



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

7th Meeting

DATE: Tuesday, April 29, 2025

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

LIVESTREAM: The Open Session portions of this meeting will be livestreamed at:
<https://us02web.zoom.us/j/88129536606>

1. Call to Order.
2. Motion to approve minutes of Open Session held on April 8, 2025.
3. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) Financial disclosure; and
 - e.) General office administration.
 - f.) Legislative Update: Discussion of 2025 S0927 regarding Gifts and 2025 H6166 regarding Sexual Harassment.

4. Advisory Opinions:

- a.) Karen R. Ellsworth, the deputy zoning inspector for the Town of Exeter, who in her private capacity is legal counsel to the Rhode Island Public Works Association, a non-profit corporation, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to respond to zoning questions from an Exeter resident relative to his request for a zoning certificate, given that the resident had in the past filed an ethics complaint against a former member of the board of directors of the non-profit corporation. [Staff Attorney Papa]
- b.) Perry Saunders Kellogg, a member of the Westerly Planning Board, requests an advisory opinion regarding what limitations, if any, the Code of Ethics imposes upon her in carrying out her public duties relative to submissions made to the planning board by Seaport Studios, Inc., a private entity by which she is employed, and which is owned by her parents. [Staff Attorney Papa]
- c.) Megan Reilly, a member of the North Kingstown School Committee, who in her private capacity is employed as a per diem substitute teacher by Effective School Solutions, an entity which currently provides services to the North Kingstown School District, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to work as a substitute teacher in the North Kingstown School District while simultaneously serving as a member of the school committee. [Staff Attorney Radiches]
- d.) Ronald Gonsalves Jr., CPA, MBA, the executive director of administration & finance for the Newport Public School Department, who recently accepted a full-time position as the chief financial officer for the Rhode Island Department of Housing, a state employee position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from, upon leaving his current municipal employment, and starting his new state employment, simultaneously working part-time for the Newport Public School Department as its business manager. [Staff Attorney Radiches]
- e.) The Honorable K. Joseph Shekarchi, a legislator serving as a member of the Rhode Island House of Representatives, who in his private capacity is an attorney licensed to practice law in Rhode Island, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in General Assembly discussions and voting on proposed legislation that seeks to establish procedures that would make certain

larger parcels of land available for subdivision in order to increase the availability of housing in Rhode Island, subject to conformance with applicable local municipal requirements, given that he previously represented a client for whom the legislation, if passed, could potentially create opportunities for development on land owned by the former client. [Staff Attorney Radiches]

- f.) Laura Pickering, an attorney in private practice who was formerly employed by a law firm that represents multiple school districts in Rhode Island, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from representing clients in special education disputes against school districts in municipalities represented by her former employer. [Staff Attorney Radiches]
- 5. Continuing discussion of potential rulemaking: Amending the Code of Ethics' Gift Rule at 520-RICR-00-00-1.4.2 regarding gifts from registered lobbyists and maximum allowable gift limits. [Director Gramitt]
- 6. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on April 8, 2025, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) Motion to return to Open Session.
- 7. Report on actions taken in Executive Session.
- 8. New Business proposed for future Commission agendas and general comments from the Commission.
- 9. 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 24, 2025

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 29, 2025

Re: Karen R. Ellsworth

QUESTION PRESENTED:

The Petitioner, the deputy zoning inspector for the Town of Exeter, a municipal appointed position, who in her private capacity is legal counsel to the Rhode Island Public Works Association, a non-profit corporation, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to respond to zoning questions from an Exeter resident relative to his request for a zoning certificate, given that the resident had in the past filed an ethics complaint against a former member of the board of directors of the non-profit corporation.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the deputy zoning inspector for the Town of Exeter, a municipal appointed position, who in her private capacity is legal counsel to the Rhode Island Public Works Association, a non-profit corporation, is not prohibited by the Code of Ethics from continuing to respond to zoning questions from an Exeter resident relative to his request for a zoning certificate, notwithstanding that the resident had in the past filed an ethics complaint against a former member of the board of directors of the non-profit corporation.

The Petitioner is the deputy zoning inspector for the Town of Exeter. She represents that she was appointed to that position by the Town Council in December 2024, after serving temporarily as the acting zoning inspector. Pursuant to the Exeter Code of Ordinances, the duties of the deputy zoning inspector include “all powers and duties vested in the [z]oning [i]nspector by the Home Rule Charter of the Town of Exeter, any Town Ordinance, or any State law.” The Petitioner states that the town zoning inspector is primarily responsible for carrying out all of the duties of the office.

The Petitioner represents that in her private capacity, she is legal counsel for the Rhode Island Public Works Association (RIPWA), a Rhode Island non-profit corporation

established in 1989 as a fraternal organization of state and municipal employees.¹ Its mission is to “support high quality training and educational opportunities for the Public Works community in Rhode Island, to represent the interests of the Public Works community to the general public as well as federal, state and local government bodies and agencies and to provide a forum to public works employees for the exchange of ideas and technical information that is helpful to them in conducting their daily duties and responsibilities.”²

The Petitioner states that in March 2025, she was asked by the town solicitor to respond to zoning-related inquiries from Mr. Asa S. Davis III, a town resident, because the zoning inspector had a conflict of interest that prevented him from doing so. The Petitioner explains that Mr. Davis owns a piece of property in the town that is used for agriculture and is leased to a business that he owns. The Petitioner further explains that Mr. Davis is seeking a zoning certificate³ stating whether the town considers his desired use of the property to be a use prohibited by the zoning ordinance. The Petitioner states that she addressed Mr. Davis’s concerns without issuing a zoning certificate. She further states that Mr. Davis responded to her that he would still like a zoning certificate issued and commented that he does not believe that the zoning inspector has a conflict of interest that prevents him from addressing the matter. In an email to the Petitioner, Mr. Davis suggested that if a conflict of interest exists for the zoning inspector based on Mr. Davis’s past filings against him then the Petitioner may also have a conflict of interest that prohibits her from responding to Mr. Davis stemming from an ethics complaint that he had initiated in 2022 against the now former Exeter Public Works director, Stephen P. Mattscheck, who was at that time an officer of RIPWA.⁴ The Petitioner explains that Mr. Davis’s basis for believing

¹ See https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000056464&SEARCH_TYPE=1 (last visited April 9, 2025).

