



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

1st Meeting

DATE: Tuesday, January 12, 2021

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Gina Raimondo's Executive Order No. 20-46, as extended by No. 21-01, this meeting will not be conducted in-person at the Rhode Island Ethics Commission. Rather, it will be conducted remotely in Zoom webinar format in order to minimize any possible transmission of COVID-19. Any member of the public who wishes to attend and view this video meeting may do so by:

- Clicking this link to join the webinar:
<https://us02web.zoom.us/j/85266652060>
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 - +1 253 215 8782 or
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- International numbers available:
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Webinar ID: 852 6665 2060

1. Call to Order.
2. Discussion of Remote Meeting Format; Identifying and Troubleshooting any Remote Meeting Issues.
3. Motion to approve minutes of Open Session held on December 8, 2020.
4. Director's Report: Status report and updates regarding:
 - a.) Discussion of impact of COVID-19 crisis on Ethics Commission operations and staffing;
 - b.) Complaints and investigations pending;
 - c.) Advisory opinions pending;
 - d.) Access to Public Records Act requests since last meeting;
 - e.) Financial Disclosure, update on 2019 and 2020 filing years.
5. Advisory Opinions (petitioners may participate remotely):
 - a.) Michael W. Favicchio, a former member of the Cranston City Council, who is privately self-employed as an attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing clients before the Cranston Probate Court within one year from the date of his official severance from the Cranston City Council.
 - b.) The Board of Commissioners for the Lime Rock Fire Department, by and through its chairperson, requests an advisory opinion regarding: (i) whether three commissioners who have family members employed by the Fire Department may participate in the decision to accept or reject, as a whole, a collective bargaining agreement addressing the employment of their family members; and (ii) whether the same three commissioners may, pursuant to the Rule of Necessity, participate in the negotiation of said collective bargaining agreement.
 - c.) Jessica Leah DeMartino, the Director of Social Services in the Town of Exeter, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon her in performing her public duties, given that she is privately employed as a grant writer for the Rhode Island Center Assisting Those in Need, a food pantry located in the Town of Charlestown.
 - d.) Timothy Walsh, the Chief of the Lime Rock Fire Department, requests an advisory opinion regarding whether the Code of Ethics prohibits him from continuing to advise the Chairperson of the Board of Commissioners for the Lime Rock Fire Department concerning the negotiation of a collective bargaining agreement addressing the employment of the firefighters within the Fire Department, given that a firefighter within the Fire Department became the Petitioner's son-in-law in November of 2020.

- e.) Timothy Walsh (2), the Chief of the Lime Rock Fire Department, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command is sufficient to insulate the Petitioner from conflicts of interest, given that his son-in-law is employed as a firefighter within the Fire Department.
 - f.) Richard Keene, a member of the North Smithfield Planning Board, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participation in the Planning Board's discussions and vote relative to a particular solar project application, given that representatives of the North Smithfield Heritage Association ("NSHA"), a private non-profit organization, of which he serves as a member of the Board of Directors and as its President, have provided, and are likely to provide again, public comment on the application during public hearings of the Planning Board.
 - g.) Erica Vieira, the Administrative and Payroll Clerk for the Johnston Police Department, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon her, given that her spouse is the Deputy Chief of the Johnston Police Department.
 - h.) Walter B. Mahony III, a member of the Charlestown Planning Commission, an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Planning Commission's discussions and voting relative to applications associated with a proposed subdivision to be located on land that partially abuts a road owned by a private homeowners' association to which the Petitioner belongs.
6. New Business proposed for future Commission agendas and general comments from the Commission.
7. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on December 8, 2020, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) Motion to return to Open Session.

NOTE ON REPORTING OUT OF ACTIONS TAKEN IN EXECUTIVE SESSION: *After the Commission votes to go into Executive Session, the Open Session Zoom meeting will temporarily close and viewers will not be able to join the Executive Session which is being held in a separate Zoom meeting. At the conclusion of the Executive Session, which has no set duration, the Commission will reconvene in the Open Session meeting solely for the purpose of reporting out any actions taken in Executive Session and sealing the executive session minutes. You may rejoin the*

Open Session by following the same instructions on Page 1 of this agenda that you followed to join the original Open Session meeting. If you attempt to rejoin the Open Session Zoom meeting while the Executive Session portion is occurring, you will see a message that the meeting host is in another meeting. Eventually, once the Executive Session meeting concludes, the host will reconvene the Open Session meeting and you will be able to view the Commission Chair report out any actions taken in Executive Session. Alternatively, it may be more convenient for you to view a written report of any actions taken in Executive Session by visiting our website (<https://ethics.ri.gov/>) later in the day.

8. Report on actions taken in Executive Session.
9. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on January 7, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Michael W. Favicchio

QUESTION PRESENTED:

The Petitioner, a former member of the Cranston City Council, a municipal elected position, who is privately self-employed as an attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing clients before the Cranston Probate Court within one year from the date of his official severance from the Cranston City Council.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former member of the Cranston City Council, a municipal elected position, who is privately self-employed as an attorney, is not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court within one year from the date of his official severance from the Cranston City Council, because such representation pertains to matters of public record in a court of law and, therefore, the Petitioner's proposed actions fall within the exception found at R.I. Gen. Laws § 36-14-5(e)(4).

The Petitioner completed his last two-year term on the City of Cranston ("Cranston") City Council ("City Council") on January 4, 2021, at which time the new City Council members were sworn in and began their two-year terms.¹ He represents that, in his private capacity, he is a self-employed attorney. He seeks clarity as to whether he may represent clients before the Cranston Probate Court ("Probate Court"), over which the City Council has appointing authority,² prior to the expiration of one year following his official severance from the City Council, based upon the exception set forth in R.I. Gen. Laws § 36-14-5(e)(4) for matters of public record in a court of law.

The Code of Ethics strictly prohibits a public official from representing himself, or another person, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. Section 36-14-5(e)(1)&(2) ("Section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1)&(2) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). These prohibitions continue while the official remains in office and

¹ The Petitioner states that he could not seek reelection in 2020 due to ten-year term limits instituted in Cranston.

² The Petitioner explains that, although the City Council has appointing authority for the Probate Court, he expects that the Probate Judge before whom he would appear will have been appointed by the new City Council that was sworn in on January 4, 2021.

for a period of one year thereafter; however, section 5(e)(4) states that "this prohibition shall not pertain to a matter of public record in a court of law."

In prior advisory opinions, the Ethics Commission has recognized that the one-year waiting period set forth in section 5(e)(4) does not extend to individuals who wish to represent clients, within one year from the date of their official severance from public service, when such representation pertains to matters of public record in a court of law. More specifically, the Ethics Commission has consistently opined that probate courts are courts of public record and have allowed petitioners to represent clients before probate courts within one year of leaving public office. See A.O. 2015-1 (opining that a former member of the East Providence City Council and other members of his law firm were not prohibited by the Code of Ethics from representing clients before the East Providence Probate Court or the East Providence Municipal Court within one year from the date of the petitioner's official severance from the City Council, because such representation pertained to matters of public record in a court of law and therefore, were not subject to the one-year probationary period); A.O. 2009-36 (opining that a former Coventry Probate Court Judge could represent clients before the Coventry Probate Court within one year from his termination from service as Probate Court Judge because the Coventry Probate Court is a court of public record); A.O. 2002-9 (opining that a former Woonsocket Probate Court Judge could represent clients before the Woonsocket Probate Court immediately upon leaving his position because the Probate Court is a court of public record).

