



STATE OF RHODE ISLAND
RHODE ISLAND ETHICS COMMISSION
40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Email: ethics.email@ethics.ri.gov
Website: <https://ethics.ri.gov>

NOTICE OF OPEN MEETING

AGENDA

8th Meeting

DATE: Tuesday, May 20, 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/81700684449>

1. Call to Order.
2. Motion to approve minutes of Open Session held on April 29, 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.
4. Discussion and vote to initiate formal rulemaking: Amending the Code of Ethics' Gift Rule at 520-RICR-00-00-1.4.2 to expressly include registered lobbyists within

the definition of “interested person,” and to raise the maximum allowable gift values to be more consistent with changes to the consumer price index since 2005. [Director Gramitt]

5. Advisory Opinions:

- a.) The Honorable Frank A. Ciccone, III, a legislator serving as a member of the Rhode Island Senate, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in Senate discussions and voting on proposed legislation that defines various assault weapons and restricts the manufacture, sale, purchase, and possession of them, given that the Petitioner holds a license to deal firearms and would be subject to the legislation if it passes. [Staff Attorney Radiches]
- b.) Sergeant Jason Brodeur, a sergeant with the Warwick Police Department, requests an advisory opinion regarding whether the established alternate chain of command policy would sufficiently insulate him from conflicts of interest arising out of his position, given the police department’s anticipated hiring of the Petitioner’s nephew to work as a communications specialist/dispatcher. [Staff Attorney Radiches]
- c.) Samantha Doyle, a community program liaison worker at the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, Office of Quality Assurance, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from simultaneously working per diem as a Go Team on-call and weekend liaison at Family Service of Rhode Island. [Staff Attorney Papa]
- d.) Kurt Wilcox, a member of the West Greenwich Planning Board, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics’ prohibition against appearing before one’s own board for purposes of seeking review and approval of a proposed development plan for a parcel of real property that his company owns in the town. [Staff Attorney Papa]
- e.) Brian Thalmann, PE, an alternate member of the Smithfield Zoning Board of Review, who in his private capacity is a professional engineer, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in zoning board discussions and decision-making relative to an application for a dimensional variance allowing the applicant to construct a detached garage on property that is part of a subdivision, given that the Petitioner was the engineer for the subdivision. [Staff Attorney Papa]

6. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on April 29, 2025, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Jonathan Pascua, Complaint No. 2025-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) Motion to return to Open Session.
7. Motion to seal minutes of Executive Session held on May 20, 2025
8. Report on actions taken in Executive Session.
9. New Business proposed for future Commission agendas and general comments from the Commission.
10. 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 May 15, 2025

MEMORANDUM

To: Rhode Island Ethics Commission

From: Jason Gramitt, Executive Director

Date: May 14, 2025

Re: Rulemaking Procedures – Amending the Gift Regulation

The agenda for the Ethics Commission’s meeting on May 20, 2025, contains an item to allow for the Commission’s discussion and vote on the issue of whether to advance to the formal rulemaking process relative to two potential amendments to the gift regulation, 520-RICR-00-00-1.4.2:

1. Expansion of “interested person” definition. Common Cause of Rhode Island has proposed an amendment that would expand the definition of “interested person” to expressly include lobbyists and the entities that have hired them, whether for-profit or not-for-profit, relative to gifts given to public officials and employees who are associated with the state or municipal agency that is being lobbied. A copy of the proposed amendment is attached hereto.
2. Increase in gift limits. Members of the General Assembly have requested that the Ethics Commission amend the gift rule to raise current gift limits that were originally established in 2005 (allows individual gifts valued at no more than \$25 and aggregated gifts from same source in a calendar year valued at no more than \$75) to more closely track increases in the consumer price index since the rule’s original enactment. A copy of a proposed amendment, raising the limits to \$50/\$125, is attached hereto for discussion purposes.

Because both of the above proposed amendments relate to different aspects of the same gift regulation, it may be beneficial and more efficient to move forward with formal consideration of both proposals. People who have an interest in one of the proposals will likely have an interest in the other, and we could consolidate the public comment periods, hearings, filings, and votes.

A vote¹ on May 20th to move forward with the formal rulemaking process would merely authorize and direct the Ethics Commission staff to prepare redlined amended regulations

¹ Passage of this initial vote requires only a simple majority of those present and voting. At the conclusion of the rulemaking process, if the Commission wishes to adopt any amendments, the assent of two-thirds (2/3) of the Commission is required.

showing each proposed amendment, file a “Notice of Proposed Rulemaking” with the Rhode Island Secretary of State, and initiate a period of public comment.

Important note: Voting to move forward with the formal rulemaking process does NOT obligate the Ethics Commission to ultimately adopt either proposed amendment. At any time, the Ethics Commission may choose to stop the rulemaking process and reject either or both of the proposed amendments. Accordingly, this vote is merely a preliminary and reversible first step in the formal rulemaking process.

The rulemaking process for the Ethics Commission, and for other administrative agencies, is set forth in the Administrative Procedures Act (APA) (R.I. Gen. Laws §§ 42-35-1, *et seq.*). In a nutshell, in order for the Ethics Commission to amend any of its regulations such as the gift rule, the APA requires the following formal steps:

1. Preparation of the text of the proposed amendment.
2. Preparation of a “regulatory analysis” that includes: the costs and benefits of the amendment, if any; a demonstration that there is no alternative approach that is equally effective and less burdensome to private persons; and identification of any other regulation that overlaps or duplicates the proposed amendment.
3. Filing of a “Notice of Proposed Rulemaking” with the Secretary of State, containing a short explanation of the amendment, any regulatory analysis conducted; citation to legal authority to adopt the rule; text of the amendment; and instructions to the public for providing written and oral comment.
4. Receiving written public comment over a period of at least 30 days and holding a public hearing to receive oral comment. The APA does not require a public hearing in all cases, but is required by one of the Ethics Commission’s own enabling statutes. See R.I. Gen. Laws § 36-14-9(a)(3).
5. Voting to adopt the amendment. While the APA only requires a majority vote to adopt a regulation, the Rhode Island Constitution imposes a higher burden on the Ethics Commission: “the assent of two-thirds (2/3) of the members appointed shall be required for the adoption of every rule or regulation.” R.I. Const. art. III, sec. 8. Therefore, if there are no vacancies on the Ethics Commission, as is currently the case, then the assent of six Commissioners will be required to adopt an amendment. If the vote fails, the formal rulemaking process is at an end with no amendment.
6. Filing the final rule with the Secretary of State, following a successful vote to amend the regulation. After filing the final rule, the amendment becomes effective either 20 days after filing or on another date beyond the 20-day period if specified as part of the rulemaking process.

