

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-28

Approved: 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 term¹ at the BSFD's annual meeting. The Petitioner represents that the scope of his duties consists of the general supervision and

¹ 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.² The BSFD is located in the Town of Narragansett and offers recreational opportunities revolving around its two scenic beaches, mooring area, and community center.³ The BSFD has been granted taxation authority for various purposes.⁴

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.⁵ 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 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.

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

³ Id.

⁴ Id.

⁵ 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 meetings⁶ 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:⁷

- **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

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

⁷ 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 wife 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 still be allowed to vote as non-resident property owners in the BSFD. His sister's right to vote could potentially be impacted by excluding beach club condominium unit owners from the voting franchise in the BSFD. However, 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.⁸ 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

⁸ 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.

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

Code Citations:

§ 36-14-2(1)

§ 36-14-2(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