

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion 2021-55

Approved: October 5, 2021

**Re: Robert R. Moreau**

### **QUESTION PRESENTED:**

The Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, requests an advisory opinion regarding whether such employment subjects him to the provisions of the Rhode Island Code of Ethics.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, is subject to the Rhode Island Code of Ethics.

The Petitioner represents that he has been employed by the Housing Authority of the City of Woonsocket (“Woonsocket Housing Authority” or “WHA”) since 2009, first as its Director of Security and, since January 1, 2019, as its Executive Director.<sup>1</sup> The Petitioner states that, as Executive Director, he is responsible for the day-to-day leadership and management of the WHA. The Executive Director is selected and appointed by the WHA’s 7-member Board of Commissioners, who themselves are all selected and appointed to their positions by the Mayor of the City of Woonsocket (“the City” or “Woonsocket”).

The Petitioner represents that the WHA, like other public housing authorities, is funded and regulated by the U.S. Department of Housing and Urban Development (“HUD”), and that it does not receive any state or municipal funds. He further states that, notwithstanding the political appointment of its Board members and while the WHA works “cohesively” with city and state leaders, its operations are “fully autonomous” from the City. For these reasons, he seeks clarification as to whether he is subject to the Rhode Island Code of Ethics.

### **Public Housing Authorities are Public Corporations**

Public housing authorities (“PHAs”) exist in cities and towns across Rhode Island and the United States. Often referred to as “quasi-public” entities having characteristics of both private and public bodies, their authority, governance, and relationship to federal, state, and local governments are often misunderstood. A comprehensive report on public housing prepared by the Congressional

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<sup>1</sup> The Petitioner previously served on the Woonsocket Police Department for twenty-three years, the Woonsocket Zoning Board for ten years, and the Woonsocket City Council from 2011 through 2016, serving as Council President in his last year.

Research Service for the members and committees of the United States Congress describes the history of public housing and PHAs as follows:

PHAs were, for the most part, created by states in response to the federal government's creation of the low-rent public housing program [in 1937]. Their authorities and structures are dictated by the state laws under which they were chartered. PHAs typically have an executive director as well as a governing board. The board generally has members appointed by local government officials, but it may also have elected members. The board's role is generally to approve policy, clarify goals, and delegate responsibility and authority to the executive director, who acts on its behalf. [PHAs' governing structures are dictated primarily by their state charters . . . .<sup>2</sup>

And also:

Public housing has a unique administrative structure that pairs local administration and local discretion with federal funding and federal regulations. Public housing properties are owned and managed by quasi-governmental local public housing authorities (PHAs). PHAs have contracts, called Annual Contributions Contracts (ACCs), with the federal government. Under the terms of their contracts, PHAs agree to administer their properties according to federal rules and regulations, and in exchange they receive federal funding in the form of operating and capital grants . . . .<sup>3</sup>

All Rhode Island PHAs, including the WHA, were created and chartered by enabling legislation adopted by the General Assembly.<sup>4</sup> As described in this enabling statute, a Rhode Island PHA is “a public body and a body corporate and politic, exercising public powers[.]”<sup>5</sup> Therefore, a PHA is a “public corporation,” which “is one of a large class of corporations created by the government to undertake public enterprises in which the public interests are involved to such an extent as to justify conferring upon such corporations important governmental privileges and powers.”<sup>6</sup>

The Rhode Island Supreme Court has described PHAs as having “a dual nature which partakes of a public as well as a private character.”<sup>7</sup> However, “[a] housing authority is not a political subdivision of the state[.]”<sup>8</sup> nor is it a municipal department.<sup>9</sup> “Once created it becomes an

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<sup>2</sup> Congressional Research Service, *Introduction to Public Housing*, 9-10 (2014).  
<https://ersreports.congress.gov/product/pdf/R/R41654/14>.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> The WHA was established on March 8, 1940 under the provisions of an enabling act, then R.I. Gen. Laws 1938, ch. 344, as amended, and now R.I. Gen. Laws § 45-25-1 *et seq.*

<sup>5</sup> R.I. Gen. Laws § 45-25-15.

