

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2025-43

Approved: July 1, 2025

**Re: Dylan Chase**

### **QUESTION PRESENTED:**

The Petitioner, the superintendent of the New Shoreham Water Pollution Control Facility, a municipal employee position, who in his private capacity owns and operates Block Island Septic Services, LLC, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from providing services in his private capacity to customers within the town's sewer district, given that there are few qualified technicians available to accommodate the needs of those customers.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the superintendent of the New Shoreham Water Pollution Control Facility, a municipal employee position, who in his private capacity owns and operates Block Island Septic Services, LLC, is prohibited by the Code of Ethics from providing services in his private capacity to customers within the town's sewer district, notwithstanding that there are few qualified technicians available to accommodate the needs of those customers.

The Petitioner is employed by the New Shoreham Sewer Commission as the superintendent of the town's water pollution control facility (sewer plant). He identifies his duties as follows: supervising and overseeing operations and maintenance of the sewer plant; meeting permit requirements as regulated by the Rhode Island Department of Environmental Management; recommending and reporting on operations budgets to the sewer commission; recommending applicants for hire by the sewer commission; overseeing capital improvement planning; implementing laboratory facilitation and supervising laboratory testing; meeting certification requirements regulated by the Rhode Island Department of Health; and overseeing the town's sewage collection system and all associated appurtenances, including the operation and maintenance of five associated pumping stations. The Petitioner states that he supervises the work of three sewer operators and one administrative assistant, and that his regular work hours are from 7:00 a.m. - 3:30 p.m., Monday through Friday.

The Petitioner represents that there are approximately 1,200 septic users who reside outside of the town's sewer district and who are not connected to the town's sewer system. He explains that people outside of the sewer district rely on septic systems to collect their sewage and are required by town ordinance to ensure adequate maintenance of those septic systems. The Petitioner further explains that the town's wastewater management office, of which he is not a part, oversees that requirement and that neither he nor the sewer commission has any oversight over people who are not connected to the town's sewer system.

The Petitioner represents that there are approximately 400 sewer customers who reside within the town's sewer district and who are connected to the town's sewer system. He explains that customers within the sewer district have wet wells or sewage tanks on their property which discharge periodically into the public sewer system. The Petitioner further explains that final treatment of the sewage for these customers occurs at the town's wastewater treatment facility. The Petitioner informs that wet wells and sewage tanks within the sewer district should undergo the same adequate maintenance that the septic systems used by people outside of the sewer district do. He adds that a town ordinance addressing low-pressure sewer grinder pump stations, in particular, expressly states that "[a] two year operation and maintenance service contract for the pumping unit shall be obtained by the contractor or dwelling owner for each unit and submitted to the Sewer Superintendent<sup>1</sup> prior to receiving a permit for installation."<sup>2</sup>

The Petitioner states that in August of 2024, he established Block Island Septic Service, LLC, a private company through which he answers calls from people who require service and maintenance for their septic systems. He further states that he operates this company from his home outside of his municipal work hours, that he has no employees, and that he does not advertise his business. The Petitioner explains that, to date, he has serviced only two clients, both of whom reside outside of the sewer district.

The Petitioner represents that he also would like to provide maintenance and other services in his private capacity to customers within the sewer district. He cites, by way of example, general maintenance activities such as checking floats and control panels, and servicing and/or replacing pumps and filters. The Petitioner informs that, although none of the work he performs for people outside of the sewer district would ever intersect with his public role, he is tasked within his public role to inspect the sewer connections of customers within

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<sup>1</sup> The Petitioner is the Sewer Superintendent in New Shoreham.

<sup>2</sup> See <https://ecode360.com/36723660#36723661> (last visited June 6, 2023).

the sewer district.<sup>3</sup> He states that in the event he discovers a broken or defective component associated with the installation of a sewer connection, he has the authority and responsibility to notify the customer in writing of the need to correct the situation. The Petitioner acknowledges that an installer could rebut an alleged problem with an installation by claiming that the fault rested not with the installation, but with the subsequent servicing of the system. The Petitioner further acknowledges that, were he to service the wet wells or sewage tanks of customers within the sewer district, a conflict of interest could occur in the event he is called as a witness before the sewer commission by which he is employed in order to answer questions about the circumstances surrounding the need for a particular service, the nature of the service he provided, and other relevant information.