MEMORANDUM

To: Rhode Island Ethics Commission

From: Jason Gramitt, Executive Director

Date: May 14, 2025

Re: Gift Limits – Nationwide Comparison

Below is a comparison of gift limits included in other states' gift laws. These limits generally appear in state ethics statutes, although some may be set forth in executive orders, lobbying laws, or legislative rules. As has been previously noted, each state regulates government ethics, conflicts of interest, and gifts differently so that there are no real "apple to apple" comparisons to be made. For example, while many states regulate gifts given to public officials from those who we in Rhode Island would call "interested persons," some other states only regulate gifts from to legislators from lobbyists. Furthermore, while Rhode Island's gift regulation applies to gifts regardless of the motivation behind the gift, several states only regulate gifts made with an intent or desire to influence official decision-making. Finally, focusing only on dollar limits does not tell the whole story of which state's gift laws are more or less strict than Rhode Island's because some states with lower overall gift limits also provide numerous, generous exceptions not offered in Rhode Island, such as exceptions for gifts from "friends," gifts given to celebrate life events, and gifts of food and beverages.

The one aspect of gift regulation that most states share is treating inexpensive gifts, variously referred to as "insubstantial" or "*de minimis*," as falling outside of gift regulation. One presumes that the basis for this exclusion is that such small gifts, such as a promotional pen, cap, or t-shirt, or an inexpensive working lunch, are not likely to interfere with a public official's integrity or independence of judgement. In Rhode Island, since 2005, individual gifts with a value of \$25 or less, or several gifts from the same source in one calendar year with an aggregate value of \$75 or less, are not prohibited.

Some states adjust their gift limits from time to time based on changes to the consumer price index, which is a measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services. According to the consumer price index calculator maintained by the U.S. Bureau of Labor Statistics, \$25 spent in 2005 when the Ethics Commission last amended the gift regulation had the same buying power as approximately \$41 spent today.¹

¹ www.bls.gov/data/inflation_calculator.htm (last accessed May 13, 2025).

Below is a very simplified listing of the dollar amounts that other states consider to be so insubstantial, or *de minimis*, as to be excluded from various gift laws. This listing is a consolidation of information on state gift rules compiled separately by the National Association of Attorneys General,² the Council on Government Ethics Laws,³ and the National Conference of State Legislatures,⁴ supplemented by independent Ethics Commission staff research.

Utilizing these figures, the mean (average) gift limit is \$68. The median (middle number in the range) gift limit is \$50. The mode (most frequently recurring) gift limit is also \$50.

Alabama: \$32/\$64 aggregate limits: Adjusted from time to time based on Consumer Price Index.

Alaska: \$250 limit.

Arizona: Prohibits acceptance of “valuable” gifts, defined by General Accounting Office as gifts with more than \$25 value.

Arkansas: \$100 limit.

California: \$250 limit.

Colorado: \$75 limit: Adjusted every four years based on Consumer Price Index.

Connecticut: \$10 limit; \$50 for food and beverages.

Delaware: No limits, but gifts valued at more than \$250 must be reported.

Florida: \$50 limit.

Georgia: \$75 limit.

Hawaii: No limits, but gifts are prohibited if it can be reasonably inferred that the gift was intended to influence.

² <https://www.naag.org/state-gift-laws/> (last accessed May 8, 2025).

³ https://cdn.ymaws.com/www.cogel.org/resource/resmgr/cogel_blue_books/cogel_blue_book_2024_ethics_.pdf (last accessed May 8, 2025).

⁴ <https://www.ncsl.org/ethics/legislator-gift-restrictions> (last accessed May 12, 2025).

Idaho: \$50 limit.

Illinois: \$100 limit.

Indiana: \$50 limit.

Iowa: Limit of \$3 or less per calendar day, but many exceptions.

Kansas: \$40 limit.

Kentucky: No limits, but gifts valued at more than \$200 must be reported.

Louisiana: \$79 limit on food and drink, adjusted each year based on Consumer Price Index.

Maine: \$300 limit on gifts, but an exception for gifts based on personal friendship.

Maryland: \$20 limit.

Massachusetts: \$50 limit.

Michigan: Adjusted \$76 limit on gifts of food and beverages from lobbyists to public officials.

Minnesota: \$5 limit on trinkets or mementos.

Mississippi: \$10 limit on food and beverages for immediate consumption from a lobbyist.

Missouri: No general limits, but \$10 limit on souvenirs or mementos.

Montana: \$50 limit.

Nebraska: \$50 per month limit.

Nevada: Gifts of any value prohibited, but many exceptions.

New Hampshire: \$50/\$250 aggregate limit.

New Jersey: Zero tolerance except in limited circumstances.

New Mexico: \$250 limit.

New York: \$15 limit, but many exceptions.

North Carolina: Zero tolerance, but many exceptions.

North Dakota: Zero tolerance for gifts from lobbyists to public officials, but many exceptions.

Ohio: \$75 limit for gifts to legislators from legislative agents.

Oklahoma: \$20/\$50 aggregate limits, but many exceptions.

Oregon: \$50 limit.

Pennsylvania: No gift limits, but gifts must be reported if more than \$250 aggregate.

Rhode Island: \$25/\$75 aggregate limits.

South Carolina: \$50/day and \$400 aggregate limits on gifts to legislators from lobbyist's principals.

South Dakota: \$100/year limit on gifts to legislators from lobbyists.

Tennessee: \$50 limit on food, beverages, and entertainment offered at in-state event to all members of the General Assembly.

Texas: \$500 limit on gifts from lobbyists; \$50 limit on gifts from other interested persons.

Utah: \$50 limit.

Vermont: \$50/\$150 aggregate limits.

Virginia: \$100 limit.

Washington: \$50 limit.

West Virginia: \$25 limit.

Wisconsin: Limit on gifts of "substantial value".

Wyoming: \$250 limit.

PROPOSED AMENDMENT TO GIFT RULE -- LOBBYING

520-RICR-00-00-1.4.2 Gifts (36-14-5009)

A. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift of cash, forbearance or forgiveness of indebtedness from an interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

B. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift(s) or other thing(s) having either a fair market value or actual cost greater than twenty-five dollars (\$ 25), but in no case having either an aggregate fair market value or aggregate actual cost greater than seventy-five dollars (\$ 75) in any calendar year including, but not limited to, gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

1. For purposes of this regulation a "single interested person" shall include all employees or representatives of an individual, business, organization or entity.

2. The prohibitions in this section do not apply if the gift or other thing of value is:

a. a campaign contribution as defined by the laws of the state;

PROPOSED AMENDMENT TO GIFT RULE -- LOBBYING

b. services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents; or

c. a plaque or other similar item given in recognition of individual or professional services in a field of specialty or to a charitable cause.

C. "Interested person," for purposes of this section, means:

1. a person, business, or other entity, whether for profit or not for profit, or a representative of such a person, business, or other entity, that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties; or

2. a person, business, or other entity, whether for profit or not for profit, that engages lobbyists or is a registered lobbyist or lobbying firm as defined by the laws or municipal ordinances of this state.