<sup>6</sup> *Little v. Conflict of Interest Commission*, 397 A.2d 884, 887-88 (R.I. 1979)(quoting *Housing Authority of Woonsocket v. Fetzik*, 110 R.I. 26, 32-33, 289 A.2d 658, 662 (1972)). See also *State ex rel. Costello v. Powers*, 80 R.I. 390, 394, 97 A.2d 584, 586 (1953) (A housing authority is akin to “a public or quasi-municipal corporation which exercise[s] police powers in the general public interest . . .”).

<sup>7</sup> *Fetzik*, 110 R.I. at 33, 289 A.2d at 662 (citing *Parent v. Woonsocket Housing Authority*, 87 R.I. 444, 143 A.2d 146 (1958)).

<sup>8</sup> *Id.*

<sup>9</sup> *Parent*, 87 R.I. at 447, 143 A.2d at 147.

autonomous body, subject only to the limits of power imposed by law.”<sup>10</sup> Nevertheless, “[a] housing authority exercises some of its powers as a representative of the city government and other powers as an agent of the federal government[.]”<sup>11</sup> Furthermore, the Rhode Island Supreme Court has stated that “the services which these authorities render are impressed with a public character to such an extent that we think it is a matter of public policy that they be bound in some particulars by the rules which govern the activities of municipal corporations and departments thereof.”<sup>12</sup>

In a recent audit of the WHA by HUD’s Office of Inspector General, the WHA was described as follows:

The Housing Authority of the City of Woonsocket, RI, was incorporated under the laws of the State of Rhode Island and operates under a board of commissioners. The executive director, who is appointed by the board of commissioners, runs the day-to-day operations of the Authority. The Authority owns and operates six developments under an annual contributions contract with the U.S. Department of Housing and Urban Development (HUD).<sup>13</sup>

An earlier report of HUD’s Inspector General described the WHA as “a quasi-governmental public entity responsible for the ownership, oversight, and management of [] low income units in the City of Woonsocket.”<sup>14</sup>

The above-discussed opinions of the Rhode Island Supreme Court, reports authored by the HUD Auditor General and the Congressional Research Service, as well as the WHA’s own chartering statutes enacted by the General Assembly, all make clear that the WHA’s legal status is that of either a “public corporation” or a “quasi-public corporation,” created and constrained by laws enacted by the Rhode Island Legislature. Therefore, the answer to the Petitioner’s question presented - whether he is subject to the State of Rhode Island’s ethics laws - depends upon whether Rhode Island law requires the employees of public or quasi-public corporations such as the WHA to be subject to the Code of Ethics.

### **Rhode Island’s Former Standards of Conduct and Persons Subject Thereto: 1977-1986**

Rhode Island’s first comprehensive set of statutory “standards of conduct” for public officials was enacted by the General Assembly in 1976 and became effective in January of 1977, ten years prior to the creation of today’s Rhode Island Ethics Commission.<sup>15</sup> These initial standards of conduct were enforced by a 9-member “Conflict of Interest Commission” and were applicable only to state or municipal *elected* and *appointed* officials who were defined as “an officer or member of state

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<sup>10</sup> *Fetzik*, 110 R.I. at 33, 289 A.2d at 662.

<sup>11</sup> *Id.* (citing *Costello*, 80 R.I. 390, 97 A.2d 584).

<sup>12</sup> *Parent*, 87 R.I. at 448, 143 A.2d at 147.

<sup>13</sup> U.S. Department of Housing and Urban Development (HUD), *Office of Inspector General’s Audit of the Housing Authority of the City of Woonsocket, RI’s Public Housing Capital Fund 3* (2019)(footnotes omitted).  
<https://www.hudoig.gov/sites/default/files/2019-06/2019-BO-1002.pdf>.

<sup>14</sup> U.S. Department of Housing and Urban Development, *Audit Report of the Office of Inspector General*, 1 (1998),  
<https://archives.hud.gov/offices/oig/reports/files/ig811003.pdf>.

<sup>15</sup> 1976 R.I. Pub. Laws, ch. 93, § 1.

or municipal government . . . .”<sup>16</sup> State or municipal *employees*, however, were not subject to the those standards of conduct enacted at that time.

