

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2021-58

Approved: November 16, 2021

Re: Christopher Abhulime

QUESTION PRESENTED:

The Petitioner, the Deputy Chief of Staff to the Governor of the State of Rhode Island, a state employee position, requests an advisory opinion regarding how best to avoid and/or manage potential conflicts of interest, if any, that may arise given that his spouse is the sole proprietor of a newly established private entity that intends to offer 24-hour community care in small residential facilities for eligible adults with intellectual and development disabilities and that will soon seek licensure from the Rhode Island Department of Behavioral Healthcare, Development Disabilities, and Hospitals.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the proposed recusal procedures set forth by the Petitioner, the Deputy Chief of Staff to the Governor of the State of Rhode Island, a state employee position, are sufficient to avoid and/or manage potential conflicts of interest, if any, that may arise given that his spouse is the sole proprietor of a newly established private entity that intends to offer 24-hour community care in small residential facilities for eligible adults with intellectual and development disabilities, and that will soon seek licensure from the Rhode Island Department of Behavioral Healthcare, Development Disabilities, and Hospitals.

The Petitioner is the Deputy Chief of Staff to Governor Daniel J. McKee and has served in this position since March of 2021. The Petitioner represents that each senior staff member in the Governor's Office is responsible for a portfolio of certain state agencies for which he or she serves as an intermediary between the agencies and the Governor. The Petitioner states that his departmental policy portfolio includes the Department of Labor and Training, the Office of Energy Resources, the Department of Environmental Management, the Public Utilities Commission and Divisions, the National Guard, and the Cybersecurity Office under the Department of Administration. He further states that the focus of those agencies is, respectively, on labor and training, energy, environment, and public safety. He explains that he also advises the Governor on diversity, equity, and inclusion issues, as well as on various disparities related to socioeconomic, educational, health, and other issues within Rhode Island.

The Petitioner states that his spouse is the sole proprietor of Agape Homes of Rhode Island ("AHRI"), a newly established private entity that intends to offer 24-hour community care in small residential facilities for eligible adults with intellectual and developmental disabilities and complex health needs. He further states that he does not have any financial and/or ownership interest in

AHRI. The Petitioner explains that AHRI will soon be seeking licensure from the Rhode Island Department of Behavioral Healthcare, Development Disabilities, and Hospitals (“BHDDH”) and that, if licensed, AHRI will be providing participants with services covered by the state Medicaid program. He further explains that AHRI would be submitting documents to BHDDH on a regular basis and would be subject to discretionary inspections by BHDDH.

The Petitioner represents that his departmental policy portfolio does not include oversight over BHDDH, the Rhode Island Department of Human Services, or Medicaid programs and that those state agencies and programs are within the purview of the Governor’s Senior Chief of Staff, who sits above the Petitioner in the Governor’s Office chain of command. Thus, the Petitioner states that he will not be involved in any state licensure, oversight, or Medicaid coverage of AHRI or other such community care residences. He advises that the licensing process, including appeals, for his spouse’s entity is conducted entirely by the BHDDH and that the Governor’s Office does not address such matters. The Petitioner states that he does not foresee any circumstances where his spouse would be required to appear before him or the Governor’s Office. He further states that it is unlikely that his advisory role to the Governor on socioeconomic disparities in the minority community would ever require him to give advice on the kind of adult community residences within which his spouse seeks to operate and that he does not have any other duties that may impact his wife or her newly established entity.

Cognizant of the Code of Ethics, and out of an abundance of caution, the Petitioner proposes the following steps to avoid any potential conflict of interest regarding his spouse’s business. First, the Petitioner states that he will recuse himself from participation in any agency budgetary discussions related to or impacting the operation, regulation, or oversight of AHRI.¹ Next, the Petitioner represents that his spouse will make any decisions relating to AHRI without any input, consultation, or advice from him. He further represents that he will not participate in any discussions or decision-making concerning AHRI-related matters with other members of the Governor’s staff, other cabinet officials, or other members of the executive branch. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding what additional steps, if any, he is required to take in order to avoid any potential conflicts of interest involving his spouse’s business.