² See <https://ripwa.org/index.html> (last visited April 9, 2025).

³ The Petitioner explains that a zoning certificate is a document issued by a zoning enforcement officer that states that a particular use complies with the zoning ordinance, is a legal nonconforming use, or is authorized by a variance or a special use permit. See R.I. Gen. Laws § 45-24-31(72)

⁴ In re Stephen P. Mattscheck, Complaint No. 2022-1. The complaint was filed by Mr. Davis on February 25, 2022, alleging that Mr. Mattscheck violated the Financial Disclosure mandate by failing to make required disclosures on his 2016 through 2020 Financial Disclosure Statements with respect to his interest in real estate, executive positions he held in certain entities, including RIPWA, sources of income, and out-of-state travel provided to him. The investigation revealed that Mr. Mattscheck was the director of the Exeter

that the Petitioner could have a conflict of interest is that the Petitioner was the agent for service of process for RIPWA in 2022, and she had past communications with him relative to the ethics complaint which has since been adjudicated.

The Petitioner represents that she has been legal counsel for RIPWA since 2008. She adds that in that capacity she has filed RIPWA's annual reports with the Office of the Rhode Island Secretary of State and has drafted its bylaws. She states that she has never attended a RIPWA meeting and that, to the best of her knowledge, she is not acquainted with any of its members, except for RIPWA's Executive Director, Gary Tedeschi. She represents that she has never met Mr. Mattscheck and that she was not employed by the Town of Exeter when Mr. Mattscheck was an Exeter employee. The Petitioner further represents that she did not provide legal representation to RIPWA or its officers relating to the investigation of the ethics complaint, given that the ethics complaint was not filed against RIPWA but against Mr. Mattscheck in his capacity as an Exeter employee and not as an officer of RIPWA. She states that her involvement with that investigation was limited to the following actions: advising RIPWA's executive director that he was required to respond to the Ethics Commission's subpoena in the case; being copied as a courtesy by Ethics Commission staff on several emails relative to questions pertaining to RIPWA's bylaws; and a telephone communication with Mr. Davis relative to his inquiry about whether RIPWA's bylaws were public.

Additionally, the Petitioner represents that she does not reside in Exeter, nor does she own property that abuts Mr. Davis's property that is the subject of his request. She further represents that she does not have a business associate relationship with Mr. Davis, nor does she represent any client in a legal matter involving Mr. Davis. The Petitioner adds that her public duties relative to Mr. Davis's request for a zoning certificate will not have a direct financial impact upon her, any person within her family, her business associate, or a business by which she is employed or which she represents. The Petitioner believes that she does not have a conflict of interest relative to Mr. Davis's request based solely on her being legal counsel to RIPWA during the ethics complaint litigation against Mr. Mattscheck. However, out of an abundance of caution, the Petitioner seeks guidance from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from continuing to address Mr. Davis's inquiries relative to his request for a zoning certificate.

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 or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if an 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

Department of Public Works from April 2007 to October 2022 and that he was a member of RIPWA's board of directors from 2015 through 2022.

monetary loss by reason of her official activity. R.I. Gen. Laws § 36-14-7(a). The Code of Ethics also 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 a business by which she is employed or which she represents. § 36-14-5(d). Finally, a public official must recuse herself from any matter in which her business associate appears or presents evidence or arguments before the municipal agency of which she is a member or by which she is employed. 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002). A “business associate” is defined as an individual or business entity joined together with another person to achieve a common financial objective. R.I. Gen. Laws § 36-14-2(3) & (7). The Ethics Commission has consistently found that the attorney-client relationship creates a business association for purposes of the Code of Ethics. See A.O. 2007-5 (stating that “an attorney and his or her clients are considered to be business associates as that term is defined in the Code of Ethics”).

Here, as legal counsel to RIPWA, the Petitioner is a business associate of that corporation. She is not, however, a business associate of its board members. See A.O. 2018-55 (opining, *inter alia*, that the president of the Providence Fire Fighters Local 799 of the International Association of Fire Fighters (union) was a business associate of the union, but was not, by extension, a business associate of any or all of the attorneys hired by the union to represent it or its members). The Petitioner states that she did not represent RIPWA during the ethics litigation because the complaint was filed against Mr. Mattscheck and not against RIPWA. Nor did the Petitioner represent Mr. Mattscheck as an employee of the Town of Exeter in that litigation. Additionally, Mr. Mattscheck is no longer a member of RIPWA’s board of directors. Even assuming, *arguendo*, that there was a business associate relationship between the Petitioner and Mr. Mattscheck during the ethics complaint investigation and litigation, such a business associate relationship would have since concluded and they would no longer be considered business associates. Moreover, Mr. Mattscheck is not involved in Mr. Davis’s request to the Petitioner. Therefore, the Petitioner is not prohibited by the Code of Ethics from performing her public duties relative to Mr. Davis’s request solely based on her having been legal counsel to RIPWA during the investigation of the ethics complaint against Mr. Mattscheck. See also A.O. 2018-11 (opining that the solicitor for the Town of Tiverton was not prohibited by the Code of Ethics from serving as legal counsel to the Tiverton Planning Board relative to a particular land development project, notwithstanding that in his private capacity as an attorney the petitioner had previously represented a client in the defense of a lawsuit brought by the developer).