D. The prohibitions in this section do not apply if the gift or thing of economic value is given:

1. because of the recipient's membership in a group, a majority of whose members are not persons subject to the Code of Ethics, and an equivalent gift is given or offered to other members of the group; ~~or~~

PROPOSED AMENDMENT TO GIFT RULE -- LOBBYING

2. by an interested person who is a person within the family of the recipient, unless the gift is given on behalf of someone who is not a member of said family;

3. by an interested person as defined in subsection (C)(2), that is not also an interested person as defined in subsection (C)(1), to a public official or employee who is not a member or employee of the state or municipal agency that the interested person is lobbying; or

4. in the form of food or beverage for immediate consumption at a reception or fundraiser to which all members of the General Assembly or statewide officers are invited and is hosted not more than once in any year by a not for profit entity that is not an interested person as defined in subsection (C)(1).

E. For purposes of this regulation, a gift or other thing of value is considered received when it comes into the possession or control of the person subject to the Code of Ethics, or his or her spouse or dependent child, and is a gift or other thing of value subject to the requirements of this regulation unless it is immediately returned to the interested person or given to a bona fide charitable organization without benefit accruing to the person subject to the Code of Ethics.

PROPOSED AMENDMENT TO GIFT RULE – VALUE LIMITS

520-RICR-00-00-1.4.2 Gifts (36-14-5009)

A. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift of cash, forbearance or forgiveness of indebtedness from an interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

B. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift(s) or other thing(s) having either a fair market value or actual cost greater than ~~twenty five dollars (\$ 25)~~ fifty dollars (\$50), but in no case having either an aggregate fair market value or aggregate actual cost greater than ~~seventy-five dollars (\$ 75)~~ one hundred fifty dollars (\$150) in any calendar year including, but not limited to, gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

1. For purposes of this regulation a "single interested person" shall include all employees or representatives of an individual, business, organization or entity.

2. The prohibitions in this section do not apply if the gift or other thing of value is:

a. a campaign contribution as defined by the laws of the state;

PROPOSED AMENDMENT TO GIFT RULE – VALUE LIMITS

b. services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents; or

c. a plaque or other similar item given in recognition of individual or professional services in a field of specialty or to a charitable cause.

C. "Interested person," for purposes of this section, means a person or a representative of a person or, business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.

D. The prohibitions in this section do not apply if the gift or thing of economic value is given:

1. because of the recipient's membership in a group, a majority of whose members are not persons subject to the Code of Ethics, and an equivalent gift is given or offered to other members of the group; or
2. by an interested person who is a person within the family of the recipient, unless the gift is given on behalf of someone who is not a member of said family.

E. For purposes of this regulation, a gift or other thing of value is considered received when it comes into the possession or control of the person subject to the Code of Ethics, or his or her spouse or dependent child, and is a gift or other thing of value subject to the requirements of this regulation unless it is immediately returned to

PROPOSED AMENDMENT TO GIFT RULE – VALUE LIMITS

1 the interested person or given to a bona fide charitable organization without
2 benefit accruing to the person subject to the Code of Ethics.

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RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: May 20, 2025

Re: The Honorable Frank A. Ciccone, III

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in Senate discussions and voting on proposed legislation that defines various assault weapons and restricts the manufacture, sale, purchase, and possession of them, given that the Petitioner holds a license to deal firearms and would be subject to the legislation if it passes.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, is not prohibited by the Code of Ethics from participating in Senate discussions and voting on proposed legislation that defines various assault weapons and restricts the manufacture, sale, purchase, and possession of them, notwithstanding that the Petitioner holds a license to deal firearms and would be subject to the legislation if it passes, given that the circumstances herein justify the application of the class exception as set forth in R.I. Gen. Laws § 36-14-7(b), and subject to the guidance herein.

The Petitioner is a legislator serving as a member of the Rhode Island Senate, representing District 7, encompassing Providence and Johnston. Originally elected in 2002, the Petitioner has served continuously since. He was recently elected to the position of Senate Majority Leader. The Petitioner informs that a piece of proposed legislation, for which he is not a sponsor, is currently pending in the Senate that, if passed, would establish the Rhode Island Assault Weapons Ban Act of 2025 (act). He further informs that the act would define various assault weapons and restrict the manufacture, sale, purchase, and possession of those assault weapons. The Petitioner explains that the act would afford the owner of an assault weapon lawfully possessed on or before the effective date of the act the options to: (i) within one year from the effective date of the act, register the weapon with the police department in the city or town where the person resides or, if there is no such police department or the person resides out of state, with the Rhode Island State Police; (ii) render the weapon permanently inoperable; (iii) surrender the weapon to the police department in

the city or town where the person resides or, if there is no such police department or the person resides out of state, with the Rhode Island State Police; (iv) surrender the weapon to any police station or other location designated as a site of a bona fide “gun buy-back” program under conditions ensuring safe transport; or (v) transfer or sell the weapon to a federally licensed firearm dealer or person or firm lawfully entitled to own or possess such weapon.

The Petitioner states that he holds a Federal Firearms License (FFL) to deal firearms other than destructive devices. He further states that there are 99 FFL holders in Rhode Island in total, all of whom would be subject to the legislation. The Petitioner explains that, of those 99 FFL holders, he is one of 80 who deal firearms other than destructive devices.¹ He further explains that the remaining 19 FFL holders are manufacturers of ammunition and firearms.² The Petitioner represents that he derives little, if any, income from firearm sales, and that it has never been his primary source of income. He clarifies that he mainly uses his license to complete a few transactions each year for friends and family. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in Senate discussions and voting on the proposed legislation.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official 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 which he represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) of the Code of Ethics prohibits a public official from using his position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or a business by which he is employed or which he represents.

Section 36-14-7(b) of the Code of Ethics, often referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, or any person within his family, or any business associate, or any business by which he is employed or which he represents “as a member of a business, profession, occupation or group, or of any

¹ The Petitioner is one of 75 holders of a Class 1 FFL (Dealer in Firearms Other Than Destructive Devices). There are two holders of a Class 2 FFL (Pawnbroker in Firearms Other Than Destructive Devices), and three holders of a Class 8 FFL (Importer of Firearms Other Than Destructive Devices).

