



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street

Providence, RI 02903

(401) 222-3790 (Voice/TT) Fax: (401) 222-3382

ethics.email@ethics.ri.gov

<https://ethics.ri.gov>

NOTICE OF OPEN MEETING

AGENDA

2nd Meeting

DATE: Tuesday, January 26, 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/82338588664>
and using Webinar ID: 823 3858 8664
- Or using iPhone one-tap US:
 - +16465588656,,82338588664# or
 - +13017158592,,82338588664#
- Or by Telephone, Dial (for higher quality, dial a number based on your current location) US:
 - +1 646 558 8656 or
 - +1 301 715 8592 or
 - +1 312 626 6799 or
 - +1 669 900 9128 or
 - +1 253 215 8782 or
 - +1 346 248 7799 or
 - 833 548 0276 (Toll Free) or
 - 833 548 0282 (Toll Free) or
 - 877 853 5247 (Toll Free) or
 - 888 788 0099 (Toll Free)
- International numbers available:
<https://us02web.zoom.us/j/kbfJHvxngb>
Webinar ID: 823 3858 8664

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 January 12, 2021.
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.) Rita A. Kenahan, RN, EdD, a member of the Little Compton School Committee, requests an advisory opinion regarding whether the Code of Ethics prohibits her from temporarily working part-time as a nurse at the Wilbur McMahon School in Little Compton to assist with the testing of students, faculty, and staff for COVID-19.
6. Discussion and potential voting regarding extension of changes to Financial Disclosure procedures in light of COVID-19, including:
 - a.) Waiver of notary requirement for paper filers;
 - b.) Allowing scanned and emailed paper filings.
7. New Business proposed for future Commission agendas and general comments from the Commission.
8. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on January 12, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: James H. Brady, Jr., Complaint No. 2020-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) 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.

9. Report on actions taken in Executive Session.
10. Motion to seal minutes of Executive Session held on January 26, 2021.
11. 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 21, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 26, 2021

Re: Rita A. Kenahan, RN, EdD

QUESTION PRESENTED:

The Petitioner, a member of the Little Compton School Committee, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from temporarily working part-time as a nurse at the Wilbur McMahon School in Little Compton to assist with the testing of students, faculty, and staff for COVID-19.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Little Compton School Committee, a municipal elected position, is prohibited by the Code of Ethics from seeking or accepting employment, including temporary part-time employment as a nurse at the Wilbur McMahon School in Little Compton to assist with the testing of students, faculty, and staff for COVID-19. However, the Petitioner is not prohibited by the Code of Ethics from assisting with the testing of students, faculty, and staff for COVID-19 at the William McMahon School, provided that she serves in a purely voluntary capacity with no compensation.

The Petitioner is a member of the School Committee ("School Committee") in the Town of Little Compton ("Town" or "Little Compton"), having been elected to a four-year term in 2018. The Petitioner states that, immediately prior to her election to the School Committee, she worked as a substitute nurse at the Wilbur McMahon School ("School"). She adds that the School, which is the only school in Little Compton, educates children in grades kindergarten through eight. The Petitioner represents that her election to the School Committee was the reason that she left her position as a substitute nurse at the School. She further represents that she presently works as a substitute school nurse in the Towns of East Providence, Tiverton, and Portsmouth, and that she is employed as an adjunct faculty member at Bristol Community College and at the University of Houston-Victoria.

During a recent conversation with Ethics Commission staff ("staff"), the Petitioner and the Superintendent of the Little Compton School District ("Superintendent") stated that students, faculty, and staff at the School will be tested for COVID-19 ("testing") each Thursday from 8:30 am until 2:15 pm at the School for the remainder of the academic year. The Superintendent also stated that it would be extremely difficult for the School's full-time nurse to administer the testing by herself to a population of approximately 220 students and 51 faculty and staff members each week while simultaneously tending to the health needs of a school community that includes students with significant health issues. The Superintendent added that, on January 14, 2021, which

was the first day of testing, the School's nurse was assisted by the Little Compton Fire Chief and members of the Emergency Medical Services ("EMS").