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 substantial conflict of interest exists if an official has reason to believe or expect that he, any person within his family, a business associate or an employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is “reasonably foreseeable,” that is, when the probability is greater than “conceivably,” but the conflict of interest is not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001).

¹ The Petitioner notes that each senior staff member normally only becomes involved in budgetary matters relative to the particular agencies that are part of his/her policy portfolio. Therefore, given the nature of his departmental policy portfolio, the Petitioner states that he would not be involved in budgetary discussions relative to agencies outside of his portfolio.

A public official will not have an interest which is in substantial conflict with his official duties if any benefit or detriment accrues to him, any person within his family, his 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 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.”² Section 36-14-7(b).

Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”) sets forth more specific nepotism provisions which are applicable to matters that involve or impact any person within a public official’s family or any person who resides in his household. In general, Regulation 1.3.1(B)(1) prohibits a public official from participating in any matter as part of his public duties if he “has reason to believe or expect that any person within his [] family, or any household member, is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be.” Regulation 1.3.1(B)(3)(a) further prohibits a public official from participating “in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family or a household member.” However, Regulation 1.3.1(B)(3)(c) provides that the public official is not prohibited from participating “in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his [] family or her household member . . . is impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class.”

A public official must also recuse from participation in a matter in which any member of his family appears or presents evidence or arguments before his state agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”). Finally, the Code of Ethics prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

Section 36-14-5(a) and Regulation 1.3.1 clearly prohibit the Petitioner from participating in any matters, including budgetary line items, as part of his official duties in which his spouse is likely to be directly financially impacted, positively or negatively. See, e.g., A.O. 2021-15 (opining that a member of the Tiverton Budget Committee was required to recuse from participating in the Budget Committee’s discussions and voting on budgetary line items that addressed or affected the employment, compensation, or benefits of his spouse, an employee of the Tiverton School Department, but he could discuss and vote to approve or reject other budgetary line items and the entire School Department budget as a whole, provided that his spouse was impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any

² When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors 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.

greater extent than any other similarly situated member of the class); A.O. 2018-29 (opining that a legislator serving in the Rhode Island House of Representatives could participate in discussions and voting by the House of Representatives relative to the FY2019 State Budget as a whole, but had to recuse from participating in any discussions or voting on particular budget amendments or line-items that impacted or specifically addressed his employer's contracts or finances); A.O. 2007-30 (opining that a member of the East Providence School Committee was prohibited by the Code of Ethics from participating in discussions and voting regarding any budgetary line item relative to bus monitors, given that he had a family member who was employed as a bus monitor, but that he could vote on the budget as a whole).

Here, the Ethics Commission acknowledges that, based on the facts represented by the Petitioner, it is very unlikely that he would be required as part of his duties to participate in the matters set forth above, or in matters in which his spouse appears to present evidence or arguments. The Ethics Commission also acknowledges that the Petitioner's proposed recusal procedures are appropriate and generally required to avoid potential conflicts of interest stemming from his spouse's new business venture, unless the specific circumstances justify the application of the class exception as set forth in section 36-14-7(b). See, e.g., A.O. 2015-4 (applying the class exception and permitting a Charlestown Town Council member to participate in the Town Council's discussions and decision-making relative to remediating ground water pollution, given that it was reasonably foreseeable that the financial impact upon the entire class would be substantially similar in the form of equal or proportional assessments to connect to community water and/or wastewater systems, or a Town-wide tax increase to subsidize improvements to the water and sewer infrastructure to prevent pollution and salt water intrusion).

Although unlikely to occur, the Petitioner would also be required to recuse himself from participation in discussions and voting on matters in which his spouse appears or presents evidence or arguments before his state agency. Regulation 1.2.1(A)(1). Finally, the Code of Ethics prohibits the Petitioner from using his public office or confidential information received through his public office to obtain financial gain for his spouse. Section 36-14-5(d). Recusal shall be consistent with section 36-14-6.

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 encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest arise.

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:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

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. 2021-15

A.O. 2018-29

A.O. 2015-4

A.O. 2007-30

Keywords:

Conflict of Interest

Family

Nepotism

Recusal