioner, his spouse, and his sister are all non-resident property owners and voting members of the BSFD, and their voting rights in the fire district could potentially be impacted by certain changes to the voting rights for non-resident property owners in the fire district, including non-resident property owners of beach club bathhouse units.

The Ethics Commission reviewed a similar fact pattern in Advisory Opinion 2023-18 involving changes to the BSFD charter and the voting franchise. There, a legislator serving in the Rhode Island House of Representatives requested an advisory opinion regarding whether she was prohibited by the Code of Ethics from participating in the House’s consideration of enacting legislation to enable the BSFD to hold an election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter proposed by a previous charter committee, given that the legislator was an eligible voter in the BSFD as both the owner of a vacation home in the BSFD and a bathhouse condominium unit at the beach club. The Ethics Commission opined that the official legislative activity contemplated by that petitioner would not impact her voting rights in the BSFD because, although it was conceivable that the petitioner’s voting rights in the BSFD might eventually be impacted, that scenario was not reasonably foreseeable. The Ethics Commission noted that even if voting rights for beach club condominium owners were eliminated, the petitioner also owned a home within the BSFD, and it was therefore not reasonably foreseeable that the petitioner would not continue to meet the voting residency requirements. Also, even if the legislator’s voting rights were ultimately impacted, there was no financial benefit or detriment attached to her right to vote, standing alone. Finally, the Ethics Commission opined that, even if there were a financial impact attached to the petitioner’s right to vote, such a financial impact would only be indirectly related to her legislative activity, given the intervening activity of the eligible BSFD voters who would decide whether to approve or reject any proposed charter amendments. Based on those reasons, the Ethics Commission concluded that the legislator was not prohibited by the Code of Ethics from participating in adopting legislation that would enable the BSFD to hold an annual meeting or special election whereby eligible voters would decide whether to approve or reject amendments to the BSFD charter.

Here, similar to the facts in Advisory Opinion 2023-18, the Petitioner or his family members will not be financially impacted by the proposed changes, because under each of the four scenarios sent to the council from the charter committee, they would all still be allowed to vote as non-resident property owners in the BSFD. Further, even if it were reasonably foreseeable that the Petitioner's official activity relative to the charter changes could impact his or his family members' voting rights in the BSFD, there is no financial impact attached to their right to vote, standing alone. Finally, even if there was a financial impact attached to the Petitioner's and his family members' right to vote, such a financial impact would be *indirect*, as opposed to direct, given the intervening activities required by both the General Assembly and the eligible BSFD voters who would decide whether to approve or reject the proposed amendments.

Further, six years ago the Ethics Commission reviewed four ethics complaints filed against members of the fire district council who owned condominium units at the beach club.<sup>8</sup> There, the Ethics Commission ultimately found that all of the respondents were business associates of the beach club, given that they all owned condominium units at the beach club and were obligated to pay annual assessments to the beach club for property maintenance. Consistent with the findings in those complaints, the instant Petitioner, his spouse, and his sister are also business associates of the beach club. However, the beach club as an entity does not have voting rights in the BSFD, the individual condominium unit owners do. Therefore, there would be no financial impact upon the beach club as a result of the Petitioner's official actions relative to changes in the voting franchise of the fire district.

For all of the foregoing reasons, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to the changes to the voting rights in the BSFD, notwithstanding that he, his spouse, and his sister own property in the fire district.

**2. Impact of paying a required fee to the Bonnet Shores Beach Club to fund potential litigation to protect condominium owners' voting rights in the fire district.**

In prior advisory opinions the Ethics Commission has required public officials to recuse from participating in *pending* litigation matters that are likely to financially impact the public officials, their family members, or their business associates. See, e.g., A.O. 2019-4 (opining that a member of the Little Compton Town Council was prohibited from participating in the town council's discussions and decision-making relative to a pending litigation matter, given that it was reasonably foreseeable that he could be financially

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<sup>8</sup> In re Janice McClanaghan, Complaint No. 2019-15; In re Michael Vendetti, Complaint No. 2019-16; In re Chris Mannix, Complaint No. 2019-17; and In re Natalie McDonald, Complaint No. 2019-18.

impacted by it due to the likelihood of being added as a third party defendant); A.O. 2013-14 (opining that those members of the Retirement Board of the Employees' Retirement System of the State of Rhode Island who held leadership positions in an organization that initiated litigation against the Retirement Board were required to recuse from Retirement Board matters, including discussions and decision-making, relative to the litigation); A.O. 2012-8 (opining that a Charleston Town Council member, who was the plaintiff in a wrongful termination lawsuit against the town, was required to recuse from any town council matters pertaining to her lawsuit); A.O. 2011-37 (opining that a member of the Charlestown Town Council was required to recuse from town council discussions and decision-making relative to a pending litigation matter which were likely to result in a financial benefit or detriment to her); A.O. 2010-59 (opining that a Tiverton Town Council member was prohibited from participating in any town council discussions or decisions involving any litigation in which he or his spouse was currently a party); A.O. 95-37 (opining that a Westerly Town Council member was required to recuse from participation in any town council matter that affected her pending litigation against the town).

