

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2021-57

Approved: November 16, 2021

Re: Jennifer Lima

QUESTION PRESENTED:

The Petitioner, a member of the North Kingstown School Committee, a municipal elected position, who in her private capacity is the founder and co-president of Towards an Anti-Racist North Kingstown (“TANK”), a non-profit organization dedicated to advancing discussions of anti-racist policies in the Town of North Kingstown, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in School Committee and/or Subcommittee discussions and/or voting on matters relative to the topics of diversity, equity, and inclusion, given that those topics are among those advanced by TANK as part of its mission.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Kingstown School Committee, a municipal elected position, who in her private capacity is the founder and co-president of Towards an Anti-Racist North Kingstown (“TANK”), a non-profit organization dedicated to advancing discussions of anti-racist policies in the Town of North Kingstown, is not required by the Code of Ethics to recuse from participating in School Committee and/or Subcommittee discussions and/or voting on matters relative to the topics of diversity, equity, and inclusion, notwithstanding that those topics are among those advanced by TANK as part of its mission provided, however, that otherwise there are no grounds for recusal.

The Petitioner is a member of the North Kingstown School Committee (“School Committee”) and has served in that position since her election in November of 2020. As part of her School Committee duties, she serves as a co-chair to the recently created Diversity, Inclusivity, and Equity Subcommittee (“Subcommittee”). According to the School Committee’s Resolution creating the Subcommittee,¹ the purpose of the Subcommittee is to examine how race, ethnicity, language, disability, religion, age, gender, socio-economic status, sexual orientation, gender identity or expression, country of ancestral origin, interrupted education status, military status, or any other category protected by law affect and influence district-wide practices in order to create a respectful and inclusive environment for all students and school department staff.

The Petitioner represents that, in her private capacity, she is the founder and co-president of a non-profit organization called Towards an Anti-Racist North Kingstown (“TANK”) which she describes as being comprised of local students, teachers, parents, and allies dedicated to enacting

¹ A copy of the resolution was submitted by the Petitioner with her request for the instant advisory opinion.

antiracist policies in the Town of North Kingstown (“Town” or “North Kingstown”). The Petitioner further represents that TANK’s mission is to move the Town forward as a community that acknowledges its history, celebrates its potential, and fosters a climate honoring and encouraging diversity, equity, and the unique character of all its residents through anti-racist policy reform, education, and advocacy.

The Petitioner states that the topics discussed by the Subcommittee and those advanced by TANK may overlap. The Petitioner further states that TANK is neither a political nor lobbying organization, but rather, an advocacy group that only identifies issues that need the Town’s attention without comment on how those issues should be resolved by the Town. She explains that neither TANK, nor any other person authorized by TANK, appears before the School Committee, the Subcommittee, or other Town Departments, but that individual TANK members or officers may appear before the School Committee in their private capacities as residents of the Town. The Petitioner states that neither TANK nor she stand to benefit personally from any policy changes enacted by the North Kingstown School Department in the area of anti-racist education, as such changes would benefit the community as a whole. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in School Committee and/or Subcommittee discussions and/or voting on matters relative to the topics of diversity, equity, and inclusion, given that those topics are among those advanced by TANK as part of its mission.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that she, her family member, her business associate, or her employer will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using her public office or confidential information received through her public office to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”), a public official must recuse from participation in any matter if her business associate appears or presents evidence or arguments or authorizes another person, on his or her behalf, to appear or to present evidence or arguments before the public official’s state or municipal agency. A business associate is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3). A person is defined as “an individual or a business entity.” Section 36-14-2(7).

