

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2025-29

Approved: 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.<sup>1</sup> 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.”<sup>2</sup>

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 certificate<sup>3</sup> 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.<sup>4</sup> The Petitioner explains that Mr. Davis’s basis for believing

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<sup>1</sup> See [https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000056464&SEARCH\\_TYPE=1](https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=000056464&SEARCH_TYPE=1) (last visited April 9, 2025).

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

<sup>3</sup> 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)

<sup>4</sup> *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

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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 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(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