Here, the Petitioner, his spouse, and his sister are required to pay a special assessment to be used by the beach club in a potential legal action that may or may not be needed to protect condominium owners' voting rights in the BSFD. Currently, unlike the advisory opinions cited above, there is no such legal action pending. It is unclear if or when the beach club condominium owners' voting rights will be impacted, or whether a legal action in which the beach club, or the Petitioner, his spouse, and/or his sister are expected to participate in or be impacted by would ever come to fruition. Thus, any legal action on the part of the beach club is hypothetical at this time. In the event that the beach club initiates or becomes involved in litigation involving the BSFD, the Petitioner is encouraged to seek further guidance as to his ability to participate in BSFD council decision-making relative to such litigation.

Accordingly, based on all of the Petitioner's representations, and review of the relevant provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that, notwithstanding that the Petitioner, his spouse, and his sister are required to pay a special assessment to the beach club to fund potential litigation, the Petitioner is not prohibited by the Code of Ethics from participating in fire district council discussions and decision-making relative to changes in the composition of the voting franchise in the BSFD, and asking the General Assembly to pass enabling legislation allowing the BSFD to hold an election to allow the BSFD voters to approve or reject any potential changes to the BSFD charter relative to voting rights in the BSFD.

The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that he, or any person within his family, his business associate, or any business by which he is employed or which he represents would be directly financially impacted by his participation in council activities, he must recuse from

participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further guidance from the Ethics Commission.

**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(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2023-18

A.O. 2019-4

A.O. 2013-14

A.O. 2012-8

A.O. 2011-37

A.O. 2010-59

A.O. 95-37

Other Related Authority:

In re Natalie McDonald, Complaint No. 2019-18

In re Chris Mannix, Complaint No. 2019-17

In re Michael Vendetti, Complaint No. 2019-16

In re Janice McClanaghan, Complaint No. 2019-15

Keywords:

Financial Interest

Litigation

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 8, 2025

**Re: Cynthia Roberts**

### **QUESTION PRESENTED:**

The Petitioner, a member of the North Smithfield Planning Board, a municipal appointed position, who is also a member of the North Smithfield Groundwater Protection Committee, a municipal appointed position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating as a member of both municipal agencies' discussions and recommendations to the North Smithfield Town Council concerning an application for a mining overlay district that is currently pending before the town council.

### **RESPONSE:**

It is the opinion of the Ethics Commission that the Petitioner, a member of the North Smithfield Planning Board, a municipal appointed position, who is also a member of the North Smithfield Groundwater Protection Committee, a municipal appointed position, is not prohibited by the Code of Ethics from participating as a member of both municipal agencies' discussions and recommendations to the North Smithfield Town Council concerning an application for a mining overlay district that is currently pending before the town council.

The Petitioner is a member of the North Smithfield Planning Board. She was appointed by the North Smithfield Town Council on December 1, 2023, to serve a 5-year term in that position. She states that there is currently pending before the town council an application for a mining overlay district.<sup>1</sup> The Petitioner represents that the planning board will be tasked with reviewing the application for the mining overlay district and then making a recommendation to the town council regarding how the proposed mining overlay district aligns with the town's comprehensive plan.

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<sup>1</sup> The Petitioner explains that the overlay district is being proposed as an administrative solution to a longstanding lawsuit between the town and a mining company operating in the town.

The Petitioner is also a member of the North Smithfield Groundwater Protection Committee (GPC). She was appointed by the town council on December 1, 2024, to serve a 2-year term in that position. She states that the GPC was created by a resolution of the town council and that the GPC's members are tasked with advising the town council on matters pertaining to groundwater safety. The Petitioner informs that the GPC is currently preparing to consider how the proposed mining overlay district in the town might affect local drinking water safety, and then advise the town council accordingly. The Petitioner represents that, ultimately, the town council will decide whether to allow the mining overlay district. She further represents that neither she, nor any of her family members, business associates, or her employer stand to be directly financially impacted by any planning board or GPC decisions relative to the application for the mining overlay district. The Petitioner would like to participate in the evaluations of the mining overlay district application by both the planning board and the GPC, provided that she may do so in conformance with the Code of Ethics.

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). 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). 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." See, e.g., 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, because neither the RIDOT nor the planning board were considered businesses within the definitions of the Code of Ethics; therefore, the "business associates" prohibitions that would have otherwise constrained the petitioner while carrying out her public duties did not apply).