The Petitioner states that she does not provide legal representation to any of her clients relative to a legal action involving Mr. Davis. She also represents that neither she, nor any person within her family, her business associate, or any business by which she is employed or which she represents, will be directly financially impacted by her official activities relative to Mr. Davis’s request for a zoning certificate. Here, the matter involves Mr. Davis, his property, and a company that he owns. Accordingly, based on the Petitioner’s

representations, and the review of the relevant 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 by the Code of Ethics from continuing to perform her public duties relative to Mr. Davis's request for a zoning certificate

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(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2018-55

A.O. 2018-11

A.O. 2007-5

Keywords:

Business Associate

Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 29, 2025

Re: Perry Saunders Kellogg

QUESTION PRESENTED:

The Petitioner, a member of the Westerly Planning Board, a municipal appointed position, requests an advisory opinion regarding what limitations, if any, the Code of Ethics imposes upon her in carrying out her public duties relative to submissions made to the planning board by Seaport Studios, Inc., a private entity by which she is employed, and which is owned by her parents.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Westerly Planning Board, a municipal appointed position, is required by the Code of Ethics to recuse from participating in planning board discussions and decision-making relative to submissions made by Seaport Studios, Inc., a private entity by which the Petitioner is employed, and which is owned by her parents. The Petitioner is further prohibited by the Code of Ethics from representing herself, her parents, or Seaport Studios, Inc. before the planning board, and 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.

The Petitioner is a member of the Westerly Planning Board. She has been serving in that capacity since her appointment by the Westerly Town Council on February 24, 2025. The Petitioner states that her family owns Seaport Studios, Inc. (Seaport Studios or the corporation), a small business that operates a seasonal, apparel and clothing retail store in the Watch Hill neighborhood of the Town of Westerly. The Petitioner represents that Seaport Studios was established by her parents in 1985 and that the store ordinarily operates during the summer season, including the months May through October. She states that her parents are each 50 percent shareholders in the company and that her mother serves as the corporation's president, whereas her father serves as its vice president and treasurer. The Petitioner further states that she does not have an ownership interest in the corporation; however, she has been serving as the corporation's secretary since 2001 and has been employed by the corporation as its manager for the last 20 years. The Petitioner represents

that she manages all aspects of the business, including purchasing and payroll. The Petitioner further represents that the store is located at 122 Bay Street in Watch Hill. The Petitioner states that, since its creation, the store has always operated at that location and that her parents initially leased the property, but subsequently purchased it 20 years ago.

The Petitioner describes the store building as a one-story structure, built in 1890 as a seasonal summer structure and maintained as such through the years. The Petitioner represents that her parents would like to demolish the existing structure and replace it with a new structure that complies with modern building, fire, and flood code standards, and that includes a new retail space for the business and a single-family residence above it where the Petitioner and her spouse intend to reside permanently. The Petitioner states that in August 2024, OnSite Engineering, as the authorized representative of Seaport Studios, submitted to the town planner a package containing a Development Plan Review Submission, and a Pre-Application and Architectural Review Board Submission (collectively, pre-application). The Petitioner explains that the pre-application process is informal, and designed for the applicant to receive feedback without the issuance of a formal decision by the town.

The Petitioner represents that, prior to her appointment to the planning board, the pre-application was reviewed by the Rhode Island Historic Preservation and Heritage Commission and the planning board. She notes that during that time she appeared before the planning board on behalf of her parents. The Petitioner states that a hearing before the town's Architectural Review Board,¹ which is advisory to the planning board, is scheduled for May 1, 2025. The Petitioner further states that Seaport Studios is then anticipated to submit to the planning board its application for Development Plan Review, Major Land Development, and Unified Development for the project. The Petitioner represents that she will recuse from participating in the planning board's discussions and decision-making relative to Seaport Studio's application; however, she seeks guidance from the Ethics Commission regarding what additional limitations, if any, the Code of Ethics imposes upon her relative to Seaport Studios' submissions.

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). The Code of Ethics also 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,

¹ The Petitioner explains that the Architectural Review Board's members are all architects appointed by the town council.

her business associate, or any business by which she is employed or which she represents. § 36-14-5(d).

Further, 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, employer, or any person within her family appears or presents evidence or arguments before the public official's state or municipal agency. The Code of Ethics also contains specific provisions aimed at curbing nepotism. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004) prohibits a public official from participating in any matter as part of her public duties if she has reason to believe or expect that any person within her family, or any household member, is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be. Any person within a public official's family includes the official's mother and father. See 520-RICR-00-00-1.3.1(A)(2). 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).

Finally, the Code of Ethics prohibits a public official from representing herself, representing another person, or acting as an expert witness before a municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. § 36-14-5(e)(1)-(3); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). The prohibitions of § 36-14-5(e) continue while the public official remains in office and for a period of one year thereafter. § 36-14-5(e)(4). In contrast to most other Code of Ethics provisions, declining to participate in related discussions and votes is insufficient to avoid § 36-14-5(e) conflicts, absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists.

The Ethics Commission has previously opined that persons are business associates of the organizations for which they serve as either officers or members of the board of directors, or in some other leadership positions that allow them to direct and affect the financial objectives of the organizations, and has advised public officials to recuse from participation in matters before their public agencies that involved or directly financially impacted their business associates. For example, in Advisory Opinion 2009-1, under circumstances similar to the ones presented in the instant advisory opinion, the Ethics Commission opined that a member of the Scituate Town Council must recuse from town council matters concerning school related issues involving the interests of his employer, S & C Collins Bus Company, Inc. (Collins Bus, Inc.) which provided busing services to the Scituate School Department. There, Collins Bus, Inc., was wholly owned by the petitioner's mother, who was also its president and treasurer. The petitioner's sister served as the company's

secretary, whereas the petitioner served as the company's vice president and was employed by it as a part-time bus driver. See also A.O. 2021-6 (opining that a member of the North Smithfield Planning Board was a business associate of the North Smithfield Heritage Association, a private non-profit organization of which he served as a member of the board of directors and as its president and, therefore, was required to recuse from participating whenever the heritage association appeared or presented evidence or arguments before the planning board); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the board of directors of the Tiverton Yacht Club (TYC), was a business associate of the TYC and, therefore, was required to recuse from participating in the planning board's consideration of a proposed amendment to the Tiverton Zoning Ordinance as requested by the TYC).