In response to staff's inquiry about the Town's search for a part-time nurse, or other appropriate candidates, to assist with the testing, the Superintendent stated that both of the two substitute school nurses who presently cover at the School on the rare occasion when the School's full-time nurse is unavailable, also work as substitute school nurses in other municipalities and would need advance notice to assist with testing at the School. The Superintendent further stated that four other nurses from Little Compton who retired in recent years, to whom she has reached out, are all in a high-risk category for contracting COVID-19, have not yet been vaccinated, and are unable and/or unwilling to assist at the School. The Superintendent represented that the use of a temporary nursing agency is cost prohibitive to the Town and that no formal advertising for a part-time nurse has been undertaken. The Superintendent states that she has inquired of the Petitioner whether the Petitioner might be able to assist with the testing at the School. The Petitioner states that she would be paid a daily per diem rate for her services, but that she is willing to perform these services without compensation, if necessary, to avoid violating the Code of Ethics.

The Petitioner states that the School Committee hires the Superintendent and that the Superintendent hires the School's principal. The Petitioner adds that the School's principal hires the School staff, including the nurses, and that the School Committee has no authority or input regarding the hiring of the School staff, including the nurses. The Superintendent represents that the School Committee is not involved with discussions or decision-making regarding the testing at the School. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether she may work part-time at the School to assist with the testing of students, faculty, and staff for COVID-19, given that she is an elected member of the School Committee.

Pursuant to Commission Regulation 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014) ("Regulation 1.5.4"), no municipal elected official or municipal school committee member, whether elected or appointed, while holding office and for a period of one (1) year after leaving municipal office, shall seek or accept employment with any municipal agency in the municipality in which the official serves. Notably, the Code of Ethics specifically includes part-time service as an independent contractor in its definition of "employment." R.I. Gen. Laws § 36-14-2(4); Regulation 1.5.4 (A)(1). Further, the Code of Ethics specifically includes schools in both the statutory and regulatory definitions of "municipal agency." Section 36-14-2(8)(ii); Regulation 1.5.4(A)(2). Regulation 1.5.4(A) does contain an exception if the municipal official held the employment in question at the time of her election to office. Additionally, Regulation 1.5.4(C) provides that the Ethics Commission may authorize exceptions that would not create an appearance of impropriety.¹

¹ Section 36-14-5(h) ("Section 5(h)") of the Code of Ethics prohibits persons subject to the Code of Ethics from entering into a contract with any state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. Contracts for professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details. While applicable to the instant facts, an analysis under section 5(h) is unnecessary, given that Regulation 1.5.4 will ultimately be dispositive of the Petitioner's inquiry.

In prior advisory opinions issued by the Ethics Commission, an exception under Regulation 1.5.4(A) for a municipal official who held the employment in question at the time of his or her election to office did not apply in circumstances under which the elected official had resigned from his or her employment. See A.O. 2013-11 (opining that a former volunteer firefighter in the Pascoag Fire District who resigned from that position in order to seek election to the Pascoag Fire District Board of Commissioners was prohibited from seeking reinstatement as a volunteer firefighter in the Fire District once elected to the Board, for the duration of his service on the Board, and for a period of one (1) year after leaving office). Contra A.O. 2007-3 (opining that a Charlestown Town Council member could retain his part-time employment as a custodian at the Charlestown Senior Center which was held prior to his election to the Town Council, but that his participation in Town Council matters involving the Senior Center that would impact his part-time employment was prohibited).

Here, the Petitioner represents that, while she held the position of substitute nurse at the School prior to her election to the School Committee, she resigned from that position immediately following her election to the School Committee. Therefore, the general prohibitions of Regulation 1.5.4(A) apply and the Petitioner is prohibited from seeking or accepting employment with the Town while serving on the School Committee and for one year after her service on the School Committee ends, unless the Ethics Commission authorizes an exception under Regulation 1.5.4(C) upon a finding that, under the circumstances, allowing the Petitioner to accept employment by the School at this time would not create an appearance of impropriety.