Here, as a member of the City Council, the Petitioner had the authority to appoint the judge serving on the Probate Court, which would generally implicate the revolving door prohibitions in section 5(e). However, the instant matter falls squarely within the exception found in section 5(e) of the Code of Ethics relating to matters of public record in a court of law. Section 36-14-5(e)(4). Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court within one year from the date of his official severance from the City Council.

This Draft 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(e)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2015-1

A.O. 2009-36

A.O. 2002-9

Keywords:
Private Employment
Revolving Door

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Board of Commissioners, Lime Rock Fire Department

QUESTION PRESENTED:

The Board of Commissioners for the Lime Rock Fire Department, by and through its chairperson, requests an advisory opinion regarding: (i) whether three commissioners who have family members employed by the Fire Department may participate in the decision to accept or reject, as a whole, a collective bargaining agreement addressing the employment of their family members; and (ii) whether the same three commissioners may, pursuant to the Rule of Necessity, participate in the negotiation of said collective bargaining agreement.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that: (i) three commissioners for the Lime Rock Fire Department who have family members employed by the Fire Department may participate in the decision to accept or reject, as a whole, a collective bargaining agreement addressing the employment of their family members; however, (ii) the same three commissioners may not, pursuant to the Rule of Necessity, participate in the negotiation of said collective bargaining agreement.

Ron Rivet, the Chairperson ("Chair") of the Board of Commissioners ("Board") for the Lime Rock Fire Department ("Fire Department"), writing on behalf of the Board, states that the Board consists of five (5) commissioners, and that a simple majority constitutes a quorum. He identifies among the duties of the Board: the oversight of the operations of the Fire Department; approval of all bills incurred in the regular conduct of Fire Department affairs; and the exercise of exclusive authority over the establishment of all terms and conditions within the collective bargaining agreement ("CBA") addressing the employment of members of the Fire Department. The Chair informs that commissioners are elected to five-year terms by a majority vote of the electorate at annual meetings of the Lime Rock Fire District. He explains that the terms are staggered so that one term expires each year, requiring the election of one new commissioner annually, and that a commissioner may serve two consecutive terms.

The Chair states that three (3) of the current five (5) commissioners have relatives who are firefighters in the Fire Department. Specifically, he represents that: Commissioner Arthur Jacques ("Commissioner Jacques"), who was elected to the Board in 2016, is the father of a firefighter; Commissioner Ryan P. Drugan ("Commissioner Drugan"), who was elected to the Board in 2020, is the brother-in-law of a firefighter; and Commissioner Joseph Nadro ("Commissioner Nadro"), who was elected to the Board in 2019, is the first cousin of a firefighter. The Chair states that

neither he nor the fifth commissioner, Mark Krieger ("Commissioner Krieger"), has a relative who is a member of the Fire Department.

The Chair represents that members of the Fire Department are currently operating under a CBA approved in 2015 that was set to expire in 2018. He further represents that he and the Board's attorney, with some assistance from Commissioner Krieger, have been negotiating a new CBA since 2018 that is now near completion. The Chair explains that, sometime before the end of April of 2021, the Board is expected to participate in a decision to accept or reject, as a whole, the CBA to which members of the Fire Department, including firefighters, will be subject. The Board, through its Chair, seeks guidance from the Ethics Commission regarding whether Commissioners Jacques, Drugan, and Nadro may participate in the decision to accept or reject the CBA as a whole.¹ Additionally, the Board seeks guidance from the Ethics Commission regarding whether, under the Rule of Necessity, Commissioners Jacques, Drugan, and/or Nadro may participate in the final stages of negotiating the CBA. The Chair states that the Board would still be able to finish negotiating the CBA without the involvement of these three commissioners.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his 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 he, any person within his family, his business associate, or any business by which he is employed 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 is also prohibited from using his public position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

Pursuant to Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) ("Regulation 1.3.1"), a public official shall not participate 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. Regulation 1.3.1(B)(1). The definition of "any person within his family" specifically includes "son," "brother-in-law," and "first cousin." Regulation 1.3.1(A)(2). Regulation 1.3.1(B)(4)(a) specifically prohibits a public official from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of any person within his family or a household member. However, Regulation 1.3.1(B)(4)(b) permits a public official to participate in a decision to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his family or household member is impacted by the contract or agreement 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. The basis for allowing such participation is an assumption that a vote on an entire contract, once negotiated by others, is sufficiently remote from individual contract issues impacting a family member so as to not constitute a substantial conflict of interest in violation of the Code of Ethics.

¹ Commissioners Jacques, Drugan, and Nadro have all separately confirmed their support for this request for an advisory opinion from the Ethics Commission.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4)(a)'s blanket prohibition against involvement in contract negotiations is based on an understanding that, during negotiations, the impact of decisions as to individual components of a contract can be difficult to predict. For that reason, an official's participation in a contract issue that is seemingly unrelated to a family member can still have a resulting impact on other areas of the contract that would directly affect the family member. For example, in Advisory Opinion 2011-14, the Ethics Commission opined that a member of the Foster-Glocester Regional School Committee was prohibited by the Code of Ethics from participating in contract negotiations between the School Committee and the Foster-Glocester Teachers' Union, given that her husband was a teacher in the Foster-Glocester Regional School District and a member of the Foster-Glocester Teachers' Union. However, the petitioner could participate in the School Committee's decision to accept or reject a contract in its entirety once negotiated by the School Committee and the Foster-Glocester Teachers' Union without her participation, provided that her husband was impacted by the contract as a member of a significant and definable class of persons, and not individually or to any greater extent than other similarly situated members of the Foster-Glocester Teachers' Union. See also A.O. 2010-35 (opining that a member of the Pawtucket School Committee was prohibited from participating in contract negotiations with the local bargaining unit in which his brother and sister-in-law were members, but was permitted to participate in the School Committee's discussions and decision-making relative to approving or rejecting said contracts in their entirety, once negotiated by others).

In the instant matter, three (3) of the five (5) commissioners have conflicts of interest requiring their recusal from participation in the negotiation of the CBA. However, while prohibited from participating in contract negotiations concerning their relatives' employment, Commissioners Jacques, Drugan, and Nadro may take part in the Board's decision to accept or reject the CBA in its entirety, once it has been negotiated by others. Although Commissioners Jacques, Drugan and Nadro are permitted to participate in the overall vote to approve or reject the CBA as a whole, the Ethics Commission is aware that a general discussion can quickly devolve into a more specific review of contractual provisions. As such, these three commissioners must be vigilant about identifying such instances where a general conversation begins to focus on individual aspects of the CBA that are likely to financially impact their relatives. Should those circumstances arise, Commissioners Jacques, Drugan, and Nadro must recuse from further participation consistent with section 36-14-6 or seek further guidance from the Ethics Commission.