The Ethics Commission has also consistently opined that a public official is not prohibited by the Code of Ethics from voting on a matter as a member of one public agency and then voting on the same matter as a member of another public agency, provided that the above-cited provisions of the Code of Ethics were not otherwise implicated. In Advisory Opinion 2024-27, for example, a member of the Middletown Planning Board, who was also a member of the Middletown Public Schools Building Committee, questioned whether he was required to recuse from participating in planning board discussions and voting on matters in which he had participated and voted as a member of the building committee. The Ethics Commission determined that both the planning board and the building committee were public entities, and that the petitioner was not a business associate of either entity. The Ethics Commission also acknowledged the petitioner's representations that neither he nor his family members, his business associates, or his employer stood to be directly financially impacted by any of the planning board's decisions relative to the proposals made by the building committee. Ultimately, the Ethics Commission opined that the petitioner was not prohibited from participating in planning board discussions and decision-making on matters in which he had previously participated and voted as a member of the building committee. See also A.O. 2021-37 (opining that a member of the Smithfield Town Council, who was also a former member of the Smithfield Land Trust, was not prohibited from participating in town council matters related to a piece of property located in town and owned by the land trust, notwithstanding that she had previously participated and voted on those matters as a member of the land trust, and given her representation that neither she nor her family members, her business associates, or her employer stood to be directly financially impacted by any of the town council's decisions relative to the subject property).

Here, the Petitioner is not a business associate of either the planning board or the GPC. She will be participating in her public capacity as a member of each of those agencies in the consideration of a mining overlay district application for purposes of then providing advice to the town council prior to the town council's rendering of a decision on the application. Additionally, the Petitioner represents that neither she, nor any of her family members, business associates, or her employer stand to be directly financially impacted by any planning board or GPC decisions relative to the application for the mining overlay district. Accordingly, based on the Petitioner's representations, 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 from participating as a member of both the planning board and the GPC in discussions and recommendations to the town council concerning the application for a mining overlay district.

**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)

§ 36-14-5(d)

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2024-27

A.O. 2021-37

A.O. 2011-29

Keywords:

Dual Public Roles

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 8, 2025

**Re: Shawn J. Brown**

### **QUESTION PRESENTED:**

The Petitioner, the Town Administrator for the Town of Middletown, a municipal appointed position, who in his private capacity is the trustee and sole beneficiary of a trust that owns a piece of property in Middletown, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from appearing, in his private capacity, before the Middletown Zoning Board in response to an application for a special-use permit filed by the owner of a piece of property that abuts the trust property.

### **RESPONSE:**

It is the opinion of the Ethics Commission that the Petitioner, the Town Administrator for the Town of Middletown, a municipal appointed position, who in his private capacity is the trustee and sole beneficiary of a trust that owns a piece of property in Middletown, is not prohibited by the Code of Ethics from appearing, in his private capacity, before the Middletown Zoning Board in response to an application for a special-use permit filed by the owner of a piece of property that abuts the trust property.

The Petitioner is the Town Administrator for the Town of Middletown. He was appointed to that position by the Middletown Town Council. He identifies among his public duties the oversight of municipal operations, the implementation of town council policies, and management of the town's budget, personnel, and public services. The Petitioner states that he is the trustee and sole beneficiary of a trust that was established by his mother, who is recently deceased. He explains that the trust assets include a piece of property located on Green End Avenue in Middletown where his mother previously resided. The Petitioner further states that he recently received notice that the owner of a piece of property located on Harvey Road that abuts the trust property on Green End Avenue has applied for a special use permit for an owner-occupied short-term rental. The Petitioner adds that the hearing on that application is expected to take place before the Middletown Zoning Board in the near future. The Petitioner represents that, because he is the trustee and sole beneficiary of the trust that owns the Green End Avenue property, he would like to participate at that hearing. He explains that, in order to maintain separation between his professional role in the town and this matter which involves him personally, he has retained legal counsel to represent

him before the zoning board. The Petitioner states that the zoning board operates independently of his office as town administrator. He further states that he does not appoint members to the zoning board, that members of the zoning board do not report to him, and that he has no supervisory authority over the zoning board or its members. It is under this set of facts that the Petitioner seeks guidance regarding whether his participation in this matter is prohibited by the Code of Ethics and, if not, whether any additional precautions or disclosures are required.

The Code of Ethics prohibits a public official or employee 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(A)(1) Representing Oneself or Others, Defined (36-14-5016) (Commission Regulation 1.1.4). Pursuant to Commission Regulation 1.1.4(A)(1)(a), a person will “represent himself [] before a state or municipal agency” if he “participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in his []own favor.” While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid § 36-14-5(e)’s prohibitions. These prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5(e)(4).

Here, the Petitioner is not a member of the zoning board, is not employed by the zoning board, and is not the appointing authority for the zoning board. For these reasons, the provisions of the Code of Ethics cited above do not apply. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from appearing in his private capacity, either personally or through his authorized representative, before the zoning board in response to the application for a special-use permit filed by the owner of a piece of property that abuts the property held by the trust for which the Petitioner is the trustee and sole beneficiary.

**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)

Keywords:  
Representing Oneself or Others

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