

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-24

Approved: 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.¹ 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.

¹ 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this

Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(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