Rule of Necessity

Understanding that Regulation 1.3.1(B)(4)(a) prohibits three (3) of the five (5) commissioners from participating in the CBA negotiations, the Board inquires as to whether application of the Rule of Necessity would nevertheless apply to permit their participation. 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 process. See, e.g., A.O. 2020-5 (opining that

the New Shoreham Town Council could utilize the Rule of Necessity to achieve a quorum of five (5) members to hear and decide a matter relating to the potential amendment of an ordinance that would provide for the issuance of municipal permits for the operation of mobile food establishments in conformance with State law, given that four (4) of the five (5) Town Council members had conflicts of interest requiring their recusals); A.O. 2008-9 (opining that the Smithfield Zoning Board of Review could utilize the Rule of Necessity to achieve a quorum of five (5) members to hear and decide an appeal from a decision of the Planning Board, given that three (3) of the seven (7) Zoning Board members had conflicts of interest requiring their recusals). Under the Rule of Necessity, the official or officials determined to have the least conflict may be permitted to participate so that an important governmental function can be accomplished. See supra A.O. 2008-9.

In the instant matter, three (3) of the five (5) commissioners have conflicts of interest requiring their recusal from participation in the negotiation of the CBA to which their relatives will be subject. However, based upon the Chair's representations, a quorum of the Board is not necessary to negotiate the CBA. For that reason, the conflicts of interest on the parts of Commissioners Jacques, Drugan, and Nadro would not inhibit the Board's process of negotiating the CBA. These facts are distinguishable from those leading to the decision of the Ethics Commission to employ the Rule of Necessity when issuing each of the advisory opinions cited above. Accordingly, it is the opinion of the Ethics Commission that the Rule of Necessity cannot be invoked under these circumstances and that Commissioners Jacques, Drugan, and Nadro must refrain from participating in the negotiation of the CBA, leaving said negotiation to be continued by the Chair, the Board's attorney, Commissioner Krieger, or other Fire District representatives who do not have conflicts of interest. See, e.g., A.O. 2003-61 (opining that five (5) members of the Tiverton Town Council were required to recuse from participation and vote in the Town Council's consideration of whether to reimburse themselves, or other similarly situated Town Council members, for their legal expenses incurred in challenging an effort to organize a recall, and declining to opine that the Rule of Necessity could be utilized to obtain a quorum on the issue, given the failure of the petitioners to determine and represent that the Town Council was the only tribunal or entity in the Town capable of deciding the issues raised).

This Draft 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

§ 36-13-7(a)

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

Related Advisory Opinions:

A.O. 2020-5
A.O. 2011-14
A.O. 2010-35
A.O. 2008-9
A.O. 2003-61

Keywords:

Collective Bargaining Agreement
Recusal
Rule of Necessity

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Jessica Leah DeMartino

QUESTION PRESENTED:

The Petitioner, the Director of Social Services in the Town of Exeter, a municipal elected position, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon her in performing her public duties, given that she is privately employed as a grant writer for the Rhode Island Center Assisting Those in Need, a food pantry located in the Town of Charlestown.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Director of Social Services in the Town of Exeter, a municipal elected position, who in her private capacity is employed as a grant writer for the Rhode Island Center Assisting Those in Need, a food pantry located in the Town of Charlestown, is prohibited by the Code of Ethics from taking any non-ministerial official actions in her role as Executive Director of Social Services that will financially impact her private employer.

In November of 2020, the Petitioner was elected to a two-year term as the Director of Social Services ("Director") in the Town of Exeter ("Town" or "Exeter"). She identifies as her primary responsibility connecting Town residents in need of food with available local and state resources. She adds that, if money and/or gift card donations are received by her office, she distributes them to Town residents in need. The Petitioner states that she will most likely do some grant writing and distribute some grant funds in her capacity as Director. She represents that she works approximately fifteen hours each week, makes her own hours, and receives a stipend from the Town. She states that she reports to the Town Clerk but works alone.

The Petitioner informs that, in her private capacity, she has been employed part-time since September of 2020 as a grant writer for the Rhode Island Center Assisting Those in Need ("RICAN"), a private non-profit agency and food pantry located in the Town of Charlestown which serves residents throughout South County, including Exeter. She states that RICAN serves approximately 7,000 people each year, roughly 2% or 140 of whom are Exeter residents. The Petitioner explains that Exeter has one food pantry, adding that it is run by a local church and is only open once per month, by appointment.

The Petitioner represents that, when people come to her as Executive Director of Social Services seeking assistance when the food pantry in Exeter is unavailable to them, she is a resource for alternatives. She states that she keeps pamphlets in her office identifying area food pantries. The

Petitioner explains that some pamphlets are specific to individual food pantries, including RICAN,¹ while other pamphlets identify several area food pantries, also including RICAN. The Petitioner states that, ultimately, a client will decide which alternative to the food pantry in Exeter he or she will visit.

The Petitioner describes among her duties at RICAN: research, writing, and submitting grant proposals which primarily focus on the issue of food insecurity, to various corporations, private family donors, and state and federal agencies. She states that the award of grant funds to RICAN may depend upon the number of people served by the agency. The Petitioner states that she would not have the opportunity to identify herself as the Director of Social Services in Exeter on a grant application written on behalf of RICAN, nor would she do so if that opportunity existed. She further states that she would not have occasion to appear before the Town in her capacity as a grant writer for RICAN, nor would she do so if that opportunity existed.² The Petitioner represents that, to the best of her knowledge, Exeter and RICAN do not compete for the same grants, adding that Exeter has limited grant opportunities. The Petitioner offers that she loves her work in Exeter because it puts her in touch with people while helping them. She states that her work at RICAN, while important, is limited to using a computer to apply for grants. The Petitioner states that she thought that the two positions would complement one another nicely. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding what limitations, if any, the Code of Ethics places upon her in her public capacity in light of her private employment.

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 occurs if a public official has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed will derive a direct monetary gain, or suffer a direct monetary loss, by reason of her official activity. Section 36-14-7(a). A public official has reason to believe or expect 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). Additionally, section 36-14-5(b) of the Code of Ethics provides that a public official may not accept other employment which would impair her independence of judgment or require her to disclose confidential information acquired in the course of her official duties. Further, a public official is prohibited from using her public position to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d).

Here, the Petitioner has represented that opportunities for RICAN to receive grant funding can be reasonably expected to depend upon the number of people who benefit from RICAN programs, including Exeter residents who constitute a mere 2% of the 7,000 people RICAN serves annually.

¹ The Petitioner states that social services offered by RICAN sometimes extend to Christmas gifts and/or assistance with rent and utilities, but Exeter identifies RICAN solely as an alternative food pantry when the food pantry in Exeter is unavailable to its residents.

² The Petitioner explains that, while RICAN might seek funding from certain municipalities in Rhode Island for the purpose of funding social services, it does not seek money from Exeter because Exeter does not have money available for such purpose.