Notwithstanding this narrow definition, in its first year of existence the Conflict of Interest Commission asserted that it had jurisdiction over an appointed member of another form of municipal public corporation, the Narragansett Redevelopment Agency. The dispute over this issue was recounted, and resolved, by an opinion of the Rhode Island Supreme Court in *Little v. Conflict of Interest Commission*.<sup>17</sup> There, the Court affirmed a decision of the Superior Court holding that a member of the Narragansett Redevelopment Agency, a public corporation compared by the Court to public housing authorities, was not required to file an annual financial disclosure statement because he was not an appointed “officer or member of state or municipal government,” as was then-required under the statute.<sup>18</sup> The Court reasoned that the Conflict of Interest Act in effect at that time must be given its plain and ordinary meaning, and “the Legislature was aware at the time it enacted the Conflict of Interest Act that this court had refused unequivocally to equate *public corporations* with municipal government.”<sup>19</sup> The clear takeaway from *Little* was that if the General Assembly had intended to include public or quasi-public corporations within the reach of its standards of conduct for public officials, it could and should have done so by clearly referring to them in the Conflict of Interest Act. Some years later, apparently aware of the Court’s holding in *Little*, the General Assembly did just that.

### **The Rhode Island Code of Ethics: 1987-Present**

After the 1986 Constitutional Convention and successful ballot measure creating the Rhode Island Ethics Commission, in 1987 the General Assembly repealed the Conflict of Interest Act and replaced it with a new “Code of Ethics in Government” to be administered and enforced by the Ethics Commission.<sup>20</sup> This new Code of Ethics applied not only to appointed and elected officials, as had the prior Conflict of Interest Act, but also specifically included state and local employees as well as employees of public and quasi-public state and municipal corporations. Section 36-14-4, entitled “Persons subject to the Code of Ethics,” which is still in effect today, was enacted as follows:

The following persons shall be subject to the provisions of the Rhode Island Code of Ethics in government:

- (1) State and municipal elected officials;
- (2) State and municipal appointed officials; and
- (3) *Employees of state and local government, of boards, commissions and agencies.*<sup>21</sup>

In order to leave no doubt as to which employees were meant to be included in subsection (3), above, the new Code of Ethics defined its entire phrase:

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<sup>16</sup> R.I. Gen. Laws §§ 36-14-2 and 36-14-3(2) (1977).

<sup>17</sup> *Little*, 121 R.I. 232, 397 A.2d 884.

<sup>18</sup> *Id.* at 886-887.

<sup>19</sup> *Id.* at 888 (emphasis added).

<sup>20</sup> 1987 R.I. Pub. Laws ch. 195, §§ 1, 3.

<sup>21</sup> R.I. Gen. Laws § 36-14-4 (emphasis added).

“Employees of state and local government, of boards, commissions and agencies” means any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation[.]<sup>22</sup>

This deliberate and express addition in 1987 of “employees of any public or quasi-public . . . municipal . . . commission or corporation” to the list of persons “subject to the provisions of the Code of Ethics” appears to directly address the Supreme Court’s opinion in *Little*, and leaves no doubt that the employees of public corporations such as the WHA are subject to the Code of Ethics. Just as the Court noted in *Little* that, “we must presume that the Legislature, when enacting the [1977] Conflict of Interest Act, was familiar with our prior analysis of the relationship between public corporations . . . and municipal government[.]”<sup>23</sup> the Ethics Commission must also presume that the General Assembly was aware of the Court’s ruling in *Little* when, in its aftermath, it adopted the new Code of Ethics and expressly added employees of public and quasi-public corporations as regulated persons.

### **The Ethics Commission’s Longstanding and Consistent Exercise of Authority Over PHAs**

Following the 1987 enactment of the Code of Ethics by the General Assembly, the Ethics Commission enacted regulations consistent with the statutory Code of Ethics, clarifying that the definition of “Employees of state and local government, of boards, commissions and agencies” includes “any individual receiving a salary from any public or quasi-public state or municipal board, commission, corporation, or other public or quasi-public agency however named[.]”<sup>24</sup> Consistent therewith, the Ethics Commission began asserting its jurisdiction over PHA employees throughout the state, and it has continued that practice to the present through the issuance of numerous advisory opinions.<sup>25</sup>

Furthermore, another amendment to the Code of Ethics by the General Assembly, in 1992, expanded the definition of “municipal agency” to expressly include any “quasi-public authority,”

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<sup>22</sup> R.I. Gen. Laws § 36-14-2(4)(emphasis added).