² There are 16 holders of a Class 7 FFL (Manufacturer of Firearms Other Than Destructive Devices), and three holders of a Class 6 FFL (Manufacturer of Ammunition for Firearms).

significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.” When determining whether particular circumstances justify the application of the class exception, the Ethics Commission considers the totality of those circumstances. Among the important factors to be considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

The Ethics Commission has previously concluded that application of the class exception was justified in a number of matters involving proposed legislation. For example, in Advisory Opinion 2023-6, the Ethics Commission concluded that a member of the Rhode Island House of Representatives was not prohibited from submitting, discussing, and voting on legislation that would relieve all 130 members of two homeowner associations from the financial responsibility for the upkeep and maintenance of water pumping stations that were not physically located on homeowner association property, notwithstanding that the petitioner belonged to one of those homeowner associations. That petitioner was cautioned by the Ethics Commission that, should the proposed legislation be revised in such a way that it would impact a smaller class or subclass of homeowner association members, or impact the petitioner individually or differently than the other homeowner association members to which the legislation would apply, he should either refrain from submitting the bill, and/or recuse from participating in its consideration, or seek further guidance from the Ethics Commission. See also A.O. 2020-12 (concluding that a member of the Rhode Island Senate was not prohibited from submitting a bill which would allow volunteer firefighters who met certain requirements to utilize the State’s vehicle bid list to purchase discounted personal vehicles, notwithstanding that the petitioner was a volunteer firefighter, given that the proposed legislation would impact equally all volunteer firefighters in Rhode Island who met the requisite requirements, and that the petitioner would not be impacted to any greater extent than any other similarly situated firefighter in the subclass); A.O. 2008-25 (concluding that a member of the Rhode Island House of Representatives, who in his private capacity owned and operated a business that, among other things, sold and installed fire alarms, could participate in a floor vote regarding legislation that would require insurers of commercial properties to provide a premium credit for the installation of fire suppression equipment, because the legislation, if passed, would benefit the petitioner’s customers to no greater extent than any other commercial property owners who utilized other businesses to install fire safety equipment); A.O. 98-40 (concluding that a legislator serving in the Rhode Island House of Representatives, whose spouse was a dentist, could participate in proposed legislation prohibiting any non-licensed person from directing the practice of dentistry that would impact all dentists and dental hygienists equally and concluding that the contemplated legislative activity, which involved broad-based issues of public policy, was precisely the type of legislative activity contemplated by the class exception).

Here, the Petitioner is one of 90 members of the class of FFL holders who would be impacted by the passage of the act. The Petitioner would be impacted by the legislation to no greater extent than any other individual member of the class of 90 FFL holders or the subclass of 80 FFL holders who deal firearms other than destructive devices to which he belongs. It is therefore the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception set forth in § 36-14-7(b) and that the Petitioner is not prohibited by the Code of Ethics from participating in Senate discussions and voting on the proposed legislation. However, in the event that his participation at any point veers into revising the proposed legislation in such a way that it would impact a smaller class or subclass of FFL holders, or impact the petitioner individually or differently than the other FFL holders to which the legislation would apply, he should either recuse from participating in its consideration, or seek further guidance from the Ethics Commission. Recusals shall be made consistent with the provisions of R.I. Gen. Laws § 36-14-6.

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, agency policy, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

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

Related Advisory Opinions:

A.O. 2023-6
A.O. 2020-12
A.O. 2008-25
A.O. 98-40

Keywords:

Class Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: May 20, 2025

Re: Sergeant Jason Brodeur

QUESTION PRESENTED:

The Petitioner, a sergeant with the Warwick Police Department, a municipal employee position, requests an advisory opinion regarding whether the established alternate chain of command policy would sufficiently insulate him from conflicts of interest arising out of his position, given the police department's anticipated hiring of the Petitioner's nephew to work as a communications specialist/dispatcher.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the established alternate chain of command policy would sufficiently insulate the Petitioner, a sergeant with the Warwick Police Department, a municipal employee position, from conflicts of interest arising out of his position, given the police department's anticipated hiring of the Petitioner's nephew to work as a communications specialist/dispatcher.

The Petitioner was hired as a police officer by the Warwick Police Department in 2011, and was promoted to the rank of sergeant in 2020. In 2023, he was assigned to the Administrative Services Division (ASD), where he is one of two sergeants. The Petitioner further states that he and his fellow ASD sergeant report directly to the ASD Officer in Charge (OIC), who is either a captain or a lieutenant, depending upon the schedule's rotation. The Petitioner adds that an administrative major oversees the entire ASD. The Petitioner informs that he and the other ASD sergeant oversee the ASD Communications Center, which is staffed by 16 civilian full-time communications specialists/dispatchers who are tasked with answering non-emergency and emergency calls for service and then dispatching officers to respond to those calls. He explains that the communications center is a 24/7 operation, and that there must be at least two dispatchers on duty at all times.¹ The hours for ASD dispatchers are as follows: 7:00 a.m. – 3:00 p.m. (1st shift); 3:00 p.m. – 11:00 p.m. (2nd shift); and 11:00 p.m. – 7:00 a.m. (3rd shift). The Petitioner states that he and the other ASD sergeant, whose duties are identical, work the 1st shift together, Monday through Friday. The Petitioner explains that, outside of the hours of 7:00 a.m. – 3:00 p.m.

¹ The Petitioner states that, ideally, there will be three dispatchers on duty at all times.

each Monday through Friday, supervision of the ASD dispatchers falls to the captain or lieutenant in charge of patrol, which may or may not be the captain or lieutenant assigned to the ASD.²

The Petitioner states that his nephew recently applied to become a dispatcher for the Warwick Police Department, and ranked first on the employment list. The Petitioner further states that the City of Warwick has a civil service system in place whereby candidates must meet minimum qualifications for a job, sit for a written test, and achieve a passing score in order to advance to the typing test, which is pass/fail. He adds that candidates who pass the typing test are invited to a structured, scored interview conducted by a panel comprised of the city's personnel department and two police officials. The Petitioner informs that a candidate's final score is weighed 60% based on the written test, and 40% based on the interview performance. He explains that candidates are rank ordered based on their final earned rating, and that the department must then select someone from the top three candidates. The Petitioner represents that he learned about his nephew's application to become a dispatcher when the Petitioner arrived to greet the applicants as a group to explain the demands of the position, such as the requirement that dispatchers work nights, weekends, holidays, and third shift to start, in case anyone then decided to withdraw their application. The Petitioner further represents that he saw his nephew among the candidates, immediately notified the ASD lieutenant of his conflict of interest, and removed himself from any involvement in the selection process for the new dispatcher.³

The Petitioner represents that his nephew, if selected to become a dispatcher, would serve a six-month period of probation during which the employment relationship could be terminated without recourse under the "just cause" provisions of the collective bargaining agreement between the city and Council 94 of the American Federation of State, County, and Municipal Employees (AFSCME), the union to which the dispatchers belong. The Petitioner explains that his nephew would start out on the first or second shift and be trained by the more experienced dispatchers and, eventually, transition to the third shift as a junior dispatcher. The Petitioner states that it is the custom of the police department to have the more experienced dispatchers train new staff and provide feedback to the sergeants and lieutenant regarding their progress. The Petitioner further states that, ordinarily, both he and the other ASD sergeant would participate in the training of new dispatchers and provide input on a new employee's probationary period performance. The Petitioner informs that, in the event that dispatcher staffing drops to below the minimum two people

² The Petitioner identifies the ranks within the Warwick Police Department in descending order as follows: chief, deputy chief, major, captain, lieutenant, sergeant, and patrol officer.