Here, the Petitioner is employed by Seaport Studios and serves as its secretary. Therefore, Seaport Studios is both the Petitioner's employer and business associate. Furthermore, Seaport Studios is owned by the Petitioner's parents, and it is expected that, if the plans for the new structure are approved, the Petitioner and her spouse would permanently live in the residential unit proposed to be built above the store. As a result, and as the Petitioner appropriately anticipates, she is required by the Code of Ethics to recuse from planning board discussions and decision-making relative to Seaport Studios' submissions. Recusal shall be consistent with the provisions of R.I. Gen. Laws § 36-14-6.

Upon recusal, the Petitioner is prohibited by the Code of Ethics from representing Seaport Studios or her parents before the planning board. Although § 36-14-5(e)(1) allows the Ethics Commission to grant a public official a hardship exception to the prohibition on representing herself before her own agency, or an agency over which she has appointing authority, that exception does not extend to circumstances where the public official wishes to represent another person before her own agency. Such prohibited representation includes not only physical appearances, but also submissions under the Petitioner's name or signature.

The Petitioner is not eligible, under these circumstances, for a hardship exception pursuant to § 36-14-5(e)(1) that would allow her to represent herself before the planning board relative to Seaport Studios' submissions. While the Petitioner may have a personal interest in a decision relative to the proposed plan for the store, in that the plan includes the construction of a residential unit above the store where the Petitioner and her spouse are expected to reside, the Petitioner does not have an ownership interest in Seaport Studios or the property that is the subject of the submissions.² Notably, because the Petitioner does not have an ownership interest in Seaport Studios or the property that is the subject of the submissions, the submissions made by an attorney or an engineering firm on behalf of Seaport Studios or the Petitioner's parents to the planning board do not constitute

² The Ethics Commission has in the past granted such a hardship exception under circumstances where a matter involved the vested property rights of an official or employee. See, e.g., A.O. 2023-29, A.O. 2000-84, A.O. 98-94.

representation of the Petitioner. Lastly, the Petitioner is prohibited 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.

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)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

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. 2023-29

A.O. 2021-6

A.O. 2012-28

A.O. 2009-1

A.O. 2000-84

A.O. 98-94

Keywords:

Business Associate

Nepotism

Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 29, 2025

Re: Megan Reilly

QUESTION PRESENTED:

The Petitioner, a member of the North Kingstown School Committee, a municipal elected position, who in her private capacity is employed as a per diem substitute teacher by Effective School Solutions, an entity which currently provides services to the North Kingstown School District, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to work as a substitute teacher in the North Kingstown School District while simultaneously serving as a member of the school committee.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Kingstown School Committee, a municipal elected position, who in her private capacity is employed as a per diem substitute teacher by Effective School Solutions, an entity which currently provides services to the North Kingstown School District, is not prohibited by the Code of Ethics from continuing to work as a per diem substitute teacher in the North Kingstown School District while simultaneously serving as a member of the school committee. The Code of Ethics does require the Petitioner's recusal from participation in school committee discussions and decision-making regarding matters which will directly financially impact her private employer, and/or in which an authorized representative of her private employer appears or presents evidence or arguments before the school committee, except during a period of public comment as described more fully below.

The Petitioner is a member of the North Kingstown School Committee, having been elected to that position in November 2024. In her private capacity, the Petitioner is employed by Effective School Solutions (ESS), which she describes as a national service that provides substitute teachers and administrators to schools throughout the country. She states that ESS currently contracts with the Town of North Kingstown to provide substitute teachers, teaching assistants, long-term substitute teachers, and administrative workers to the North

Kingstown School District.¹ The Petitioner further states that ESS was hired by the North Kingstown School District via a vote by the school committee under a contract that is set to expire in June 2025. The Petitioner represents that, although ESS currently has no agency competitors in North Kingstown, and its contract with the town could be extended by the school committee, it is also possible that the school committee may decide to discontinue contracting with ESS in favor of using an “in-house” list of school district substitutes.

The Petitioner states that she has been employed by ESS since 2022. She further states that, since that time, she has worked as a substitute teacher on a per diem basis approximately one to two days per week during the school year for grades pre-school through 12 under ESS’s contract with the North Kingstown School District. The Petitioner emphasizes that she is not an employee of the town, and that she is paid each week directly by ESS. She adds that she has a supervisor at ESS who serves as an intermediary between the Petitioner and the North Kingstown School District, as necessary. She cites as potential examples any issue with her pay or the occurrence of an incident at one of the schools in which the petitioner may have been a party or witness. The Petitioner explains that her job performance is not monitored by the school department, nor does she receive performance reviews from the school department. The Petitioner states that there has been no interruption in her employment with ESS since her start date. It is in the context of these facts that the Petitioner seeks guidance regarding whether she may continue working as a per diem substitute teacher in the North Kingstown School District as an employee of ESS, while simultaneously serving as a member of the school committee.

Pursuant to 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014) (Regulation 1.5.4), no municipal elected official or municipal school committee member, whether elected or appointed, while holding office and for a period of one year after leaving municipal office, shall seek or accept employment with any municipal agency in the municipality in which the official serves. Notably, the Code of Ethics specifically includes part-time service as an independent contractor in its definition of “employment.” R.I. Gen. Laws § 36-14-2(4); Regulation 1.5.4 (A)(1). Further, the Code of Ethics specifically includes schools in both the statutory and regulatory definitions of “municipal agency.” § 36-14-2(8)(ii); Regulation 1.5.4(A)(2). Regulation 1.5.4(A) does contain an exception if the municipal official held the employment in question at the time of her election to office.

The Code of Ethics also prohibits a public official from participating 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

¹ The Petitioner adds that ESS also contracts with the Johnston School Department.

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). The Code of Ethics further 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, the Code of Ethics requires a public official to recuse from participation in a matter in which her employer, or a person authorized by her employer, appears or presents evidence or arguments before the public official's municipal agency, except during a period where public comment is allowed on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the employer is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion. 520-RICR-00-00-1.2.1(A)(2) & (3) and (B)(2). Additional Circumstances Warranting Recusal (36-14-5002). All notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6.

