

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-49

Approved: August 19, 2025

Re: The Town of New Shoreham Town Council

QUESTION PRESENTED:

The Town of New Shoreham Town Council, by and through its solicitor, Nicholas A. Solitro, requests an advisory opinion regarding whether one or more town council members may, pursuant to the Rule of Necessity, participate in the town council's consideration of a proposed ordinance that would regulate the operation of courtesy shuttles by local business owners, notwithstanding the stated conflicts of interest by those town council members, so that the town council can achieve a necessary quorum of three members.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the town council member identified below may, pursuant to the Rule of Necessity, participate in the town council's consideration of a proposed ordinance that would regulate the operation of courtesy shuttles by local business owners, notwithstanding the stated conflict of interest by that town council member, so that the town council can achieve a necessary quorum of three members.

The solicitor for the Town of New Shoreham, writing on behalf of the New Shoreham Town Council, informs that the town council consists of five members. The solicitor states that earlier this year, the town council received a letter from two New Shoreham residents who own and operate taxi businesses on the island. Enclosed with the letter was a proposed ordinance for consideration by the town council which would regulate the provision of courtesy shuttles by local businesses to their patrons. The solicitor informs that the increased use of courtesy shuttles over the past several years has become contentious as it may be taking business away from taxi and bus drivers.¹

¹ Following telephone conversations with each of the town council members who ultimately cited conflicts of interest in this matter, Ethics Commission staff learned that there are approximately 34 active taxi licenses in New Shoreham and there is an extensive waitlist for which people will wait years for an opportunity to obtain a taxi license. Additionally, there are two active bus licenses in New Shoreham. There are reportedly at least ten courtesy shuttles currently operating on the island, some of which travel from an

The solicitor advises that when this matter appeared on the town council's agenda last June, the following three town council members recused, citing a conflict of interest: Tristan Payne, Margaret O'Neill, and William McCombe. The solicitor states that there remain only two town council members who did not recuse and are able to participate in the consideration of the proposed ordinance. However, the solicitor further states that Article IV, Section 405 of New Shoreham's Home Rule Charter requires a quorum of three members for a town council meeting. The solicitor represents that, under the circumstances, the town council is unable to conduct its statutorily assigned duties and seeks permission to invoke the Rule of Necessity to allow the participation of at least one of the presumably conflicted members to achieve a quorum.²

Under the Code of Ethics, a public official may not participate in any matter in which they have an interest, financial or otherwise, which is in substantial conflict with the proper discharge of their 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 they, any person within their family, their business associate, or any business by which they are employed or which they represent, will derive a direct monetary gain or suffer a direct monetary loss by reason of their official activity. R.I. Gen. Laws § 36-14-7(a). A public official has reason to believe or expect a conflict of interest exists when it is "reasonably foreseeable," meaning the probability is greater than conceivably but the conflict of interest is not necessarily certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). The Code of Ethics also prohibits a public official from using their public position to obtain financial gain, other than that provided by law, for themselves, a person within their family, their business associate, or any business by which they are employed or which they represent. § 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 official may not participate in any matter as part of their public duties if there is reason to believe or expect that any person within their family is a party to or participant in such matter or will be directly financially impacted or obtain an employment advantage by reason of the public official's participation. The definition of "any person within [their] family" expressly includes mother and spouse. Regulation 1.3.1(A)(2). A public official must also recuse from participation in a matter in which any member of their family appears or presents evidence or arguments before their municipal agency, except during a period where public comment

owner's place of business to a set drop-off location, and others which travel from the owner's place of business to locations as requested by the guests of those businesses.

² Town council members Payne, O'Neill, and McCombe have each assented to the solicitor's request for this advisory opinion on behalf of the town council. Their signatures appear on page three of the request letter.

is allowed on a matter of general public interest, and further provided that the family member is not otherwise a party or participant and has no personal financial interest in the matter under discussion. 520-RICR-00-00-1.2.1(A)(1) & (B)(2) Additional Circumstances Warranting Recusal (36-14-5002).

The Ethics Commission has recognized and permitted a Rule of Necessity exception in matters where recusals inhibit governmental process, such as where the majority of public body members must recuse themselves and a resulting failure of a quorum renders the entity unable to act. Public bodies may not, on their own, invoke the Rule of Necessity. Rather, public bodies are required to seek an advisory opinion from the Ethics Commission permitting the use of the Rule of Necessity each time conflicts of interest would inhibit their necessary governmental processes. In fact, the Ethics Commission has previously considered and applied the Rule of Necessity to proceedings before municipal agencies, including the New Shoreham Town Council. For example, in Advisory Opinion 2020-5, the Ethics Commission opined that the town council could utilize the Rule of Necessity to achieve a quorum of three members to hear and decide a matter relating to the potential amendment of a town ordinance that would provide for the issuance of municipal permits for the operation of mobile food establishments in conformance with state law. There, four of the five town council members had conflicts of interest requiring recusals. See also A.O. 2018-45 (opining that the New Shoreham Zoning Board of Review could utilize the Rule of Necessity to achieve a quorum of five members to hear and decide an application for a special use permit for a utility facility, given that three of the seven zoning board members had conflicts of interest requiring their recusals); A.O. 2008-9 (opining that the Town of Smithfield Zoning Board of Review could utilize the Rule of Necessity to achieve a quorum of five members to hear and decide an appeal from a decision of the planning board, given that three of the seven zoning board members had conflicts of interest requiring their recusals).