³ The Petitioner explains that he had not been involved in the selection process for a new dispatcher prior to arriving to address the candidates about the demands of the position. He adds that the ASD lieutenant, the other ASD sergeant, and a representative from the city's personnel division constituted the interview panel of final candidates.

required on a particular shift, a notice will go out to all dispatchers on the Police Detail Systems website informing them of the opportunity to work overtime. He adds that, if no one takes the shift, a rotating list of forces will be employed, whereby a person on the previous shift will be required to remain on shift for an additional four hours, and a person on the following shift will be required to arrive for their shift four hours early. The Petitioner states that neither he nor the other ASD sergeant exercise any discretion with regard to dispatcher overtime. The Petitioner represents that, ordinarily, routine matters of dispatcher discipline, such as counseling and/or verbal and written warnings, can be dispensed by the ASD sergeants. He adds that matters of performance and discipline are moved up the chain of command to the ASD-OIC, and that serious matters that may result in suspension or termination will be brought to the major or deputy chief, who will then work in consultation with the personnel department toward an outcome.

In light of the conflicts of interest that would result because of the Petitioner's role as an ASD sergeant in the division by which his nephew is expected to become employed as a dispatcher, including but not limited to those referenced above, an alternate chain of command has been established. Pursuant to that alternate chain of command, any matters concerning his nephew's training, supervision, evaluation, discipline, and/or decisions regarding his nephew's work hours or requests for furlough which carry with them any amount of discretion on the part of the Petitioner, will instead be performed by either the other ASD sergeant, or the captain or lieutenant serving as the ASD-OIC or, in the absence of the ASD-OIC, by whoever is covering for that person. The Petitioner represents that the other ASD sergeant and their superiors within the ASD agree with the proposed alternate chain of command.

The Code of Ethics provides that 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 in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if the public employee has reason to believe or expect that any person within his family, among others, 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). Also, a public employee may not use his public position to obtain financial gain, other than that provided by law, for any person within his family, among others. § 36-14-5(d).

The Code of Ethics contains specific provisions aimed at curbing nepotism which are laid out in 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) (Regulation 1.3.1). Pursuant to Regulation 1.3.1(B)(1), a public employee may not participate in any matter as part of his public duties if there is reason to believe or expect that any person within his family is a party to or participant in such matter, or will be financially impacted or obtain an employment advantage by reason of the public employee's participation. Additionally, Regulation 1.3.1(B)(2) prohibits a public employee from participating in the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of

any person within his family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission. The phrase “any person within his [] family” expressly includes “nephew.” Regulation 1.3.1(A)(2).

The Ethics Commission has issued numerous advisory opinions applying the provisions of the Code of Ethics to analogous questions involving family members. In those opinions, the Ethics Commission took the position that a public employee serving in a supervisory capacity would satisfy the conflict of interest and nepotism provisions of the Code of Ethics by recusing from participation in matters directly affecting his family member. For example, in Advisory Opinion 2018-21, the Ethics Commission determined that the established alternate supervisory chain of command was sufficient to insulate the petitioner, a sergeant with the Cumberland Police Department who had recently been assigned to the detective division, from conflicts of interest arising out of his new position, notwithstanding that his spouse was one of two detectives already serving in the same division. There, the petitioner’s new duties as a detective sergeant included not only the investigation and prosecution of cases, but the supervision of the other detectives in the division, thus, placing his spouse in a position subordinate to his. Prior to the petitioner’s assignment to the detective division, both detectives were supervised and reported directly to the captain, who reported to the deputy chief, who reported to the chief. The alternate chain of command submitted proposed that the petitioner’s spouse would continue to report to, and be directly supervised, by the captain. In the captain’s absence, such supervision would be exercised by the deputy chief and, in the event of the deputy chief’s unavailability, by the chief. See also A.O. 2005-19 (opining that the Code of Ethics would not prohibit the chief of the Cranston Police Department from continuing in that position, notwithstanding that his brother served in the department, given that an alternate chain of command had been established wherein the mayor would replace the chief as the final decision-maker on matters concerning the chief’s brother).

Similarly, in the instant matter, it is our opinion that the alternate chain of command policy outlined by the Petitioner and his superiors within the ASD, which requires the Petitioner to recuse from any decisions that may financially impact his nephew (including, but not limited to, his nephew’s supervision, evaluation, work assignment, promotion, transfer, and discipline) is reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest. As we have noted in prior advisory opinions issued to public safety personnel whose family members were employed by the same municipal agency, during discrete emergency situations where incident-specific supervision of his nephew may be unavoidable, no nepotism violation of the Code of Ethics will exist for the Petitioner. See, e.g., A.O. 2016-26 (opining that the Code of Ethics did not prohibit a lieutenant in the East Greenwich Fire Department from serving in that position upon the hiring of his brother as a probationary firefighter in the same department, provided that certain procedures were followed so that the lieutenant was removed from personnel decisions or other matters that particularly affected his family member, but that if, during discrete emergency situations,

such as fighting fires where incident-specific supervision of his brother may be unavoidable, no violation of the Code of Ethics would exist). The Petitioner is encouraged, however, to remain vigilant about identifying and avoiding any conflicts of interest that might arise given his nephew's position that are not addressed herein and is encouraged to seek further guidance from the Ethics Commission as needed. All episodes of recusal must be exercised consistent with the provisions of R.I. Gen. Laws § 36-14-6.

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, agency policy, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2018-21

A.O. 2016-26

A.O. 2005-19

Keywords:

Family: Public Employment

Family: Supervision

Nepotism

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: May 20, 2025

Re: Samantha Doyle

QUESTION PRESENTED:

The Petitioner, a community program liaison worker at the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, Office of Quality Assurance, a state employee position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from simultaneously working per diem as a Go Team on-call and weekend liaison at Family Service of Rhode Island.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a community program liaison worker at the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals, Office of Quality Assurance, a state employee position, is not prohibited by the Code of Ethics from simultaneously working per diem as a Go Team on-call and weekend liaison at Family Service of Rhode Island, consistent with the representations set forth herein, and provided that all of the work is 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 does not use her public employment to advertise or promote her private work.

The Petitioner is employed as a community program liaison worker by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH or department) at its Office of Quality Assurance. She states that she began her employment there in January 2025, and that her work hours are 8:30 a.m. to 4:00 p.m., Monday through Friday. The Petitioner further states that her duties include answering the department's telephone hotline and taking reports of abuse, neglect, mistreatment, and/or exploitation of persons 18 years of age or older who have behavioral and/or developmental disabilities.¹ The Petitioner explains that the department ordinarily receives such calls from social workers at Rhode Island Hospital, group homes, fire departments, police departments, family members of the individual who is the subject of the call, or the affected individual

¹ The Petitioner acknowledges that her actual duties vary from the duties listed in the job description she submitted with the instant request for an advisory opinion.

him or herself. The Petitioner further explains that she assesses the urgency of each call, and records each report in an electronic system. The Petitioner notes that calls that indicate a threat of imminent harm to a person are referred to an investigator immediately, and that each report that she records is later reviewed by a team of various BHDDH employees. She adds that, upon review, the report is either closed, forwarded to an investigator, or a determination is made that additional information needs to be collected. The Petitioner represents that while she is present at the team review meetings where she updates the case notes and later collects additional information as needed, she does not actively participate in the team review of the reports. By way of example, the Petitioner explains that if an individual is receiving outside support services, the Petitioner will contact the appropriate agency for clarification on the level of support received by the person. She adds that she will also obtain any existing police or hospital reports related to the alleged misconduct. The Petitioner explains that if an individual requires initial or additional services following a BHDDH team review, the individual will be referred to a BHDDH service coordinator who, in turn, will refer the individual to the appropriate state or private agency for receipt of those services.