<sup>23</sup> *Little*, 121 R.I. at 237-238, 397 A.2d 887 (citing *Romano v. Duke*, 111 R.I. 459, 462, 304 A.2d 47, 49 (1973); *Loretta Realty Corp. v. Massachusetts Bonding & Insurance Co.*, 83 R.I. 221, 225-26, 114 A.2d 846, 848-49 (1955)).

<sup>24</sup> Commission Regulation 520-RICR-00-00-1.1.3(C)(4) Additional Definitions (36-14-2002).

<sup>25</sup> See A.O. 88-53 (A violation of the Code of Ethics will arise for the Executive Director of the Lincoln Housing Authority if his spouse applies for, or is hired to the position of Assistant Executive Director); A.O. 97-131 (Executive Director of the Pawtucket Housing Authority will not violate the Code of Ethics if he is a member of the Laborer's International Union pension plan and also participates in the negotiation of the Laborer's Union contract with the Housing Authority, given that his own salary and pension benefits would not be affected by those negotiations but are set by the City); A.O. 2002-42 (Central Falls Housing Authority employee must recuse from participation in any Housing Authority matters involving his own property); A.O. 2018-13 (an employee and tenant of the Providence Housing Authority may become a member of the Housing Authority’s Board of Commissioners, but must recuse from Commission matters that would financially impact her as an employee and tenant); A.O. 2018-25 (the Code of Ethics does not prohibit a Research/Executive Assistant at the Pawtucket Housing Authority from seeking election to the Pawtucket School Committee).

thereby further clarifying that the General Assembly considered the *appointed* PHA board members/commissioners to also be within the reach of the Code of Ethics.<sup>26</sup> Since then, the Ethics Commission has, on numerous occasions, issued advisory opinions applying the Code of Ethics to the actions of appointed PHA commissioners, including the commissioners of the WHA.<sup>27</sup>

### **The WHA's Administrative Regulations Support Application of the Code of Ethics**

Finally, we find support in the WHA's own duly adopted regulations, which appear to recognize the applicability of the Code of Ethics to its employees and commissioners. The General Assembly has authorized PHAs to promulgate regulations that are necessary for the just and effective administration of their operations.<sup>28</sup> Pursuant thereto, the WHA has enacted its own Administrative Regulations, some of which govern conflicts of interest by WHA commissioners and employees.<sup>29</sup> Section 9-11 of its Administrative Regulations, entitled "Application of Other Codes of Conduct," reads:

This article is *in addition to* other requirements relating to the conduct of Authority employees. *Authority officers, directors and employees are required to follow the*

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<sup>26</sup> 1992 R.I. Pub. Laws, ch. 396.

<sup>27</sup> See A.O. 96-27 (Chairperson of the Cumberland Housing Authority who is also an attorney engaged in the practice of law may represent an outside vendor's employee in a personal injury action that does not involve the Housing Authority); A.O. 96-77 (Newport Housing Authority Board of Commissioners member must recuse herself from participation in any discussion or voting in matters concerning her employer, Newport Residents Council Inc.); A.O. 96-92 (Chairperson of the Westerly Housing Authority Board of Commissioners is not prohibited from voting on a union contract involving Local 1217 given that he is also employed by the Town of Westerly and a member of the same union, but a different local, Local 1215, and would not be impacted by the vote); A.O. 96-94 (Commissioner of the Woonsocket Housing Authority, a municipal appointed official, may not participate in decisions of the Housing Authority to purchase advertising time at a radio station for which he is employed as general manager); A.O. 96-116 (Westerly Housing Authority Commissioner is not prohibited by the Code of Ethics from purchasing gifts for staff with public funds, provided such gifts are not for the benefit of Commissioners); A.O. 97-113 (Woonsocket Housing Authority Commissioner is not prohibited by the Code of Ethics from participating in discussions or votes on matters concerning the Police Department, where she is employed); A.O. 99-115 (members of the Gloucester Housing Authority may not receive compensation for their efforts if the members of the Housing Authority themselves take action to provide for or set their own compensation); A.O. 2000-21 (a member of the Pawtucket Housing Authority Commission may not participate in negotiations, votes or other matters affecting the labor contract with the Laborers' Union of the Housing Authority, a labor organization representing half of the approximately 45 employees of the Housing Authority, given that his son-in-law is an employee represented by that union); A.O. 2000-67 (the Pawtucket Housing Authority Chairperson must recuse from all participation in Housing Authority matters relating to his tenant's employer); A.O. 2000-74 (the Code of Ethics prohibits Westerly Housing Authority Commissioners from participating in the discussion or vote to donate funding to the Westerly Housing Association, a non-profit association, since they are all members of the Board of Directors of the Association); A.O. 2005-46 (Commissioner for the Cumberland Housing Authority may continue his full-time employment with the Cumberland School Department); A.O. 2010-24 (a member of the Coventry Housing Authority Board of Commissioners is prohibited by the Code of Ethics from accepting employment from the Housing Authority as its Maintenance Director, while serving on the Housing Authority and for one year thereafter); A.O. 2012-14 (a prospective Commissioner for the Johnston Housing Authority is not prohibited by the Code of Ethics from serving as a Commissioner while he is also a Section 8 landlord in Johnston, given that his tenant's Section 8 housing choice voucher was transferred from the Johnston Housing Authority to Rhode Island Housing).