The Petitioner asserts that general maintenance to wet wells and sewage tanks on an annual basis would reduce by 50% or more the 3-4 costly emergencies that arise in New Shoreham between Memorial Day and Columbus Day. He explains that one technician who previously serviced customers within the town's sewer district has since moved off-island and is no longer generally available to travel to the island. The Petitioner adds that technicians from the mainland are either unable or unwilling to spend the time and money to travel to New Shoreham to perform maintenance work. The Petitioner represents that there are two septic tank installers and one local plumbing service in New Shoreham that perform emergency repairs in town, but they either do not meet the requirements to perform annual maintenance, or are unwilling to do so because they are so busy with other projects. He explains that, even though approximately 38 customers within the sewer district have mandatory operation and maintenance service contracts with the contractors who installed their systems, those contractors are not honoring their maintenance obligations. The Petitioner underscores that his request to be allowed to provide maintenance and other services for customers within the sewer district in his private capacity is based solely on the general unavailability of qualified technicians to meet the demands of those customers.

The Petitioner represents that, if allowed to service customers within the sewer district in his private capacity, his independence of judgment with respect to his public duties would not be impaired, and that he would complete his private work outside of his normal work hours for the town and without the use of public resources. He states that, in his private capacity, he would most likely work 5-10 hours per week, which would allow him to service 3-5 customers each week. The Petitioner currently anticipates that he could personally, without additional help, adequately maintain the systems of customers within the sewer district and respond to their service calls. He explains that if the demand for his services were to increase, he would consider training someone to assist him. The Petitioner

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<sup>3</sup> The Petitioner explains that he does not install those sewer connections, only inspects them.

states that he was once sent to respond to an emergency within the sewer district in his public capacity, but that he does not do so regularly. It is under this set of facts that the Petitioner seeks guidance regarding whether he is prohibited by the Code of Ethics from providing services in his private capacity to customers within the town's sewer district.

The Code of Ethics provides that no person subject to the Code of Ethics shall accept other employment which will either impair his independence of judgment as to his official duties or employment or require or induce him to disclose confidential information acquired by him in the course of, and by reason of, his official duties or employment. R.I. Gen. Laws § 36-14-5(b). Additionally, 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. § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of his duties in the public interest if he has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or 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, the Code of Ethics provides that a public employee shall not use his public office or confidential information received through his holding public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). A "business associate" is defined as a "person joined together with another person to achieve a common financial objective." R.I. Gen. Laws § 36-14-2(3). A "person" is defined as an "individual or a business entity." § 36-14-2(7).

The Code of Ethics further prohibits a public official or employee from representing himself or any other person, or acting as an expert witness, before a municipal agency of which he is a member or by which he is employed. § 36-14-5(e)(1)-(3). A person "represents" himself before a municipal agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his favor or in favor of another person. § 36-14-2(12) & (13); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). These prohibitions extend for a period of one year after the public official or employee has officially severed his position with the subject municipal agency. § 36-14-5(e)(4). Finally, a public employee must recuse from participation in any matter in which his business associate or employer, or another person authorized by his business associate or employer to act on their behalf, appears or presents evidence or arguments before his municipal agency. 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding other employment that is secondary to their primary public positions, provided that the other employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public

duties, and subject to certain other restrictions. The Ethics Commission examines several factors when considering potential conflicts regarding other employment. These factors include, but are not limited to, the nexus between the official's public duties and other employment; whether the employee completes such other work outside of his normal working hours and without the use of public resources; whether the employee is required to appear before his own agency as part of his other employment; whether such other work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his public position to solicit business or customers. See General Commission Advisory No. 2009-4.

The Ethics Commission has previously advised public officials and employees who wished to engage in private secondary employment of their obligations under the Code of Ethics. See, e.g., A.O. 2009-31 (opining that the chief plumbing investigator for the Rhode Island Department of Labor and Training, who was also a licensed master plumber and pipefitter, was prohibited by the Code of Ethics from working as a plumber and pipefitter in Rhode Island, but was not prohibited from performing such work outside of the state, provided that such work was performed on his own time and without the use of public resources and, further provided, that he did not use his state position to recruit potential clients); A.O. 2008-12 (opining that the building official for the Town of Little Compton could simultaneously work as a finish carpenter contractor in the town, provided that he did not inspect his own work).

The Ethics Commission has consistently opined that public officials and employees may not participate in matters coming before them in their public capacities when it is reasonably foreseeable that such matters will have a direct financial impact on their business associates or themselves. See, e.g., A.O. 2019-60 (opining that the Town of New Shoreham's building official, who in his private capacity owned and operated a house watch service there, was required to recuse from any matters before his agency that involved or financially impacted his current business associates); A.O. 2005-1 (opining that a recent appointee to the Town of New Shoreham Motor Vehicles for Hire Commission could serve on the commission while holding a taxi license, but was required to recuse himself from participating in certain matters that were likely to result in a personal, financial impact).