The Petitioner represents that she has been offered a per diem position with Family Service of Rhode Island (FSRI) as a Go Team on-call and weekend liaison. The Petitioner explains that FSRI is a non-profit organization that is focused on improving the health and well-being of children and families across Rhode Island. Pursuant to the job description for the position submitted by the Petitioner, her duties would include the following: providing in-person crisis intervention and emergency screening in collaboration with law enforcement to individuals and families exposed to victimization and trauma in the community; responding as directed and as needed by law enforcement during weekends, holidays, and after hours; and providing coverage and support in the various Go Team communities. The Petitioner represents that, if permitted by the Code of Ethics to accept the position, she will be working on cases involving adolescents younger than 18 years of age, and will be advising FSRI's employees and/or members of a particular police department as to the appropriate state or private agencies to be contacted and how best to access the resources needed for the adolescent involved. She further represents that her duties will be to, each month, be on-call for one week and ride along for one weekend with a police officer from a police department to which she is assigned. The Petitioner states that her schedule during the on-call week would be as follows:

Friday 5:00 p.m. – Monday 8:00 a.m.
Monday 5:00 pm – Tuesday 8:00 a.m.
Tuesday 5:00 p.m. – Wednesday 8:00 a.m.
Wednesday 5:00 p.m. – Thursday 8:00 a.m.
Thursday 5:00 p.m. – Friday 8:00 a.m.

She notes that during that time she will be required to be available by telephone to render advice to FSRI's employees or police officers in a particular situation involving an

adolescent. The Petitioner states that her hours during her police ride-along weekend would be Saturday and Sunday from 11 a.m. to 7 p.m. each day. During that time, she will be required to respond in person along with local police officers to crisis situations and advise those officers on how to proceed in the situation and as to what services an adolescent might need.

The Petitioner explains that cases involving adolescents are referred to the Rhode Island Department of Children, Youth & Families (DCYF), rather than the BHDDH. However, she represents that should a case to which she responds as an FSRI employee also involve a person open to the BHDDH, she would recuse and let the emergency services clinician on the scene handle the situation. The Petitioner expects that she would be required to fill out a report relative to the case she has worked on in her position with FSRI. She anticipates that such a report may be forwarded to the DCYF. The Petitioner represents that she will not be required to appear before the BHDDH to represent FSRI because, as an FSRI employee, she would only be assigned cases involving adolescents. The Petitioner states that there are sometimes situations where an adolescent ages out of DCYF jurisdiction and is then referred to the BHDDH for services, but that BHDDH employees do not have access to the individual's DCYF file. The Petitioner states that she will recuse from her BHDDH duties in matters in which she has worked as an FSRI employee that involved an adolescent who is now under the BHDDH's jurisdiction. The Petitioner represents that she would also recuse from taking and recording the results of calls made by FSRI to the BHDDH reporting abuse.² She states that she will refer such calls to a colleague within her office.³ Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may accept the position with FSRI.

No person subject to the Code of Ethics shall accept other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of and by reason of her official duties. R.I. Gen. Laws § 36-14-5(b). Further, no person subject to the Code of Ethics shall engage in any business, employment, transaction, or professional activity which is in substantial conflict with the proper discharge of her duties or employment in the public interest. § 36-14-5(a). A substantial conflict of interest exists if a public official or employee has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, no person subject to the Code of Ethics

² The Petitioner notes that from the start of her employment with the BHDDH, FSRI has only made two to three reports on the BHDDH's hotline.

³ The Petitioner explains that she is the only community program liaison worker within Office of Quality Assurance and that she has three colleagues that are not her subordinates and who can handle calls coming through the hot line upon the Petitioner's recusal.

shall use 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).

The Code of Ethics further prohibits a public employee from representing herself or any other person, or acting as an expert, before a state or municipal agency of which she is a member or by which she is employed. § 36-14-5(e)(1)-(3). A person “represents” herself before a state agency if she participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in her favor. R.I. Gen. Laws § 36-14-2(12). These prohibitions extend for a period of one year after the public employee has officially severed her position with the subject state or municipal agency. § 36-14-5(e)(4). Finally, a public employee must recuse from participation in any matter in which her business associate or employer appears or presents evidence or arguments before her state agency. 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” § 36-14-2(3). A person is defined as “an individual or a business entity.” § 36-14-2(7).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited by the Code of Ethics 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 not impair their independence of judgment, involve the use or resources of their public office, nor create an interest in substantial conflict with their public duties. For example, in Advisory Opinion 2022-38, the Ethics Commission opined that a supplemental block grant planner for the 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); A.O. 2025-32 (opining that the chief financial officer for the Rhode Island Department of Housing was not prohibited by the Code of Ethics from simultaneously working part-time for the Newport Public School Department as its business manager, with working hours Monday through Friday, 6:00 a.m. to 8:00 a.m. & 5:00 p.m. to 8:00 p.m., and on weekends as needed, provided that all of the work was 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).

Here, based upon the facts as represented by the Petitioner, there is no evidence to suggest that her per diem position with Family Service of Rhode Island would either impair her independence of judgement or create an interest that in substantial conflict with her public duties at the BHDDH. Accordingly, the Petitioner is not prohibited by the Code of Ethics from working in her private capacity as a Go Team on-call and weekend liaison in the manner described herein, provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her state employment with the BHDDH. Also, the Petitioner shall not use her public position to promote or advertise her private employment, nor shall she list her public employment as part of the advertisement of her private work. Additionally, the Petitioner shall recuse from any matter that comes before her in her capacity as a community program liaison worker at the BHDDH that involves FSRI or for which an authorized representative of FSRI appears on behalf of FSRI, and to refer that matter to her superiors. Recusal shall be pursuant to 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 her 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, agency policy, 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)
§ 36-14-2(12)
§ 36-14-5(a)
§ 36-14-5(b)
§ 36-14-5(d)
§ 36-14-5(e)
§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2025-32

A.O. 2022-38

A.O. 2020-1

Keywords:

Secondary Employment

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: May 20, 2025

Re: Kurt Wilcox

QUESTION PRESENTED:

The Petitioner, a member of the West Greenwich Planning Board, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against appearing before one's own board for purposes of seeking review and approval of a proposed development plan for a parcel of real property that his company owns in the town.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the West Greenwich Planning Board, a municipal appointed position, does not qualify for a hardship exception to the Code of Ethics' prohibition against appearing before one's own board for purposes of seeking review and approval of a proposed development plan for a parcel of real property that his company owns in the town.