Accordingly, based upon the Petitioner's representations, the application of the relevant provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is prohibited from taking official action in matters that financially impact her private employer including, but not limited to, directing Exeter residents who are in need of an alternative to the Exeter food pantry either to or away from RICAN. See A.O. 2019-28 (opining that a member of the Providence City Council, who in her private capacity was an attorney, was prohibited from participating in City Council matters that financially impacted the law firm by which she was employed); A.O. 2018-60 (opining that a member of the Burrillville Town Council was prohibited from participating in matters that involved or impacted the non-profit community health center by which she was employed).

However, were RICAN to appear on a list of all food pantries available to Exeter residents, and be presented in such a manner that the Petitioner is neither advocating for nor against a client's selection of RICAN as a food pantry, a violation of the Code of Ethics could be avoided. For example, were RICAN to be identified as one of all food pantries available to Exeter residents, either listed alphabetically or by location in proximity to the Petitioner's office, the inclusion of RICAN as a source of food assistance for her clients would be a ministerial act on the part of the Petitioner, as it would not involve discretion or decision-making on her part.

Finally, based upon the Petitioner's description of her public duties, as well as those associated with her private employment, there is no indication that the Petitioner's work for RICAN would impair her independence of judgment in her role as Director of Social Services in Exeter or involve the disclosure of confidential information acquired during the course of those duties to obtain pecuniary gain for either herself or her employer. Nevertheless, in the event, however unlikely, that the Petitioner has an opportunity to apply for a grant in her capacity as the Director of Social Services for which it is reasonably foreseeable that RICAN might apply, the Petitioner is advised to seek further guidance from the Ethics Commission.

This Draft 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(b)

§ 36-14-5(d)

§ 36-13-7(a)

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

Related Advisory Opinions:

A.O. 2019-28

A.O. 2018-60

Keywords:

Conflict of Interest

Private Employment

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Timothy Walsh

QUESTION PRESENTED:

The Petitioner, the Chief of the Lime Rock Fire Department, a municipal employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from continuing to advise the Chairperson of the Board of Commissioners for the Lime Rock Fire Department concerning the negotiation of a collective bargaining agreement addressing the employment of the firefighters within the Fire Department, given that a firefighter within the Fire Department became the Petitioner's son-in-law in November of 2020.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chief of the Lime Rock Fire Department, a municipal employee position, is not prohibited by the Code of Ethics from continuing to advise the Chairperson of the Board of Commissioners for the Lime Rock Fire Department concerning the negotiation of a collective bargaining agreement addressing the employment of firefighters within the Fire Department, notwithstanding that a firefighter within the Fire Department became the Petitioner's son-in-law in November of 2020, because it is not reasonably foreseeable that the Petitioner's son-in-law would be financially impacted by the Petitioner's official activity, nor does the Petitioner's advice to said Chairperson rise to the level of participation in negotiations relative to a collective bargaining agreement affecting the employment, compensation or benefits of the Petitioner's son-in-law.

The Petitioner is the Chief of the Lime Rock Fire Department ("Fire Department"), having been hired in 2015 by its Board of Commissioners ("Board"). He cites among his duties as Chief: responsibility for the safety of the members of the Fire Department and the taxpayers of the Lime Rock Fire District, and the day-to-day operations of the Fire Department. The Petitioner states that the duties of the Board, of which he is not a member, include the exercise of exclusive authority over the establishment of all terms and conditions within the collective bargaining agreement ("CBA") which addresses the employment of the Fire Department's firefighters ("firefighters"). He explains that members of the Board have been negotiating a new CBA since 2018 that is now near completion.¹ The Petitioner further explains that, sometime before the end

¹ The Petitioner informs that the firefighters are currently operating under a CBA approved in 2015 that was set to expire in 2018.

of April of 2021, members of the Board are expected to participate in a decision to accept or reject the CBA as a whole.

The Petitioner represents that, as Chief of the Fire Department, he is not subject to the provisions of the CBA. He explains that, in anticipation of participation by the Board's Chairperson ("Chair") in negotiating the CBA, the Petitioner had been acting as a consultant to the Chair by identifying certain day-to-day considerations and concerns of the Fire Department, of which the Chair is neither a member nor a firefighter, by providing information about which the Chair might not otherwise have knowledge or access. The Petitioner offers the following examples of matters on which he advises the Chair concerning the firefighters: shift length; necessary training; the identification of apparatus chores; and the color and style of uniforms. The Petitioner specifies that his advice to the Chair is limited to matters concerning Fire Department operations only, and excludes Fire Department finances, be they related to firefighter compensation or otherwise. The Petitioner states that all provisions of the CBA about which he has advised the Chair will apply to all firefighters the same way. He further states that he has acted as a consultant only and emphasizes that he does not attend the negotiation sessions, is not actively involved in the negotiations, and has no voting authority over the CBA which will eventually be presented to members of the Board for consideration.

The Petitioner states that he has not consulted with the Chair regarding the CBA since before November of 2020. The Petitioner informs that, in November of 2020, one of the firefighters within the Fire Department married the Petitioner's daughter and became the Petitioner's son-in-law. It is in the context of these facts that the Petitioner seeks advice from the Ethics Commission regarding whether he may resume consulting with the Chair in advance of the Chair continuing the negotiation process for the CBA.²

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if the Petitioner has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed, 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 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). A public official also may not use his office for pecuniary gain, other than as provided by law, for himself, any person within his family, his employer, his business associate, or any business that he represents. Section 36-14-5(d). Further, the Code of Ethics provides that no public official shall participate in any matter as part of his public duties if he has reason to believe or expect that any person within his family will derive a direct monetary gain or suffer a direct monetary loss as a result. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1"). The definition of "any person within [a public official's] family" specifically includes "son-in-law." Regulation 1.3.1(A)(2). Finally, no

² In recognition of his responsibility to seek approval of an alternate chain of command following his daughter's marriage to a firefighter within the Fire Department for which the Petitioner serves as Chief, the Petitioner has requested a second advisory opinion from the Ethics Commission. That request is also on today's agenda.

person subject to the Code of Ethics is permitted to participate in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of any person within his family. Regulation 1.3.1(B)(4)(a).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether the Petitioner's consultations with the Chair constitute participation in collective bargaining negotiations as prohibited by Regulation 1.3.1(B)(4)(a), and whether such consultations would result in a direct financial impact upon his son-in-law as prohibited by Regulation 1.3.1(B)(1). If such a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by the Code of Ethics to recuse from further advising the Chair concerning the CBA negotiations. See A.O. 2019-25 (opining that a member of the Cranston City Council could participate in City Council discussions and voting relative to a proposed ordinance that would ban the use of plastic bags by Cranston business establishments, notwithstanding that the petitioner owned and operated a restaurant in Cranston, given the petitioner's representations that the proposed ordinance's ban on plastic bags would have no impact on his current operations); A.O. 2012-2 (opining that an Exeter Town Council member, who was also a licensed firearms dealer, could participate in the Town Council's discussions and voting relative to a resolution asking the General Assembly to change the state law regarding municipal licensing of concealed weapons because his business as a firearms dealer was not directly affected by the ability of the Town to issue permits to carry a concealed weapon).