The Ethics Commission has previously applied the exception contained in Regulation 1.5.4(A) where a municipal official held the employment in question at the time of their election to office. For example, in Advisory Opinion 2007-3, a member of the Charlestown Town Council was allowed to retain his part-time employment as a custodian at the Charlestown Senior Center which he held prior to his election to the town council. Contra A.O. 2021-9 (opining that a member of the Little Compton School Committee, a municipal elected position, was prohibited from seeking or accepting employment, including temporary part-time employment as a nurse at the Wilbur McMahon School in Little Compton to assist with testing for COVID-19; however, the petitioner was not prohibited from assisting with such testing in a purely voluntary capacity with no compensation). Here, the Petitioner's employment with ESS was held at the time of her election to the school committee and, furthermore, it is ESS, and not the Petitioner, that is providing services as an independent contractor to the town. For that reason, the provisions of Regulation 1.5.4 are inapplicable to the Petitioner here. Accordingly, the Petitioner's continued private employment by ESS as a per diem substitute teacher in the North Kingstown School District while she simultaneously serves as a member of the school committee is not prohibited.

However, while the Petitioner may continue her work as a substitute teacher in the district, the other above-referenced provisions of the Code of Ethics prohibit the Petitioner from participating in any school committee matters that will financially impact ESS, her private employer, and also require her to recuse if and when ESS, or an authorized representative of ESS, appears or presents evidence or arguments before the school committee. Accordingly, recusal will be required during the school committee's consideration of whether, and under what terms, to renew its contract with ESS. See, e.g., A.O. 2019-63 (opining that the vice chairperson of the Rhode Island Real Estate Commission, who in his

private capacity was employed by Residential Properties Ltd. was required to, among other things, recuse from participation in matters in which his private employer or his private employer's representative appeared or presented evidence or arguments on behalf of his employer, or was a party or participant in a matter before the Real Estate Commission); A.O. 2009-1 (opining that a member of the Scituate Town Council was required to recuse from participation in matters coming before the town council that concerned S & C Collins Bus Company, Inc., by which he was employed part-time as a bus driver, or in which it was reasonably foreseeable that there would be a financial impact upon that entity); A.O. 2003-65 (opining that a Chariho School Committee member could officiate at sporting events involving the Chariho schools, but was required to recuse from participation and/or voting during the school committee's consideration of any matters relating to the hiring or remuneration of sports officials, and in matters relating to the Chariho director of athletics who selected such officials).

In summary, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from continuing to work in her private capacity as an employee of ESS as a per diem substitute teacher in the North Kingstown School District while simultaneously serving as a member of the school committee. The Code of Ethics does require the Petitioner's recusal from participation in school committee discussions and decision-making regarding matters which will directly financially impact her private employer, and/or in which an authorized representative of her private employer appears or presents evidence or arguments before the school committee, except during a period of public comment as described more fully herein. The Petitioner is advised that Regulation 1.5.4 prohibits her from seeking or accepting employment from the North Kingstown School District, or any other municipal agency in the town, during her tenure on the school committee and for a period of one year following her official severance from that agency.

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(4)

§ 36-14-2(8)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)
520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014)

Related Advisory Opinions:

A.O. 2021-9
A.O. 2019-63
A.O. 2009-1
A.O. 2007-3
A.O. 2003-65

Keywords:

Conflict of Interest
Employer
Private Employment
Recusal
Revolving Door

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 29, 2025

Re: Ronald Gonsalves Jr., CPA, MBA

QUESTION PRESENTED:

The Petitioner, the executive director of administration & finance for the Newport Public School Department, a municipal employee position, who recently accepted a full-time position as the chief financial officer for the Rhode Island Department of Housing, a state employee position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from, upon leaving his current municipal employment, and starting his new state employment, simultaneously working part-time for the Newport Public School Department as its business manager.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the executive director of administration & finance for the Newport Public School Department, a municipal employee position, who recently accepted a full-time position as the chief financial officer for the Rhode Island Department of Housing, a state employee position, is not prohibited by the Code of Ethics from, upon leaving his current municipal employment, and starting his new state employment, simultaneously working part-time for the Newport Public School Department as its business manager, provided that he does so in conformance with the guidance outlined herein.

The Petitioner is currently employed by the City of Newport as the executive director of administration & finance for the Newport Public School Department, a position he has held since 2019. He identifies among his primary responsibilities the following: preparing and administering the school department general fund operating budget, overseeing the completion of the final school committee annual operating budget, and preparing the necessary financial reports for monthly school committee meetings. The Petitioner states that he also directly supervises the daily operations of the human resources department, transportation services, food service operations, the non-public textbook program, and performs payroll and purchasing functions. He adds that he participates as an integral part of the negotiations for health, dental, and group life insurance contracts, and serves as the school department's risk manager on all insurance matters. The Petitioner states that he

works remotely from 7:00 a.m. until 5:00 p.m., Monday through Friday, and reports directly to the city's superintendent of schools.

The Petitioner represents that he recently accepted a position with the State of Rhode Island as the chief financial officer for the Rhode Island Department of Housing. He states that he expects to begin his new employment in May 2025, and that his work hours for the state will be between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday. The Petitioner identifies among his general duties in this position the oversight of funding from the federal government to be disbursed through the Department of Housing and other community service providers, and aligning access programs and funding for those struggling to obtain housing in Rhode Island. The Petitioner states that, during his interview for the Department of Housing position, he mentioned that he would be interested in staying on with the City of Newport in a reduced capacity, at least for the foreseeable future, so as not to leave the city in a bind as a result of his departure. He further states that the individual with whom he discussed this suggested that he contact the Ethics Commission for an advisory opinion addressing the issue.

The Petitioner explains that the reduced capacity in which he would like to continue to work for the City of Newport is as the school department's business manager. He further explains that his general duties in that capacity would include the oversight of the general operating budget for the school department, interaction with the Rhode Island Department of Education relative to state aid from federal sources, and the oversight of transactions between the school department and third-party vendors. The Petitioner represents that he would continue to work for the city remotely, as he has done since 2020. He further represents that his work hours would be Monday through Friday between the hours of 6:00 a.m. - 8:00 a.m. & 5:00 p.m. - 8:00 p.m., and on weekends as needed. He adds that he would attend monthly school committee meetings in the evening and two workshops annually. The Petitioner states that he reports to the superintendent of public schools under an employment contract with the city in his current position; however, were he to continue with the city as the school department's business manager, he would do so as an independent contractor under a professional services contract and report directly to the school committee.