The Petitioner is a member of the West Greenwich Planning Board, having been appointed to that position by the West Greenwich Town Council in July 2020. The Petitioner represents that in his private capacity, he owns and operates a landscaping business and a nursery. He adds that he also owns KAW Realty, LLC (KAW), a real estate holding company, and is a licensed contractor.

The Petitioner would like to submit a site development plan to the planning board, seeking the board's approval for the development of a 1.5-acre undeveloped parcel of land (lot) that KAW owns in the Town of West Greenwich. The Petitioner represents that the lot was originally part of a 2.6-acre, undeveloped parcel of land (property) that KAW purchased in December 2017 and for which the seller had received approval from the planning board of a preliminary development plan. The Petitioner states that the approved plan included the construction of a 9,600 square-foot building comprised of eight contractor garages. The Petitioner further states that in 2018, KAW received a permit to construct the proposed building, and that in 2019, KAW obtained a certificate of occupancy for the building, followed by a final plan approval issued administratively by the town planner.

The Petitioner explains that in 2020, KAW created a condominium association for the building, resulting in each of the eight contractor garage units becoming an individual condominium unit. The Petitioner states that in March 2020, prior to his appointment to the planning board, KAW filed with the town a site plan entitled “Condominium Plan-Phase I Nooseneck Business Center (Units 1-8).”¹ The Petitioner represents that the condominium plan was described as phase I and that phase II was identified on the plan as a future phase, but that no specific site plan for phase II was submitted with the condominium plan or presented to the planning board. During telephone conversations with Ethics Commission staff, the town planner and the Petitioner noted that although no specific plans for phase II were submitted to the town prior to the Petitioner’s appointment to the planning board, it was presumed that the property would eventually be further developed in the future due to the size and nature of the land, and the facts that the initial building only occupied about half of the land.

The Petitioner states that KAW has since sold all of the condominium units along with their common areas, and that he is no longer involved with the condominium association. The Petitioner states that KAW continues to own the remainder of the property. The Petitioner represents that he would like to construct an additional building on the remaining parcel of land. The Petitioner refers to this new construction plan as phase II. He anticipates that the building will be either the same or similar to the one previously built and will also be comprised of contractor garages. The Petitioner explains that the demand for commercial space is high and that the additional contractor garages would benefit the community by giving business owners who lack the means or demand to construct a freestanding large building a place for their business to operate in compliance with zoning regulations which typically prohibit commercial uses in residential zones.

The Petitioner represents that the planning board is vested with the authority to approve or reject the proposed plan, request changes to it, or impose additional conditions for its approval. Examples would include relocating the parking spaces, reducing the size of the building, or requiring a second opinion on the drainage design. The Petitioner states that he would follow any recommendations or requirements of the planning board. During a telephone conversation with the Ethics Commission staff, the town planner explained that although the majority of the property is zoned for commercial use, the rear portion of it extends into a residential zone. The town planner further explained that because the property contains a so-called “split zone” by ordinance, a proposed plan may extend 30 feet into either zone without the need for approval by the planning board. However, if the Petitioner would like to extend the commercial zone more than 30 feet into the residential zone in order to better accommodate the new construction, he would be required to seek

¹ During a telephone conversation with the Ethics Commission staff, the town planner explained that the condominium plan is neither presented to, nor approved by, the planning board.

and obtain a variance from the planning board. The town planner stated that the commercial development approval process has changed in the past two years. He noted that the Petitioner may choose to either submit a master plan or a combined plan that includes preliminary and master plans. The Petitioner represents that he is not certain which one he would pursue, and that his decision would depend on the town's requirements. The Petitioner states that he is likewise not sure at this time whether he would request a variance and/or whether he would rent or sell the new spaces.

The Code of Ethics prohibits a public official from representing himself, or authorizing another person to appear on his behalf, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). While many conflicts can be avoided under the Code of Ethics by recusing from participation and voting in certain matters, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, § 36-14-5(e)'s prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5 (e)(1) & (4). Upon receipt of a hardship exception from the Ethics Commission, the public official must also advise the state or municipal agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations that the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. § 36-14-5(e)(1)(i-iii). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review, permitting him to appear before the zoning board to request a dimensional variance for his personal residence, but requiring him to recuse himself from participating and voting during the zoning board's consideration of his request for relief).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency of which he is a member. Having determined that § 36-14-5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will now consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship that will permit him to represent himself, either personally or through a representative, before the planning board.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved an existing business or a new commercial venture; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors, and no single factor is determinative.

In past advisory opinions, the Ethics Commission has applied the hardship exception in situations involving commercial ventures where exceptional circumstances were present and/or a matter involved modification to the official's place of business. For example, in Advisory Opinion 2021-12, the Ethics Commission opined that a former member of the Richmond Planning Board qualified for a hardship exception relative to his applications involving the development of two pieces of property, both of which had been purchased by the petitioner prior to his appointment to the planning board. The Ethics Commission noted that prior to the petitioner's appointment to the planning board, he had purchased the first property with the intent to create a subdivision with an affordable housing component, had begun the planning board application process for its subdivision, and had appealed the planning board's initial denial of his application to the State Housing Appeals Board. If the appeal was successful, the petitioner then would be required to present his master plan application again before the planning board. Similarly, the petitioner purchased the second property and filed an application for a land transfer of the affordable housing component of the first property to the second property prior to his appointment to the planning board. The denial of the petitioner's land transfer application led to his having to engineer the two properties separately and simultaneously at a substantial cost of money and time. Additionally, that petitioner had only served as a member of the planning board for a period of seven weeks, during which time the planning board met only once.

Similarly, in Advisory Opinion 2018-24, the Ethics Commission granted a hardship exception to a member of the Scituate Town Council, allowing him to represent himself, either personally or through a representative, before the Scituate Plan Commission, for which the town council was the appointing authority, to seek and obtain preliminary/final approval of a comprehensive permit application. The application related to a parcel of undeveloped land on which the petitioner had planned to build a housing development consisting of 18 condominium units, a number of which would be deemed affordable housing under circumstances where affordable housing in the Town of Scituate fell below the required percentage. In opining that the totality of the circumstances justified granting a hardship exception to §36-14-5(e)'s prohibitions, the Ethics Commission relied upon the petitioner's representation that he had purchased the property, filed the comprehensive permit application, and obtained a master plan approval prior to his election to the town council. The petitioner had further represented that, absent preliminary/final approval from the Scituate Plan Commission, he stood to suffer significant economic impact due to his considerable investment to date.