Here, the Petitioner represents that the nature of his consultations with the Chair is limited to providing information relative to Fire Department operations, and specifically excludes financial matters such as firefighter compensation or benefits. Furthermore, the Petitioner has stated that he does not attend the CBA negotiation sessions, is not actively involved in those negotiations, and has no voting authority over the CBA which will eventually be presented to members of the Board for consideration. The Petitioner's advice to the Chair does not rise to the level of participation in negotiations relative to the CBA and, therefore, does not trigger the provisions of Regulation 1.3.1(b)(4)(a). Nor is it reasonably foreseeable that such consultations will result in a direct financial impact upon the Petitioner's son-in-law as prohibited by Regulation 1.3.1(b)(1).

Accordingly, based upon the Petitioner's representations, the application of the relevant provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from continuing to advise the Board of Commissioners for the Lime Rock Fire Department concerning the negotiation of a collective bargaining agreement addressing the employment of firefighters within the Fire Department.

This Draft 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)

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2019-25

A.O. 2012-2

Keywords:

Collective Bargaining Agreement

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Timothy Walsh (2)

QUESTION PRESENTED:

The Petitioner, the Chief of the Lime Rock Fire Department, a municipal employee position, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command is sufficient to insulate the Petitioner from conflicts of interest, given that his son-in-law is employed as a firefighter within the Fire Department.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the proposed alternate supervisory chain of command is sufficient to insulate the Petitioner, the Chief of the Lime Rock Fire Department, a municipal employee position, from conflicts of interest, given that his son-in-law is employed as a firefighter within the Fire Department.

The Petitioner is the Chief of the Lime Rock Fire Department ("Fire Department"), having been hired in 2015 by its Board of Fire Commissioners. He cites among his duties as Chief: responsibility for the safety of the members of the Fire Department and the taxpayers of the Lime Rock Fire District, and the day-to-day operations of the Fire Department. The Petitioner identifies the chain of command within the Fire Department as follows: The Chief, under whom two (2) captains serve; six (6) lieutenants who report to the captains; and sixteen (16) firefighters who report to the particular lieutenant or captain who is in charge during any given shift. The Chief informs that he is not involved with the contractual employment of the firefighters or the scheduling of their shifts, including overtime, adding that shift selection is subject to a bid process through the firefighters' union. The Petitioner further informs that he is regularly involved with disciplinary and meritorious service matters involving the firefighters.

The Petitioner states that, in November of 2020, one of the firefighters within the Fire Department married the Petitioner's daughter and became the Petitioner's son-in-law.¹ Cognizant of the nepotism provisions of the Code of Ethics, the Petitioner has created an alternate supervisory chain of command that will remove the Petitioner from any supervisory, disciplinary, or other responsibilities or involvement relative to his son-in-law's employment as a firefighter. Pursuant to the proposed alternate chain of command, the Petitioner's son-in-law would report directly to the particular lieutenant or captain in charge during any given shift, just as he would in the regular chain of command; however, the particular lieutenant or captain in charge would report any

¹ The Petitioner states that his son-in-law had been a firefighter within the Fire Department for approximately five (5) years before his marriage to the Petitioner's daughter.

personnel matters involving the Petitioner's son-in-law directly to the Chairperson of the Board of Fire Commissioners for review and decision, rather than to the Petitioner. Given this set of facts, the Petitioner seeks the guidance of the Ethics Commission regarding whether the alternate supervisory chain of command established by the Petitioner is sufficient to insulate the Petitioner from conflicts of interest arising out of his position as Chief, given that his son-in-law is a firefighter in the same Fire Department.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if the public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Nor may a public official use his office for pecuniary gain, other than as provided by law, for himself, any person within his family, his employer, his business associate, or any business that he represents. Section 36-14-5(d).

The Code of Ethics further provides that no public official shall participate in any matter as part of his public duties if he has reason to believe or expect that any person within his family is a party to or participant in such matter, or will derive a direct monetary gain, suffer a direct monetary loss, or obtain an employment advantage as a result. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1"). Also, a public official may not participate in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his family, nor may he delegate such tasks to a subordinate. Regulation 1.3.1(B)(2). The definition of "any person within [a public official's] family" specifically includes "son-in-law." Regulation 1.3.1(A)(2).

The Ethics Commission has issued a number of advisory opinions approving an alternate chain of command in analogous situations involving family members working in the same fire department. For example, in Advisory Opinion 2010-40, the Ethics Commission opined that the Chief of the Manville Fire Department, whose son was employed as a firefighter in the department, would not violate the Code of Ethics if he adhered to a proposed alternate chain of command pursuant to which the petitioner would recuse from participation in supervisory matters involving his son and, instead, the Chairman of the Board of Fire Wardens would become the son's designated supervisor regarding all administrative matters such as the scheduling of work shifts and disciplinary actions. See also A.O. 2009-34 (opining that the Chief of the West Warwick Fire Department was not prohibited from serving in that position were his son-in-law to be a successful candidate for a firefighter position within the same department, provided that certain procedures were followed so that the petitioner was removed from personnel decisions or other matters that particularly affected his family member). Contra A.O. 2008-54 (opining that the son of the Chief of the Saylesville Fire District was prohibited from being employed by the Fire District, notwithstanding that the Fire Chief would not take part in the selection process, since no alternative chain of command existed or was proposed to insulate the Fire Chief from apparent conflicts of interest).

Accordingly, based on the facts as represented, a review of the applicable provisions of the Code of Ethics, and consistent with advisory opinions previously issued, it is the opinion of the Ethics Commission that the chain of command outlined by the Petitioner which requires the Petitioner to recuse from any decisions that may financially impact his son-in-law (including, but not limited to, supervision, evaluation, work assignment, promotion, transfer and discipline) is reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest. As we have noted in prior advisory opinions, during discrete emergency situations, such as fighting fires where incident-specific supervision of his son-in-law may be unavoidable, the Ethics Commission finds that a violation of the Code of Ethics will not exist. The Petitioner is strongly cautioned, however, to remain vigilant in identifying and avoiding additional conflicts of interest that may arise in non-emergency situations. The Petitioner is encouraged to seek further guidance from the Ethics Commission as needed. Finally, when recusing, the Petitioner must complete a statement of conflict of interest consistent with the provisions of section 36-14-6.

This Draft 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)

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

Related Advisory Opinions:

A.O. 2010-40

A.O. 2009-34

A.O. 2008-54

Keywords:

Alternate Chain of Command

Nepotism

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Richard Keene

QUESTION PRESENTED:

The Petitioner, a member of the North Smithfield Planning Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participation in the Planning Board's discussions and vote relative to a particular solar project application, given that representatives of the North Smithfield Heritage Association ("NSHA"), a private non-profit organization, of which he serves as a member of the Board of Directors and as its President, have provided, and are likely to provide again, public comment on the application during public hearings of the Planning Board.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Smithfield Planning Board, a municipal appointed position, is not prohibited by the Code of Ethics from participation in the Planning Board's discussions and vote relative to a particular solar project application, notwithstanding that representatives of the North Smithfield Heritage Association ("NSHA"), a private non-profit organization, of which he serves as a member of the Board of Directors and as its President, have provided, and are likely to provide again, public comment on the application during public hearings of the Planning Board, provided that the requirements of Commission Regulation 520-RICR-00-00-1.2.1(B)(2) are satisfied.