<sup>28</sup> R.I. Gen. Laws § 42-25-18.1(b).

<sup>29</sup> *Woonsocket Housing Authority Administrative Legislation and Administrative Regulations*. <https://ecode360.com/WO1105> (last visited Sept. 29, 2021).

*Rhode Island laws and regulations relating to the conduct of public officials and employees.*<sup>30</sup>

The “Rhode Island laws and regulations relating to the conduct of public officials and employees” are those contained in the statutory and regulatory provisions of the Code of Ethics.

### **Conclusion**

Based on all of the above, including a clear statutory grant of jurisdiction by the General Assembly in the Code of Ethics and the Ethics Commission’s longstanding interpretation thereof, it is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the WHA, is subject to the provisions of the Code of Ethics.<sup>31</sup>

**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:**

R.I. Gen. Laws § 36-14-2(4)

R.I. Gen. Laws § 36-14-2(8)

R.I. Gen. Laws § 36-14-2(9)

R.I. Gen. Laws § 36-14-4

Commission Regulation 520-RICR-00-00-1.1.3(C)(4) Additional Definitions (36-14-2002)

### **Other Authorities:**

R.I. Gen. Laws § 45-25-10

R.I. Gen. Laws § 45-25-10.5

R.I. Gen. Laws § 45-25-15

*Little v. Conflict of Interest Commission*, 121 R.I. 232, 397 A.2d 884 (R.I. 1979)

*Housing Authority of City of Woonsocket v. Fetzyk*, 110 R.I. 26, 289 A.2d 658 (1972)

*Parent v. Woonsocket Housing Authority*, 87 R.I. 444, 143 A.2d 146 (1958)

*State ex rel. Costello v. Powers*, 80 R.I. 390, 97 A.2d 584 (1953).

### **Related Advisory Opinions:**

A.O. 2018-25

A.O. 2018-13

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<sup>30</sup> *Woonsocket Housing Authority Administrative Legislation and Administrative Regulations, Ch. 9 Ethics and Standards of Conduct*. <https://ecode360.com/14482439> (last visited Sept. 29, 2021).

<sup>31</sup> In his letter requesting an advisory opinion, the Petitioner correctly notes that he and other executive directors of public housing authorities have not been directed to file annual financial disclosure statements with the Ethics Commission. While this is true, it is not relevant to our analysis of whether such employees are subject to the Code of Ethics. Only a small fraction of public, or quasi-public, employees are required to file financial disclosure statements under the current statutory scheme, but *all* are nevertheless subject to the conduct requirements of the Code of Ethics.

A.O. 2012-14  
A.O. 2010-24  
A.O. 2005-46  
A.O. 2002-42  
A.O. 2000-74  
A.O. 2000-67  
A.O. 2000-21  
A.O. 99-115  
A.O. 97-131  
A.O. 97-113  
A.O. 96-116  
A.O. 96-94  
A.O. 96-92  
A.O. 96-77  
A.O. 96-27  
A.O. 88-53

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