The Ethics Commission has regularly concluded that under the very strict, but very clear, language of § 36-14-5(e) public officials may not appear before an agency of which they are a member or by which they are employed prior to the expiration of one year from the date of their separation from that agency, absent a substantial hardship if denied that opportunity. See, e.g., A.O. 2006-42 (opining that the former Rhode Island State Fire Marshal was not prohibited by the Code of Ethics from providing consulting services to private companies, national services, and schools provided that he did not represent his employer's or his business associate's interests before his former agency for a period of one-year following his official severance of employment, and did not disclose confidential

information obtained during the course of his state employment); A.O. 2000-35 (opining that a member of the New Shoreham Town Council could appear before that agency to provide information regarding his company's participation in the Department of Energy's (DOE) Small Wind Turbine Field Verification Program, in which the town would be invited to participate, given the Ethics Commission's determination that it would be a substantial hardship to the town if, because of the petitioner's status as a town council member, it were denied the opportunity to participate in the DOE's program; therefore, the petitioner could appear before the town council and other municipal boards to provide information and answer any questions about the program, but the petitioner was required to recuse from the town council's consideration of any matters regarding the program and/or his company).

Here, despite the likelihood that the Petitioner could service customers within the sewer district outside of his normal municipal working hours and without the use of public resources, the remaining factors employed when considering potential conflicts regarding other employment present insurmountable issues. The nexus between the Petitioner's public and proposed private duties is such that confusion would likely occur during the inevitable overlap of the two positions. For example, when the Petitioner is called in his public capacity to the home of a customer within the sewer district to identify a problem with a wet well or sewage tank, the Petitioner would then be the one to return in his private capacity to rectify the problem. The Petitioner acknowledges that, were he to identify the installation of the sewer connection as the source of a problem, the installer could allege that the fault was not with the installation, but with subsequent service to the system by the Petitioner. This would then require the Petitioner to inspect his own work, which is prohibited by the Code of Ethics. Furthermore, the work in which the Petitioner seeks to engage in his private capacity is directly within an area over which he has decision-making jurisdiction in his public capacity. As the sewer superintendent, the Petitioner is the municipal employee to whom proof of a two-year operation and maintenance service contract for a particular pumping unit must be submitted by the installer or dwelling owner before the Petitioner will even issue a permit for installation. Finally, use of his public position to solicit business or customers for his private company could become an unavoidable, albeit unintentional, consequence for the Petitioner.

The Ethics Commission is aware of the unique needs of the town of New Shoreham, given its remote location and low population. There is, however, no hardship exception for secondary employment. Hardship exceptions to the Code of Ethics' prohibitions identified herein are limited to § 36-14-5(e)'s representation of oneself before the state or municipal agency of which he is a member or by which he is employed. If this were instead, for example, a situation in which the Petitioner sought to leave his municipal position in order to start a private business to address the need for septic and related services in New Shoreham, an exception to the revolving door requirement that the Petitioner not appear before the sewer commission for a period of one year following the severance of his employment from that agency might be allowed. See A.O. 2014-5 (opining that a member

of the New Shoreham Town Council's private recycling management business was authorized to bid on new contracts through an open and public bidding process for services that it currently provided to the town, because the unique circumstances justified an exception to the Code of Ethics' Municipal Official Revolving Door Regulation).<sup>4</sup>

The Ethics Commission recognizes that allowing the Petitioner to provide services in his private capacity to customers within the sewer district could be of great convenience to those customers. However, the circumstances as described here do not appear to be temporary, and the Petitioner's private clients would become his business associates, which would expose him to even more potential conflicts of interest. Furthermore, service providers are available for true emergencies, and a number of customers within the sewer district and/or the contractors who install their sewer connections are required by municipal law to produce evidence of a two-year operation and maintenance service contract to the town in advance of a sewer connection installation. Also, the Petitioner has on at least one occasion been sent to address a sewer emergency in his public capacity. For these, and all of the foregoing reasons, and consistent with the applicable provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from providing services in his private capacity to customers within the town's sewer district.

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

Code Citations:

§ 36-14-2(3)

§ 36-14-2(7)

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<sup>4</sup> In Advisory Opinion 2013-37, issued to the same petitioner who sought and received Advisory Opinion 2014-5, the Ethics Commission opined that the petitioner's business was prohibited from seeking or accepting new contracts with the town for the duration of the petitioner's service on the town council, and for a period of one year after his official date of severance from the town council. The petitioner resigned from the town council the day after the advisory opinion was issued. In allowing the exception to the Code of Ethics' municipal revolving door regulation, the Ethics Commission noted that the recycling business was the petitioner's primary source of income, he would not have sought election to the town council had he anticipated the problem, he immediately resigned when he learned of the conflict, and the petitioner's company would be bidding on contracts for services that he had been providing to the town for at least ten years.

§ 36-14-2(12)

§ 36-14-2(13)

§ 35-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(e)

§ 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)

Related Advisory Opinions:

A.O. 2019-60

A.O. 2014-5

A.O. 2013-37

A.O. 2009-31

A.O. 2008-12

A.O. 2006-42

A.O. 2005-1

A.O. 2000-35

G.C.A. 2009-4

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