The Petitioner represents that the performance of his part-time duties as a contract business manager for the school department would not impair his independence of judgment as to his official duties as an employee of the Department of Housing.¹ He further represents that he would have no occasion, whether personally or on behalf of the City of Newport, to appear before the Department of Housing. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks guidance regarding whether he is prohibited by the Code of Ethics from, upon starting his new job with the state,

¹ The Petitioner adds that, in order to avoid any appearance of impropriety, he would recuse from participating in any Housing Department grants to the City of Newport.

simultaneously working part-time for the Newport Public School Department as its business manager.

The Code of Ethics provides that a public employee shall not accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of his official duties. R.I. Gen. Laws § 36-14-5(b). Further, a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties or employment in the public interest. § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest if he has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or 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). Finally, the Code of Ethics provides that a public employee may not use his office, or confidential information received through his 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).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or positions subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties. The Ethics Commission examines several factors when considering potential conflicts regarding secondary employment. These factors include, but are not limited to, the nexus between the public official or employee's public duties and private employment; whether the public official or employee completes such work outside of their normal working hours and without the use of public resources; whether the public official or employee is to appear before, or their work product is to be presented to, their own agency; whether such work is to be conducted outside of the areas over which the public official or employee has decision-making jurisdiction; and whether the public official or employee uses their position to solicit business or customers. See General Commission Advisory No. 2009-4.

For example, in Advisory Opinion 2022-38, the Ethics Commission opined that a supplemental block grant planner for the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) was not prohibited by the Code of Ethics from working part-time to provide counseling services to members of local municipal police departments, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment and, further provided, that the petitioner did not use her public employment to advertise or promote her work or to recruit or obtain clients. The petitioner

in that advisory opinion represented that she would provide counseling to clients by telephone from an office in her home. She further represented that she would do this on various evenings during the week after 5:00 p.m., and on weekends. That petitioner described her counseling duties as being separate and distinct from those for which she was responsible as a BHDDH employee, and outside of the areas over which she had decision-making authority as a grant planner. Also, there was nothing in the facts to suggest that her part-time secondary employment as the provider of counseling services to police officers would either impair her independence of judgment or create an interest in substantial conflict with her public duties at the BHDDH. See also A.O. 2020-1 (opining that a probation and parole officer at the Rhode Island Department of Corrections was not prohibited from working in her private capacity as an independent contractor providing supervised visitation services between non-custodial parents and their child or children, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment).

Here, the Petitioner describes his proposed duties as the part-time business manager for the school department as being separate and distinct from those for which he will be responsible as a state employee.² He states that he would perform his part-time business manager work outside of his regular hours as a state employee and outside of the areas over which he will have decision-making jurisdiction as the Department of Housing's chief financial officer. There is nothing in the facts as represented to suggest that the Petitioner would appear before, or that his work product as a business manager for Newport's school department would be presented to, the Department of Housing.

Based upon the facts as represented by the Petitioner, there is no evidence to suggest that his part-time contractual work for the school department would either impair his independence of judgement or create an interest that in substantial conflict with his public duties at the Department of Housing. Accordingly, the Petitioner is not prohibited by the Code of Ethics from working part-time as a business manager for the school department in the manner described herein, provided that all of the work is performed on his own time and without the use of state resources or confidential information obtained as part of his state employment with the Department of Housing. The Ethics Commission acknowledges

² Although the Petitioner seeks to continue working for the City of Newport, albeit in a reduced capacity, he would no longer be a municipal employee, but a vendor under a professional services contract. For this reason, his status as a city vendor would constitute private employment, and the Petitioner would no longer be subject to the Code of Ethics by virtue of his part-time position with the city; he would, however, be subject to the Code of Ethics as a state employee. See, e.g., A.O. 2004-19 (opining that a petitioner who served as legal counsel to both the West Warwick Planning Board and the West Warwick Zoning Board of Review was not subject to the Code of Ethics in that capacity, because independent contractors of state or municipal government are neither "employees" nor appointed officials subject to the provisions of the Code of Ethics).

and supports the Petitioner's intent to recuse from participating in any matters involving housing grants to the City of Newport in order to avoid even the appearance of impropriety. Any such recusal should be made consistent with the provisions of R.I. Gen. Laws § 36-14-6. Finally, the Petitioner is advised to seek further guidance from the Ethics Commission if any changes occur within either his private or public employment that could present a conflict of interest.

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

Code Citations:

§ 36-14-5(a)
§ 36-14-5(b)
§ 36-15-5(d)
§ 36-14-6
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2022-38
A.O. 2020-1
A.O. 2004-19
G.C.A. 2009-1

Keywords:

Secondary Employment

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 29, 2025

Re: The Honorable K. Joseph Shekarchi

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state elected position, who in his private capacity is an attorney licensed to practice law in Rhode Island, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in General Assembly discussions and voting on proposed legislation that seeks to establish procedures that would make certain larger parcels of land available for subdivision in order to increase the availability of housing in Rhode Island, subject to conformance with applicable local municipal requirements, given that he previously represented a client for whom the legislation, if passed, could potentially create opportunities for development on land owned by the former client.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state elected position, who in his private capacity is an attorney licensed to practice law in Rhode Island, is not prohibited by the Code of Ethics from participating in General Assembly discussions and voting on proposed legislation that seeks to establish procedures that would make certain larger parcels of land available for subdivision in order to increase the availability of housing in Rhode Island, subject to conformance with applicable local municipal requirements, notwithstanding that he previously represented a client for whom the legislation, if passed, could potentially create opportunities for development on land owned by the former client.

The Petitioner is a legislator serving as a member of the Rhode Island House of Representatives, representing District 23 in Warwick. Originally elected in 2012, he has served continuously since. The Petitioner is currently serving his third term as Speaker of the House, having first been elected to that position by his House colleagues in January 2021. In his private capacity, the Petitioner is an attorney licensed to practice law in Rhode Island. He focuses his practice on zoning and land use permitting, real estate closings, underwriting legal work, business formations, personal injury, and administrative hearings.