The Petitioner is a member of the North Smithfield Planning Board ("Planning Board") and has served in that position since his appointment by the Town Council in September of 2018. In his private capacity, the Petitioner serves on the Board of Directors and as the President of the North Smithfield Heritage Association ("NSHA" or "Association"), a private non-profit organization founded in 1970. The Petitioner informs that the NSHA:

... shall strive to preserve and promote North Smithfield's heritage. At a minimum, members and committees shall endeavor to identify, acquire, maintain, and preserve historic buildings and historic locations, as well as open them to the public. Additionally, the Association shall endeavor to reserve for posterity historic references, relics, landmarks, historical cemeteries, and objects of historical, educational, architectural, cultural, and aesthetic value

related to the Town of North Smithfield []. The Association shall assist local property owners with their preservation efforts.

The Petitioner states that the NSHA, which has more than 200 members, is an entirely volunteer organization and that no one receives any remuneration for serving as an officer or director. He further states that, in order to fulfill its mission, the NSHA raises money from, among other sources, annual membership dues, donations, rental fees from one of the three historic buildings maintained by the NSHA, and grants awarded to the Association by the Town of North Smithfield.

The Petitioner represents that presently before the Planning Board for review is an application for a solar project ("Solar Project"), the master plan for which was already approved by the Planning Board. He further represents that he participated in the Planning Board's discussions and vote relative to the Solar Project's master plan approval during which he expressed his opinion relative to the Solar Project. The Petitioner states that the Vice President of the NSHA was also present at the hearing relative to the Solar Project's master plan and spoke on behalf of the NSHA in support of the Solar Project. The Petitioner explains that the applicant must next come before the Planning Board for preliminary and then final plan approval. The Petitioner states that neither he, any of his family members, nor the NSHA are abutters to the property subject to the Solar Project. He adds that the NSHA does not stand to be financially impacted by the Planning Board's discussions and vote on the Solar Project and that the NSHA is neither a party nor a participant in the matter. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics requires his recusal from the Planning Board's future discussions and votes concerning the Solar Project if representatives of the NSHA appear and provide comments during the public comment portions of the Planning Board's hearings.¹

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A conflict of interest exists if a public official has reason to believe or expect that he, his family member, his business associate, or his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also 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 member, his business associate, or any business by which he is employed or which he 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 his business associate appears or presents 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).

¹ In his letter requesting the instant advisory opinion, the Petitioner had asked an additional question pertaining to past conduct involving actions taken by him in his private capacity. The Ethics Commission does not opine on past conduct in an advisory opinion, especially conduct involving actions taken in a petitioner's private capacity rather than in his public capacity.

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 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); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC). Here, the Petitioner serves on the Board of Directors and as the President of the NSHA, thus, he is a business associate of the NSHA. Therefore, Regulation 1.2.1(A)(2) requires him to recuse from participating in matters before his municipal agency when his business associate appears or presents evidence or arguments.

However, Regulation 1.2.1(B)(2) contains an exception whereby a person subject to the Code of Ethics is not required to recuse himself when:

[t]he person’s business associate, employer, household member or any person within his or her family is before the person’s state or municipal agency during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the business associate, employer, household member or person within his or her family is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

This exception focuses on unique situations, not otherwise contemplated by Regulation 1.2.1(A), where a public official’s family member, business associate or employer appears before the public official’s board on a matter in which the person appearing has no financial interest in the matter and is not a party or a participant.

In Advisory Opinion 2015-34, the Ethics Commission reviewed facts similar to the ones presented in the instant matter. There, the Ethics Commission opined that a member of the Westerly Planning Board was not prohibited by the Code of Ethics from participating in the Westerly Planning Board’s consideration of a major land development application, notwithstanding that the petitioner was a member of the Board of Directors of Greater North End Community Development, Inc. (“North End”), and that her fellow Board members, or other representatives of that organization were likely to provide public comment during the public hearing for that application. The Ethics Commission based its opinion on the petitioner’s representations that her business associates: were not parties or participants in the application; did not own any property within 200 feet of the perimeter of the subject property; and did not have any financial interest in the outcome of the application. See also A.O. 2013-9 (opining that a Woonsocket Zoning Board member could

participate in the Zoning Board's reconsideration of a variance application, notwithstanding his business associate's past appearance as a remonstrant in that matter and the possibility that his business associate could appear again during the public comment portion of the variance hearing, given that neither the petitioner nor his business associate were a party or participant in the variance application, did not own property within the 200-foot perimeter of the property under review, and did not have a financial interest in the matter).

Here, the Petitioner represents that: the NSHA is not a party or participant in the application for the Solar Project; is not an abutter to the subject property; does not have a financial interest in the outcome of the Solar Project application; and that the appearance of the NSHA will be during public comment period in which all other members of the public would have equal opportunity to comment. Based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with the prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not required to recuse if his fellow members of the NSHA Board of Directors, or any other representative of the NSHA, appears before Planning Board during the public comment portion of the hearings on the Solar Project.

This Draft 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)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2015-34

A.O. 2014-14

A.O. 2013-9

A.O. 2012-28

Keywords:

Business Associate

Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Erica Vieira

QUESTION PRESENTED:

The Petitioner, the Administrative and Payroll Clerk for the Johnston Police Department, a municipal employee position, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon her, given that her spouse is the Deputy Chief of the Johnston Police Department.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Administrative and Payroll Clerk for the Johnston Police Department, a municipal employee position, may carry out her current duties without running afoul of the Code of Ethics, notwithstanding that her spouse is the Deputy Chief of the Johnston Police Department, given the Petitioner's representation that she has no discretionary decision-making authority that would allow her to use her position to benefit her spouse's financial interests nor any supervisory authority over her spouse.

The Petitioner represents that she has been employed by the Johnston Police Department ("Police Department" or "Department") for fifteen years and has served as its Administrative and Payroll Clerk since October of 2019. The Petitioner states that the Administrative and Payroll Clerk is a civilian employee position with responsibilities over:

- the recording, filing, and maintenance of all daily absences and extended leave for all Department personnel including, but not limited to, sick leave, vacation time, personal time, compensatory time, overtime, injury on duty, job related illnesses, bid awards, and promotions;
- the update and maintenance of all computer and manual files concerning Department personnel records for each individual including any and all financial and personal changes; and
- the processing and maintaining of all health and dental benefits for all Department personnel.

The Petitioner states that no Department employees report directly to her and, thus, she has no supervisory role in the Department. She further states that any payroll and employee time records or accruals recorded by her must receive final approval by the Chief of Police.

The Petitioner represents that her spouse was appointed Deputy Chief of the Police Department on August 28, 2020, after the former Deputy Chief, Joseph P. Razza, was appointed Chief ("Chief Razza"). Upon his appointment as Chief, Chief Razza issued a Special Order to all Department personnel stating that, effective immediately, the Petitioner would report directly to Chief Razza, rather than to her spouse, the Deputy Chief, regarding all matters relating to her duties and responsibilities, and also requiring that any time off requested by her be submitted to and approved by Chief Razza. Further, in the event that Chief Razza is unavailable, the Petitioner will be supervised by the Mayor's Chief of Staff, who is responsible for the supervision of all Department Heads. In a telephone conversation with Commission Staff, Chief Razza explained that the Petitioner is responsible for recording the data received from Department employees relative to their overtime, which is confirmed by the employees' supervisor(s) prior to recording the data. Thereafter, overtime data is reviewed and authorized for payment by Chief Razza, who in turn forwards the data to the payroll department at Town Hall to be entered into the Town's payroll system without the Petitioner's involvement.

