

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2025-30

Approved: 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, Seaport Studios has owned the building and operated at that location.

The Petitioner describes the store building as a two-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. 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,<sup>1</sup> 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,

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<sup>1</sup> The Petitioner explains that the Architectural Review Board's members are 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 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.<sup>2</sup> 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

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<sup>2</sup> 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 Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.**

Code Citations:

§ 36-14-2(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(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