The Ethics Commission has granted a Regulation 1.5.4 (C) exception only three times within the past seven years. Most recently, in Advisory Opinion 2015-43, the Ethics Commission granted what was then known as a Commission Regulation § 36-13-5014(c) ("Regulation 5014(c)") exception to a member of the North Kingstown School Committee ("NKSC"), allowing her to apply for and accept, if offered, the position of North Kingstown Town Manager. The circumstances were such that the petitioner had not run for election to the NKSC but, rather, had volunteered to be appointed to the NKSC to fill an unexpected vacancy. The petitioner represented that she did not intend to seek election to the NKSC once her appointed term expired and that, if hired as the Town Manager, she would resign from the NKSC. In that case, the NKSC had no role or authority relative to the hiring process for the Town Manager position and the Town Manager was not a subordinate position to the NKSC and operated separate and apart from the School Department. See also A.O. 2015-22 (granting what was then known as a Regulation 5014(c) exception to a former Charlestown Town Council member, permitting her to apply for the position of Charlestown Director of Parks & Recreation, a position which she previously held for twenty-two years until she was terminated in 2010, given that she immediately challenged her termination as wrongful, filed a lawsuit and favorably settled the case, but at the time of settlement reinstatement was problematic because the position had already been filled by another person); A.O. 2014-5 (granting what was then known as a 5014(c) exception to a former New Shoreham Town Council member and permitting his business to bid on new contracts through an open and public bidding process for services that it then performed, given that his business had been providing those municipal services for at least ten years and was his primary source of income, his representation that he would not have sought election to the Town Council had he anticipated this problem, and his immediate resignation when he learned of the conflict).

Here, there are none of the extenuating circumstances under which the Regulation 1.5.4(C) exception was granted in the foregoing advisory opinions. Notwithstanding the present COVID-19 pandemic, the convenience of bringing back a former substitute nurse to the School, albeit on a part-time basis for the next six months, does not eliminate an appearance of impropriety, given that the former substitute nurse is now an elected member of the Town's School Committee. This is especially true in light of the narrowness of the Town's search to employ an individual who does not have a conflict of interest under the Code of Ethics, coupled with the potential availability of two substitute nurses and the apparent availability of the Town's Fire Chief and EMS team to be of assistance.

Notably, the receipt of compensation is a necessary element in the application of Regulation 1.5.4. See, e.g., A.O. 2013-11 (opining that an elected member of the Pascoag Fire District Board of Commissioners could not seek or accept a position as a volunteer firefighter in the same district while holding office as Commissioner and for one year after because volunteer firefighters are paid for their services as independent contractors). However, the Ethics Commission has permitted a public official to accept an appointment to a municipal agency within the municipality in which the public official served, provided that the appointment was to a volunteer position or that the public official agreed to waive the receipt of compensation and benefits and serve in a volunteer capacity. See A.O. 2018-7 (opining that the Chairman of the West Warwick School Committee was not prohibited from serving as a coach for the West Warwick High School girls' basketball team, provided that he waived the receipt of any financial compensation and/or benefits and served in a volunteer capacity); A.O. 2003-65 (opining that a School Committee member could provide sports officiating services to the school department, given that he waived receipt of remuneration); A.O. 99-94 (finding that a member of the Coventry School Committee was permitted to accept appointment to the position of the Head Wrestling Coach at the Middle School, provided that he waived the receipt of compensation and benefits).

Here, the Petitioner states that she is willing, if necessary, to volunteer her services as a part-time nurse to assist with the administration of testing to students, faculty, and staff at the School. It is the opinion of the Ethics Commission that, based upon the facts as represented, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, the Code of Ethics does not prohibit the Petitioner from assisting with the testing of students, faculty, and staff for COVID-19 at the Wilbur McMahon School, provided that she serves in a purely voluntary capacity with no compensation.

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(4)

§ 36-14-2(8)

§ 36-14-5(h)

520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014)

Related Advisory Opinions:

- A.O. 2018-7
- A.O. 2015-43
- A.O. 2015-22
- A.O. 2014-5
- A.O. 2013-11
- A.O. 2007-3
- A.O. 2003-65
- A.O. 99-94

Keywords:

Revolving Door

DRAFT