In the instant matter, town council member Payne is the sole employee of a helicopter tour business which offers a free courtesy shuttle to its patrons. During a telephone conversation with Ethics Commission staff, Mr. Payne noted that he not only pilots the helicopter but operates the courtesy shuttle to transport patrons between the ferry landing and the airport. Mr. Payne states that he has held this employment for ten years and explains that the reason he has transported patrons between the ferry landing and the airport for the last seven years is to ensure timely arrivals in order to adhere to a strict tour schedule. He adds that he is not paid extra by his employer for these transports and accepts no gratuities from patrons for them.³ Mr. Payne confirms that his mother is one of the two women who sent the letter to the town council requesting consideration of the ordinance regulating courtesy shuttles. He states that his mother is a farmer who also has driven a taxi on the island for approximately fifty years. Mr. Payne further states that, without the regulation of courtesy shuttles on the island, his mother and other similarly situated taxi drivers on the island will

³ He does, however, accept gratuities from patrons for the tours he provides.

have fewer opportunities to transport people, which will impact their income. Mr. Payne acknowledges his conflict of interest under the circumstances. See, e.g., A.O. 2020-40 (opining that a member of the Jamestown Town Council was prohibited from participating in the town council's discussions and voting relative to a proposed amendment to the Jamestown Code of Ordinances pertaining to the height of structures in special flood hazard areas, given that a piece of commercial property for which his employer had the real estate sale listing, and that was then under contract, was located within such an area); A.O. 2020-2 (opining that a member of the Newport Planning Board was prohibited by the Code of Ethics from participating in discussions and decision-making relative to matters concerning the proposed demolition of property and subsequent development of a hotel in Newport, given that her mother owned property within 200 feet of the hotel's proposed location).

Next, council member O'Neill's spouse has held a taxi license issued by the town for 14 years which he uses to derive an income. During a telephone conversation with Ethics Commission staff, Ms. O'Neill explained that her spouse, who is employed full-time as a carpenter, drives a taxi approximately two days weekly during the summer months. Additionally, Ms. O'Neill's spouse employs three other drivers who work most days and evenings. Ms. O'Neill acknowledges that, because taxi license holders will be directly financially impacted by the regulation of courtesy shuttles through an ordinance drafted and passed by the town council, she is required to recuse from participation in the matter. See, e.g., A.O. 2021-44 (opining, among other things, that a member of the North Smithfield Town Council was prohibited by the Code of Ethics from participating in discussion and voting relative to any town council matter in which his sister would be financially impacted, was a party or participant, would receive an employment advantage, or appeared or presented evidence or arguments).

Finally, town council member McCombe holds a motor vehicle for hire license (bus license) issued by the town. Ethics Commission staff spoke with Mr. McCombe, who informed that he is employed by Interstate Navigation, a/k/a The Block Island Ferry. Mr. McCombe states that he possesses one of only two bus licenses currently issued on the island. He further states that he allows his employer to utilize his license to offer and conduct bus tours or transport wedding parties and guests numbering 20-49 people at a time. Mr. McCombe explains that, on those occasions where he himself operates the bus, he receives no additional compensation from his employer. Mr. McCombe further explains that his employer reimburses him for the cost of the bus license and any additional fees associated therewith, such as those for the two other drivers allowed to operate under the license. Mr. McCombe opines that an ordinance addressing courtesy vehicles would likely have no financial impact upon him or his employer because the bus used by The Block Island Ferry does not operate as a taxi.

Because the proposed ordinance regulating courtesy shuttles on the island has yet to be considered, and potentially amended, by the town council, it is unclear at this time whether and to what extent the employers and family members, and even these three town council

members themselves, could be impacted. For this reason, it appears that three of the five town council members have each properly recused at this time. Thus, given the legal requirement that there be participation by three town council members to consider the proposed ordinance, and based on the reviews of prior advisory opinions issued, it is appropriate for the Ethics Commission to apply the Rule of Necessity.

Under the Rule of Necessity, the two town council members who have not asserted a conflict are required to participate. Then, the remaining official or officials determined by the Ethics Commission to have the least conflict may be permitted to participate so that an important governmental function can be accomplished. See, e.g., A.O. 2020-5; A.O. 2018-45; A.O. 2008-9, supra. Here, Mr. Payne's private employer owns the helicopter tour business for which Mr. Payne is the sole employee and occasionally shuttles patrons back and forth between the ferry and the airport. Mr. Payne's employer would be directly financially impacted by an ordinance regulating courtesy vehicles. Also, Mr. Payne's mother is one of the two taxi drivers who submitted the letter and proposed ordinance to the town council for consideration. For these reasons, Mr. Payne shall remain disqualified and recuse. Ms. O'Neill shall also recuse, given that her spouse holds one of approximately 34 taxi licenses issued by the town from which he derives income. It is the opinion of the Ethics Commission that Mr. McCombe is the least conflicted because, as the owner of a bus license that is used by his employer to transport groups of 20-49 people for tours and weddings, neither he nor his employer appear at this time to stand to be personally financially impacted by an ordinance regulating courtesy shuttles in the manner that a taxi operator would. However, a conflict for Mr. McCombe cannot be ruled out completely because it remains to be seen whether and how an ordinance regulating courtesy shuttles in New Shoreham would directly financially impact the drivers who operate buses under the two bus licenses issued by the town. Accordingly, in order that the town council may conduct its statutorily assigned duties, Mr. McCombe shall, prior to participation in the matter, file a conflict of interest statement consistent with the provisions of R.I. Gen. Laws § 36-14-6. He shall disclose his interest in the matter and shall affirm that, despite his interest, he is willing and able to participate fairly, objectively, and in the public interest. Mr. Payne and Ms. O'Neill shall recuse from participation and voting on the matter consistent with the provisions of § 36-14-6.

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:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

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

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

Related Advisory Opinions:

A.O. 2021-44

A.O. 2020-40

A.O. 2020-5

A.O. 2020-2

A.O. 2018-45

A.O. 2008-09

Keywords:

Recusal

Rule of Necessity