The Petitioner represents that on February 27, 2025, he and several other House representatives introduced Bill Number H 5799 (legislation) that seeks to amend existing legislation to establish procedures that would make certain larger parcels of land available for subdivision in order to increase the availability of housing in Rhode Island. The Petitioner further represents that the legislation, if passed, would expand the ability of cities and towns throughout the state to more readily permit subdivisions of large parcels for housing construction, provided that the proposed subdivisions conform to all other applicable municipal requirements. The Petitioner explains that the legislation has already been considered and approved by the House Municipal Government and Housing Committee, and is soon expected to be presented for consideration by the full House.

The Petitioner states that, in 2021, he represented a private client who had applied for a residential zone change in the City of Cranston that would have allowed the client to construct eight new houses on land that he owned, rather than construct only four houses as allowed under the city's ordinance. The Petitioner further states that, although the local planning board returned a favorable decision for his client and issued master plan approval, either the city council ultimately denied the application, or the application was withdrawn after significant opposition. The Petitioner represents that he and his client then parted ways. The Petitioner explains that their attorney-client relationship existed only for that one case, which lasted for about one year. The Petitioner adds that the former client paid his legal fees in full, and that there is no anticipated future business relationship between them. The Petitioner states that, although the pending legislation could potentially create opportunities for development on the land owned by his former client, the Petitioner's review of the city assessor's plat map indicates that will most likely not be the case. The Petitioner adds that, even if the pending legislation were to pass, resulting in the opportunity for the development of land owned by his former client, any application submitted by the former client would necessitate an independent analysis by the city in order to determine compliance with the relevant municipal requirements for development. Cognizant of the Code of Ethics, committed to acting in conformance therewith, and out of an abundance of caution, the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in General Assembly discussions and voting on the proposed legislation.

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 or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest which is in substantial conflict with the proper discharge of his duties or employment in the public interest if it is reasonably foreseeable that a direct monetary gain or a direct monetary loss will accrue, by virtue of the public official's activity, to the public official, or any person within his family, or any business associate, or any business by which he is employed or which he represents. R.I. Gen. Laws § 36-14-7(a). A public official is further prohibited 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). 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).

The Ethics Commission has consistently recognized an attorney-client relationship as a business association for purposes of the Code of Ethics and has, on multiple occasions, required a public official to recuse from participating in matters directly affecting his business associate, or in which his business associate was to appear before the official’s public body. See, e.g., A.O. 2007-54 (opining that a member of the Smithfield Zoning Board of Review was prohibited from participating in a matter in which the zoning board would be sitting as the Smithfield Board of Appeals, given that the petitioner had an ongoing attorney-client relationship with one of the attorneys representing the appellants in the matter); A.O. 2010-47 (opining that the Middletown solicitor was prohibited from participating in the consideration by the town’s zoning board and planning board of a petition for a special use permit, given that one of the petitioner’s private law clients had been retained to provide information and testimony in support of the permit application).

However, while the Code of Ethics clearly prohibits a public official from participating in matters directly affecting a current business associate, the Ethics Commission has permitted a public official to participate in matters involving or impacting a *former* business associate, assuming no other conflicts were present. In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, or whether there exists an anticipated future relationship between the parties. For example, in Advisory Opinion 2021-11, a member of the State Housing Appeals Board was not prohibited from participating in a matter before the board in which the appellant was represented by legal counsel who had once provided legal services to the petitioner. There, the petitioner represented that the attorney-client relationship between her and the subject attorney had ended five years prior, that the attorney had been paid in full for the services he had provided to her, and that she did not anticipate any occasion for which she might require that attorney’s services in the future. See also A.O. 2013-21 (opining that a member of the State Labor Relations Board, a private attorney, was not required to recuse from matters involving his former law client provided that the representation had concluded, that all outstanding legal fees had been paid in full, and that there was no reasonable likelihood of reestablishing an attorney-client relationship in the foreseeable future); A.O. 2007-5 (opining that a Smithfield Town Council member’s prior attorney-client relationship with an individual who had sought legal advice from the petitioner related to the individual’s property that abutted the Slacks Reservoir Dam did not prohibit the petitioner from participating in the town council’s consideration of a matter related to the release of funds to repair the dam, given that the

attorney-client relationship, during which the client had not been charged, had ended more than a year prior with no plans for future representation).

Here, the business associate relationship between the Petitioner and his former law client has ended for purposes of the Code of Ethics. The Petitioner states that he represented the former client in 2021 for about one year, that the former client paid his legal fees in full, and that there is no future business relationship anticipated between them. Accordingly, based on the facts as represented, 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 by the Code of Ethics from participating in General Assembly discussions and voting on the proposed legislation described herein, notwithstanding that his former client could potentially be impacted by the passage of the legislation.

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(3)
§ 36-14-5(a)
§ 36-14-5(d)
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-11
A.O. 2013-21
A.O. 2010-47
A.O. 2007-54
A.O. 2007-5

Keywords:

Business Associate

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 29, 2025

Re: Laura Pickering

QUESTION PRESENTED:

The Petitioner, an attorney in private practice who was formerly employed by a law firm that represents multiple school districts in Rhode Island, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from representing clients in special education disputes against school districts in municipalities represented by her former employer.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an attorney in private practice, who was formerly employed by a law firm that represents multiple school districts in Rhode Island, is not prohibited by the Code of Ethics from representing clients in special education disputes against school districts in municipalities represented by her former employer, because the Petitioner's former law firm works as an independent contractor for those municipalities and, therefore, the law firm's attorneys are not subject to the Code of Ethics, or limited by prohibitions therein that might otherwise have prevented the Petitioner from representing such clients for a period of one year following her departure from the firm.