The Ethics Commission has previously reviewed somewhat similar situations. In Advisory Opinion 2005-20, the Ethics Commission opined that the chairman of the North Smithfield Planning Board was not required to recuse from participating in discussions and voting relative to a Planning Board application about which the petitioner had previously made public comments of support. In that advisory opinion, the Planning Board had considered and unanimously approved a master plan for the development of Dowling Village. Approximately two weeks after the vote, the petitioner wrote a letter that was published in the Providence Journal explaining the reasons behind his support and the Planning Board’s approval of the development. A local grassroots

organization then objected to the petitioner's subsequent participation in the Planning Board's discussions and voting on the application for an amended master plan and, later, for preliminary and final approval. The Ethics Commission based its opinion on the fact that there was no indication of a financial benefit or detriment to the petitioner, his family members, his business associates, or employer, adding that, although the views expressed in the petitioner's letter to the Providence Journal might have indicated an existing personal inclination for the development, such preference alone did not support mandatory recusal under the Code of Ethics.

Additionally, in Advisory Opinion 98-3, the Ethics Commission determined that the Code of Ethics did not bar an Exeter Planning Board member from participating in subsequent discussions and votes on a proposed zone change and amendment to the Exeter Comprehensive Plan relating to Bald Hill Nursery, despite the fact that the petitioner had previously voted against the zoning change and amendment and had given public testimony against the proposal before the Exeter Town Council in his private capacity as an Exeter resident. The Ethics Commission noted that the petitioner did not have a financial interest in the matter that would result in a substantial conflict of interest under the Code of Ethics.

Similar to the above-cited advisory opinions, the views expressed by the instant Petitioner as the founder and co-president of TANK may indicate an existing, personal inclination toward matters relative to the topics of diversity, equity, and inclusion discussed or voted on by the School Committee or Subcommittee; however, such preference alone does not support mandatory recusal under the Code of Ethics. Thus, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with the prior advisory opinions cited above, it is the opinion of the Ethics Commission that the Petitioner is not required to recuse from participating in School Committee and/or Subcommittee discussions and voting on matters relative to the topics of diversity, equity, and inclusion, notwithstanding that those topics are among those advanced by TANK as part of its mission. The Petitioner is advised, however, that although she is not generally required to recuse from School Committee and/or Subcommittee matters that align with TANK's ideology, she is required to recuse from School Committee and/or Subcommittee matters when she has reason to believe or expect that she, her family member, her business associate,² or her employer will derive a direct monetary gain or suffer a direct monetary loss by reason of her

² The Petitioner is advised that TANK and her fellow TANK officers are considered her business associates under the Code of Ethics. The Ethics Commission has consistently opined that persons are "business associates" of the entities for which they serve as either officers or members of the Board of Directors, or in some other leadership position that permits them to direct and affect the financial objectives of the organization. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management ("DEM"), who was also a Director of the Rhode Island Boy Scouts ("Boy Scouts"), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization's interests). Further, the Ethics Commission has determined that those who are fellow officers or directors within an organization are "business associates." Specifically, the Ethics Commission has opined that, while an organization may pursue various objectives that are not financial, the existence of a financial component is sufficient to qualify an official and his fellow officers as business associates. See, e.g., A.O. 2018-30 (opining that a member of the Coventry Town Council was prohibited by the Code of Ethics from participating in the Town Council's discussions and decision-making relative to the reappointment of the Coventry Municipal Court Judge, given that both were members of the Board of Directors of Gabriel's Trumpet Christian Book Store, Inc., and the existence of a financial component was sufficient to qualify the fellow Board members as business associates).

official activity. The Petitioner is also prohibited from using her public office or confidential information received through her public office to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Finally, the Petitioner may be required to recuse from participation in any School Committee and/or Subcommittee matter if her business associates appear or authorize another person to appear on their behalf to present evidence or arguments before the School Committee and/or Subcommittee, even in matters unrelated to TANK or its mission.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is advised to remain vigilant about identifying potential conflicts of interest and to either recuse or seek further guidance from the Ethics Commission in the future as warranted. Notice of recusal shall be filed with the Ethics Commission consistent with section 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, 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)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2014-14

A.O. 2018-30

A.O. 2005-20

A.O. 98-3

Keywords:

Business Associate

Recusal