The above-described alternate supervisory chain of command designed to insulate Deputy Chief Vieira from any conflicts of interest arising from the Petitioner's position within the same Department was approved by the Ethics Commission on December 8, 2020, through the issuance of Advisory Opinion 2020-48 to Deputy Chief Vieira. Advisory Opinion 2020-48 did not address any potential conflicts of interest that might arise for the instant Petitioner while performing her official duties as Administrative and Payroll Clerk, when such duties may impact or involve her spouse. The Petitioner was advised to seek her own guidance from the Ethics Commission. Given this set of facts, the Petitioner asks what restrictions, if any, the Code of Ethics places upon her in performing her public duties.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any employment or transaction 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 the employee has reason to believe or expect that she or any family member, among others, will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). Also, a public employee may not use her public position to obtain financial gain, other than that provided by law, for herself or any member of her family. Section 36-14-5(d).

Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) ("Regulation 1.3.1") contains specific provisions aimed at curbing nepotism. Pursuant to Regulation 1.3.1's general "catch-all" provision, a public employee may not participate in any matter as part of her public duties if "any person within [] her family" is a participant or party, or if there is reason to believe that a family member will be financially impacted or will obtain an employment advantage. Regulation 1.3.1(B)(1). More specifically, Regulation 1.3.1 prohibits a public employee from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within her family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission. Regulation 1.3.1(B)(2). The phrase "any person within [] her family" expressly includes "spouse." Regulation 1.3.1(A)(2).

In the instant matter, the Petitioner represents that her duties as the Administrative and Payroll Clerk are limited in nature, and that she has no supervisory authority over other Department employees, including her spouse. She further represents that she does not exercise any decision-making that has the potential to financially impact her spouse; rather, her duties are ministerial and must further be approved by Chief Razza. See A.O. 2008-17 (opining that the Finance Director for the Town of Lincoln did not violate the Code of Ethics by processing payments for the Town's legal notices that were carried in a newspaper owned by his brother, given that the petitioner's duties did not involve selecting the newspaper, but only required him to process the payment vouchers that had been approved by the Town Administrator and the Town Council and, as such, the Finance Director's actions were ministerial in nature and did not involve the exercise of any discretionary authority that could affect the financial interests of his brother); A.O. 2003-69 (opining that a Mail Ballot Clerk for the City of East Providence Board of Canvassers, whose position was ministerial only and did not involve exercising any discretionary authority that could affect the candidacy of her spouse, a potential candidate for a seat on the East Providence City Council, had no ability to use her position to benefit her spouse, but should exercise diligence in identifying any actions that she might be asked to take that would involve discretionary authority as to the election process and should recuse herself from participation on any matters relating to, or affecting the candidacy of, her spouse and/or other City Council candidates).

Accordingly, based on the Petitioner's representations, 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 may carry out her current duties as Administrative and Payroll Clerk without running afoul of the Code of Ethics, notwithstanding that her spouse is Deputy Chief in the same Department. The Petitioner is cautioned, however, that should her duties enlarge or change to include any discretionary decision-making role or authority in regard to her spouse, she should either recuse, consistent with section 36-14-6, from participation in such action and/or request further guidance from the Ethics Commission.

This Draft 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)

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

Related Advisory Opinions:

A.O. 2008-17

A.O. 2003-69

Keywords:

Nepotism

Family: Public Employment

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 12, 2021

Re: Walter B. Mahony III

QUESTION PRESENTED:

The Petitioner, a member of the Charlestown Planning Commission, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Planning Commission's discussions and voting relative to applications associated with a proposed subdivision to be located on land that partially abuts a road owned by a private homeowners' association to which the Petitioner belongs.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Charlestown Planning Commission, a municipal elected position, is not prohibited by the Code of Ethics from participating in the Planning Commission's discussions and voting relative to applications associated with a proposed subdivision to be located on land that partially abuts a road owned by a private homeowners' association to which the Petitioner belongs.

The Petitioner is the second alternate member of the Charlestown Planning Commission ("Planning Commission"), having been elected to that position in November of 2020. The Petitioner represents that it is the duty of the Planning Commission to ensure the orderly and environmentally sound growth of the Town of Charlestown ("Town" or "Charlestown") through the implementation of various municipal, state, and federal land development and subdivision regulations when reviewing and evaluating pertinent applications. The Petitioner states that he resides at 27 Stumpy Point Lane in Charlestown, a property located at the very eastern end of Stumpy Point Lane, consisting of lots 15 and 16, Assessor's Plat 7, which he purchased in 2012. He further states that he is one of 77 lot owners whose properties are located in the private Arnolda development, which is owned by the Arnolda Improvement Corporation ("AIC"), a private homeowners' association.

The Petitioner represents that the Arnolda development is unique because, unlike many other private subdivisions located in Rhode Island, the individual homeowners in the Arnolda development do not own an interest in the common property. He informs that the common property is owned by the AIC and includes one tennis court, five docks, and all of the roads within the Arnolda development. The Petitioner further informs that the AIC's affairs and property are managed by a Board of Directors whose members are also property owners in the Arnolda development. The Petitioner states that all homeowners automatically become members of the

AIC upon purchasing property in the Arnolda development and are required to pay annual assessments and fees to the AIC for the maintenance, improvement, insurance, and taxes on the common areas. The Petitioner represents that these obligations are not recorded in his deed, nor was he required to sign an agreement with the AIC memorializing these obligations. The Petitioner states, however, that he does not have the ability to opt out of either membership in the AIC or payment of the annual assessments. He represents that the AIC normally presents each homeowner with a bill reflecting the particular homeowner's annual assessment. The Petitioner informs that, to the best of his knowledge, no one has ever asked to discontinue his/her membership in the AIC.

The Petitioner represents that currently before the Planning Commission is a pre-application plan submitted by the 4772 Old Post Road, LLC for a major subdivision of cluster design known as Summer Winds ("Summer Winds" or "Subdivision") on lot 51, Assessor's Plat 7 in Charlestown. The Petitioner informs that, prior to his election to the Planning Commission, he had testified relative to Summer Winds at two virtual public hearings before the Planning Commission in his capacity as a resident of Charlestown. He further informs that the Subdivision is located on a lot outside the boundaries of the AIC homeowners' lots. The Petitioner states that lot 51 abuts approximately 2,000 feet of Arnolda Round Road, one of the private roads owned by the AIC and used by homeowners in the Arnolda development. He further states that his property does not abut lot 51, but rather is located approximately 1,476.6 feet from it, and that he has not received an abutter's notice regarding the pre-application plan for the Subdivision. The Petitioner adds that he is neither on the Board of Directors for the AIC nor is he a member of any of its advisory committees.