The Petitioner is an attorney in private practice who was previously employed by a law firm that represents approximately twelve school districts in Rhode Island. She states that the law firm provides these services on a contractual basis and that the attorneys from the firm are not sworn in as solicitors by those municipalities. The Petitioner explains that the law firm bills each municipality for its services and receives a Form 1099 in return every year for income tax purposes.

The Petitioner states that she was employed by the law firm as an associate attorney from July 2023 through January 2025. She further states that her duties as an associate attorney included, in large part, providing support to the law firm's partners by conducting legal research and drafting legal memoranda. The Petitioner represents that, not long before she left the law firm in January 2025, she attended a school committee meeting in one of the school districts as a substitute for a partner at the law firm who was unavailable to attend.

She further represents that in November 2024, she attended two school committee policy subcommittee meetings in another school district for the same reason.

The Petitioner states that she now maintains her own law practice. She further states that she would like to represent clients in special education disputes against school districts, which may include those that are represented by her former law firm. The Petitioner specifies that she wishes to represent the parents of special education students at Individualized Education Program (IEP) meetings and in other various education matters within school districts. She adds that the attendees at IEP meetings include the parents or guardians of the student with an IEP, the school department's education director, various teachers, administrators, counselors, and therapists. The Petitioner emphasizes that appeals from the decisions reached at IEP meetings are made to the Rhode Island Department of Education. She notes that none of the matters involving clients with children in a school district would require her to appear before a school committee. It is in the context of these facts that the Petitioner seeks guidance regarding whether she may represent clients in special education disputes against school districts in municipalities that are represented by her former employer.

As a threshold determination, the Ethics Commission must ascertain whether the Petitioner, in her former role as an attorney with a law firm that provides legal counsel to multiple school districts, was subject to the Code of Ethics. If she was, she will remain subject to the revolving door provisions of R.I. Gen. Laws § 36-14-5(e)(4) and 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) for a period of one year following the severance of her position with the law firm. Pursuant to R.I. Gen. Laws § 36-14-4, the following groups of individuals shall be subject to the Code of Ethics: “(1) State and municipal elected officials; (2) State and municipal appointed officials; and (3) Employees of state and local government, of boards, commissions, and agencies.”

Unlike solicitors, who are municipal appointed officials with duties set forth in a municipal charter or ordinance, the Ethics Commission has repeatedly opined that attorneys in private practice performing legal work for public agencies are independent contractors and, therefore, are not subject to the Code of Ethics, nor constrained by its conflict of interest provisions. See, e.g., A.O. 2021-21 (opining that an attorney in private practice who represented the City of Newport as special counsel in an environmental litigation matter was an independent contractor and, therefore, was not subject to the Code of Ethics or limited by prohibitions therein that might otherwise have prevented her from appearing before the local planning board and zoning board on behalf of a client who sought to retain the petitioner as an environmental expert witness to testify in a land use application matter); A.O. 2007-43 (opining that an attorney whose law firm served as legal counsel to the North Providence School Committee was an independent contractor and, as such, did not fall under the jurisdiction of the Ethics Commission); A.O. 2004-19 (opining that an attorney who served as legal counsel to both the planning board and the zoning board of review for the Town of West Warwick was not subject to the Code of Ethics in that capacity, because

independent contractors of state or municipal government are neither “employees” nor appointed officials subject to the provisions of the Code of Ethics). See also Gemma v. Rhode Island Ethics Commission, No. PC94-3404 (R.I. Super. Ct., Sept. 17, 1994) (concluding that an attorney contractually retained by the state was not an employee, but an independent contractor and, accordingly, was not subject to the revolving door provisions set forth in R.I. Gen. Laws § 36-14-5(o)).

Here, the Petitioner’s former law firm provides legal services to various school districts as an independent contractor. For this reason, the Petitioner did not fall under the jurisdiction of the Ethics Commission when she was employed by the law firm and, therefore, is not prohibited by § 36-14-5(e)(4)’s revolving door provisions from representing clients in special education disputes against school districts in municipalities that are represented by her former employer prior to the expiration of one year following her departure from the firm.

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(4)

§ 36-14-4

§ 36-14-5(e)

§ 36-14-5(o)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-114-5016)

Related Advisory Opinions:

A.O. 2021-21

A.O. 2007-43

A.O. 2004-19

Related Case Law:

Gemma v. Rhode Island Ethics Commission, No. PC94-3404 (R.I. Super. Ct., Sept. 17, 1994)

Keywords:

Code Jurisdiction

Continuing Discussion of Potential Rulemaking



Rhode Island
Holding Power Accountable

RECEIVED
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ETHICS COMMISSION

25 APR 24 AM 10:17

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www.commoncause.org

April 24, 2025

Rhode Island Ethics Commission
40 Fountain Street, 8th Floor
Providence, RI 02903

Dear Members of the Rhode Island Ethics Commission:

This letter follows up on the Commission's discussion at your March 25th meeting about the draft proposed rule for amendments to the gift rule submitted by Common Cause Rhode Island.

During the Commission's discussion of the language proposed by Common Cause Rhode Island, Commissioner Ricci asked whether the proposed amendments would cover government lobbyists. When drafting our original proposal we did not include, or contemplate, the role of governments and their lobbyists.

According to the most recent records of the Rhode Island Secretary of State, currently the Rhode Island Judiciary employs three lobbyists from two different lobbying firms. The Association of Trial Judges, or any other courts, do not have any registered lobbyists. Including the Rhode Island Judiciary we also counted at least 28 government agencies that employ lobbyists.¹

Common Cause Rhode Island believes that no lobbyists, whether representing private interests like for-profit and not-for-profit organizations, or governments, should be providing gifts in excess of the current limits to public officials they are lobbying. As we stated in our February 4, 2025 letter, we believe that it is a conflict of interest for a lobbyist to provide a gift to someone they are lobbying unless it falls into one of the enumerated exceptions 520-RICR-00-00-1.4.2.

We believe that the language we proposed in our February letter would include governments as an "other entity" but we are happy to suggest additional language to clarify.

Sincerely,

John Marion
Executive Director

¹ That total excludes unions who represent government employees, associations of government (e.g. Rhode Island League of Cities and Towns, etc.), and charter schools.