Additionally, in Advisory Opinion 2001-29, the Ethics Commission granted a hardship exception to a member of the Narragansett Town Council, permitting him to appear before the Narragansett Zoning Board, over which he had appointing authority, in order to apply for an alteration to the site plan to enclose the outdoor seating areas of his restaurant that are used during the summer season. The Ethics Commission based its decision to grant the hardship exception primarily on the fact that the petitioner had owned and operated the restaurant for eight years prior to his election to the town council. See also A.O. 2011-33

(granting a hardship exception to a former Westerly Planning Board member and permitting him to seek a permit from his former board in order to install an additional sign at his ice cream shop because the business was his primary source of income and his ownership interest predated his service on the planning board); A.O. 2005-32 (granting a hardship exception to a Westerly Planning Board member, permitting him to appear before the planning board to request a zone change which would allow the petitioner to relocate his existing business, an ice cream shop, necessitated by the expiration of his current lease); A.O. 95-110 (granting a hardship exception to a member of the Middletown Town Council, permitting him to appear before the Middletown Zoning Board, over which the town council has appointing power, in order to apply for a special zoning exception for the addition of a drive-up window to the petitioner's restaurant, based on his vested property rights in his primary business).

In contrast, the Ethics Commission has previously declined to grant a hardship exception in cases where matters involved new commercial ventures. In Advisory Opinion 2003-49, the assistant solicitor for the Town of Lincoln wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board regarding the development of two parcels of real estate that he owned in the town. The hardship exception was not granted because the petitioner's ownership of the lots did not predate his appointment as assistant solicitor, and it was uncertain whether either lot would be used as the petitioner's primary residence or simply resold in commercial transactions after development. The Ethics Commission also declined to recognize a hardship in Advisory Opinion 2000-41, where a member of the Exeter Zoning Board sought to generate additional income by entering into a contract to locate a cellular communications tower on his residential property. There, the Ethics Commission opined that, although the subject property involved the petitioner's principal residence, the proposed commercial venture served only to generate additional income for the petitioner. See also A.O. 2006-43 (declining to grant a hardship exception to a member of the Barrington Planning Board who wished to seek approval from his own board to construct an affordable housing development, because the property was not the petitioner's residence or place of business, the development appeared to be in furtherance of a commercial venture, and the petitioner's legal interest in the property did not predate his appointment to the planning board); A.O. 97-146 (declining to grant a hardship exception to a member of the North Kingstown Zoning Board who wished to seek approval from his own board for certain variances relating to a residential subdivision for which he was the developer).

In the instant advisory opinion, there are factors that both favor and disfavor the application of the hardship exception. On the one hand, the Petitioner and KAW purchased the 2.6-acre property with an approved master plan for the construction of a commercial building on a portion of the land, completed the construction of that building, and filed the condominium plan prior to the Petitioner's appointment to the planning board. The Petitioner and the town planner both represented that it was expected that the land would eventually be further developed, given the size and nature of the land, and that just under

half of it is being utilized by the first building. On the other hand, however, and perhaps more significantly, KAW sold all of the individual contractor garages, including their common areas, retaining ownership of the remaining 1.5 acres of land. Now, and subsequent to his appointment to the planning board, the Petitioner would like to submit a new site plan to the planning board for the construction of a new commercial building on the remaining 1.5 acres of land. Although the Petitioner refers to the new construction as “phase II,” plans for this phase were never previously a part of either the master plan approval in 2017, or the condominium plan in 2020. Furthermore, this property is neither the Petitioner’s primary place of business, nor his primary residence. The proposed development is a new commercial venture designed to generate additional income for the Petitioner. Under these specific circumstances, the facts disfavoring the application of the hardship exception to the Code of Ethics’ longstanding and widely known prohibition against a public official bringing his own financial interests before his own board outweigh the facts supporting it. Accordingly, based on the Petitioner’s representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of Ethics Commission that the totality of the circumstances here does not justify the granting of a hardship exception to the Code of Ethics’ prohibition against the Petitioner appearing before the planning board while he serves on the board and for a period of one year following his official severance from it. Therefore, KAW’s application relative to the development of the lot shall not be submitted to the planning board for review and approval.

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, agency policy, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(e)(1)

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

Related Advisory Opinions:

A.O. 2021-12

A.O. 2018-24

A.O. 2014-26

A.O. 2011-33

A.O. 2006-43

A.O. 2005-32

A.O. 2003-49

A.O. 2001-29

A.O. 2000-41

A.O. 97-146

A.O. 95-110

Keywords:

Hardship Exception

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: May 20, 2025

Re: Brian Thalmann, PE

QUESTION PRESENTED:

The Petitioner, an alternate member of the Smithfield Zoning Board of Review, a municipal appointed position, who in his private capacity is a professional engineer, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in zoning board discussions and decision-making relative to an application for a dimensional variance allowing the applicant to construct a detached garage on property that is part of a subdivision, given that the Petitioner was the engineer for the subdivision.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an alternate member of the Smithfield Zoning Board of Review, a municipal appointed position, who in his private capacity is a professional engineer, is not prohibited by the Code of Ethics from participating in zoning board discussions and decision-making relative to an application for a dimensional variance allowing the applicant to construct a detached garage on property that is part of a subdivision, notwithstanding that the Petitioner was the engineer for the subdivision.

The Petitioner is a member of the Smithfield Zoning Board of Review, having been appointed to that position by the Smithfield Town Council in December 2024. The Petitioner represents that he serves as a first alternate and, as such, he attends zoning board meetings and participates in discussions on matters presented before it. The Petitioner explains that he only participates in the zoning board's vote on a matter when an alternate is required in order to achieve a quorum.

The Petitioner states that before the zoning board is an application for a dimensional variance that would allow the applicant (homeowner) to construct a detached garage on his property. The Petitioner represents that the subject property is part of a subdivision comprised of approximately 32 or 33 single-family homes. The Petitioner states that he and the firm he previously owned were hired by the original owner (developer) to design

the subdivision. The Petitioner explains that he was the engineer in responsible charge and that his duties included, but were not limited to, designing the locations of the utilities, roadways, and drainage. The Petitioner represents that he completed the work for the developer in or about 2008, and that he was compensated for the services rendered with no outstanding balances remaining. The Petitioner states that he does not have any current business relationship with the developer nor does he have any existing or former business relationship with the homeowner. The Petitioner further states that no information that has been provided by the homeowner as part of the application package contains any plans that had been previously prepared by the Petitioner or his firm at the time, and that his previous work relative to the subdivision is not being challenged. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether, if called upon to do so in his capacity as an alternate member, he may participate in the zoning board's discussions and vote relative to the application for a dimensional variance.

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 that is in substantial conflict with the proper discharge of his duties 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, any person within his family, his business associate, or any business by which he is employed or which he represents. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) prohibits a public official from using his position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or represents. Further, 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002) states that a public official must recuse himself from participation in his official capacity when his business associate or employer appears or presents evidence or arguments before his municipal agency. 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).

Here, the Petitioner represents that the applicant is not the Petitioner's current or former client. The Petitioner states that none of his plans relative to the development of the subdivision that were prepared for the developer are subject to the relief sought in the application. Therefore, the above-cited provisions of the Code of Ethics are inapplicable here. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in zoning board discussions and/or voting relative to the application for dimensional variance discussed herein.

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, agency policy, 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)

Keywords:

Business Associate