The Petitioner states that the alternate members of the Planning Commission are not voting members unless and until a regular member is absent. However, the alternate members have been asked to participate in the hearings and discussions relative to all of the applications relating to the Subdivision. Given this set of facts, the Petitioner requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Planning Commission's discussions and voting relative to the Subdivision application(s).

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A conflict of interest exists if a public official has reason to believe or expect that he, his family member, his business associate, or his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also 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 member, his business associate, or any business by which he is employed or which he 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 his business associate appears or presents 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).

In determining whether a relationship between two parties constitutes an ongoing business association as defined in the Code of Ethics, the Ethics Commission examines the nature of the association and the scope of the business dealings between the parties and looks to, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, or there exists an anticipated future relationship. See A.O. 2010-16 (opining that an East Greenwich Planning Board member, who in his private capacity was the publisher of a local news and information website, was required to recuse when a business associate appeared before the Planning Board, specifically, if the business associate currently advertised on the petitioner's website, had outstanding accounts, or when there was an anticipated future relationship between the parties).

Recently, the Ethics Commission reviewed four complaints filed against members of the Bonnet Shores Fire District Council who owned condominium units at the Bonnet Shores Beach Club ("Beach Club").¹ There, the Ethics Commission ultimately found that all of the Respondents were business associates of the Beach Club, given that they all owned condominium units at the Beach Club and were obligated to pay annual assessments to the Beach Club for property maintenance.²

The Ethics Commission also recognized a continuous business relationship between a petitioner and the customers to whom he sold fire alarm systems, under circumstances where the petitioner also provided inspection and service of said alarm systems on a quarterly basis after installing them. See A.O. 2008-25. The Ethics Commission determined that such a continuing service relationship between the petitioner and his customers evidenced the existence of an ongoing business association. See id. Further, the Ethics Commission has established that a landlord and tenant are business associates under the Code of Ethics. See A.O. 2002-70 (opining that a member of North Kingstown Town Council was a business associate of the person from whom she rented retail space, and could not participate in Council matters that would financially impact her landlord); A.O. 2001-57 (opining that a Central Falls City Councilor could not participate in matters that would have a financial impact upon his tenants, who were his business associates under the Code of Ethics).

Here, the Petitioner represents that he does not have an ownership interest in the common areas owned by the AIC and that his obligation to pay annual assessments to the AIC, which in return maintains such common areas including all of the roads used by the Petitioner to access the Arnolda development and his own property, does not originate from his deed or a subsequent written agreement between him and the AIC. However, the Petitioner acknowledges that his membership in the AIC is directly related to, and not severable from, his homeownership in the

¹ See In re: Janice McClanaghan, Complaint No. 2019-15; In re: Michael Vendetti, Complaint No. 2019-16; In re: Chris Mannix, Complaint No. 2019-17; and In re: Natalie McDonald, Complaint No. 2019-18 ("Bonnet Shores Complaints").

² Five years prior to rendering its decision in the Bonnet Shores Complaints, the Ethics Commission issued Advisory Opinion 2015-11 to another member of the AIC under similar circumstances. There, the Ethics Commission recognized no business associate relationship between the petitioner and the AIC because the petitioner was not an officer or member of the AIC's Board of Directors. In concluding that the petitioner's payment of annual assessments to the AIC did not constitute a business relationship, the advisory opinion was silent regarding the petitioner's inability to opt out of either membership in the AIC or the payment of the mandatory annual assessments, a fact which carried much weight in the decision addressing the Bonnet Shores Complaints.

Arnolda development and that he is required to pay annual assessments for which he receives a bill each year. Thus, it is the opinion of the Ethics Commission that the Petitioner is a business associate of the AIC, based not on the Petitioner's membership in the AIC, *per se*, but rather, because of the continuous responsibilities of the Petitioner to the AIC, and *vice versa*, that cannot be separated from his property ownership.

Next, the Ethics Commission must ascertain whether the Petitioner or his business associate, the AIC, will be financially impacted by the official action that is under consideration. In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussion or vote on decisions concerning abutting property, absent reliable evidence that their official action would not affect the financial interests of the public official, either positively or negatively.

Instances in which the presumption was found to be sufficiently rebutted include the following: A.O. 99-148 (presumption rebutted where a petitioner provided independent evidence from a licensed appraiser that his property would not be financially affected by a proposed zoning change); A.O. 98-92 (presumption rebutted where only a small fraction of the petitioner's back yard was within 200 feet of the area at issue; the proposed cul-de-sac would not be visible from her property; and where she represented that there would be no financial impact on her property); A.O. 98-58 (presumption rebutted where the petitioner represented that he did not believe a zoning change would financially impact his property); A.O. 98-35 (presumption rebutted where the requested height variance was minor; the subject dwelling was not adjacent to the petitioner's property; and the petitioner represented that the variance would have no financial impact on his property).

Just as the Ethics Commission has presumed a financial impact for abutting property, the Ethics Commission has applied the opposite presumption of no financial impact relative to property that is near, but not abutting, a subject property. See A.O. 2003-44 (opining that a member of the Cranston Town Council could participate in the Safety Services and Licensing Committee's consideration of a proposed license for the Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, in the absence of evidence indicating a reasonable foreseeability of financial impact); A.O. 2002-30 (opining that a Jamestown Town Council member could participate in the determination of the location for a highway garage, notwithstanding that two of the location options were 1000 and 900 feet away from her land).

Based upon the above representations, the Petitioner's property neither adjoins lot 51, nor did he receive an abutters' notice. Rather, the Petitioner states that his property is located 1,476.6 feet from lot 51, and that the development of lot 51 will have no financial impact on the value of his property. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not an abutter and, therefore, there is no presumption of financial impact upon the Petitioner. However, the Petitioner represents that a portion of Arnolda Round Road, a private road owned by the AIC, his business associate, does directly abut lot 51. Therefore, there is a rebuttable presumption that

the AIC would be financially impacted by the Petitioner's official actions relative to the proposed Subdivision. Nonetheless, the Petitioner represents that Arnolda Round Road is a private road to which the Subdivision would not have access. He informs that the Subdivision is required by law to be accessible by a public road and that the Subdivision has such access through Old Post Road located to the north of both the Subdivision and the Arnolda development. Thus, the Petitioner does not expect any increase of vehicular traffic on Arnolda Round Road nor does he believe that the AIC will be financially impacted by the proposed Subdivision. Accordingly, it is the opinion of the Ethics Commission that the Petitioner's representations are sufficient to rebut the presumption that his business associate, the AIC, will be financial impacted by his official actions. Thus, the Petitioner may participate in the Planning Commission's discussions and voting relative to applications associated with the proposed Subdivision. However, the Petitioner is advised that, if any of the circumstances change, he must recuse consistent with section 36-14-6, and/or seek further guidance from the Ethics Commission.

This Draft 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. 2012-4

A.O. 2010-16

A.O. 2008-25

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

A.O. 2003-44

A.O. 2002-70

A.O. 2002-30

A.O. 2001-57

A.O. 99-148

A.O. 98-92

A.O. 98-35

Keywords:

Business Associate
Recusal

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