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

4th Meeting

DATE: Tuesday, March 2, 2021

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Gina Raimondo's Executive Order No. 20-46, as extended by No. 21-10, 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/88222418944
  and using Webinar ID: 882 2241 8944
- Or using iPhone one-tap US:
  - +16465588656,,88222418944#or
  - +13017158592,, 88222418944#
- 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/u/kbVnAJ6tkM
  Webinar ID: 882 2241 8944

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 February 9, 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.) Colonel Mark A. Knott, the Interim Town Manager for the Town of West Warwick, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command is sufficient to insulate the Petitioner from conflicts of interest relating to his spouse's employment as the Solid Waste/Recycling Coordinator for the Town of West Warwick.

   b.) The Honorable Gayle Goldin, a legislator serving as a member of the Rhode Island Senate, requests an advisory opinion regarding whether the Code of Ethics prohibits her from introducing and participating in the General Assembly's discussions and vote on legislation that would carve out an exemption to R.I. Gen Laws § 3-7-19 for a specific property, allowing a restaurant owner whose establishment is located at said property to apply for a liquor license, given that the restaurant owner and Petitioner's spouse are in an ongoing attorney-client relationship.

6. Adjudication:

   a.) In re: Gayle Corrigan, Complaint Nos. 2017-11 and 2018-5.

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 February 9, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

   b.) In re: Brett Smiley, Complaint No. 2021-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

c.) In re: Gayle Corrigan, Complaint Nos. 2017-11 and 2018-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4) and/or for possible deliberations pursuant to § 36-14-13(8) & (9).

d.) 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 March 2, 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 February 25, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 2, 2021

Re: Colonel Mark A. Knott

QUESTION PRESENTED:

The Petitioner, the Interim Town Manager for the Town of West Warwick, a municipal appointed position, requests an advisory opinion regarding whether the proposed alternate supervisory chain of command is sufficient to insulate the Petitioner from conflicts of interest relating to his spouse's employment as the Solid Waste/Recycling Coordinator for the Town of West Warwick.

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 Interim Town Manager for the Town of West Warwick, a municipal appointed position, from conflicts of interest relating to his spouse's employment as the Solid Waste/Recycling Coordinator for the Town of West Warwick.

In October of 2020, the Petitioner was appointed by the Town of West Warwick ("Town" or "West Warwick") Town Council ("Town Council") to the position of Interim Town Manager after the contract of the previous Town Manager was not renewed by the Town Council. At that time, the Petitioner was – and still is – West Warwick's Chief of Police.[1] The Petitioner explains that, although he was originally only expected to serve in the position of Interim Town Manager until February of 2021, by which time it was expected that the Town Council would have hired a new Town Manager, he is now considering applying for the position himself. The Petitioner adds that, in the event that he is selected by the Town Council to become the Town Manager, he will immediately resign as the Chief of Police.

The Petitioner states that his spouse has been employed by the Town as its Solid Waste/Recycling Coordinator for the past six years. He further states that his spouse works part-time, twenty-five hours per week, and is not a member of any union. The Petitioner represents that his spouse is supervised by both the Director and the Assistant Director of the Town's Department of Public Works, adding that the Director of Public Works reports to the Town Manager, as do all other Town department heads. The Petitioner further represents that, in his capacity as Town Manager,

[1] The Petitioner states that, immediately following his appointment to the position of Interim Town Manager, he appointed an Acting Chief of Police. The Petitioner further states that the Acting Chief of Police is presently responsible for handling all duties formerly performed by the Petitioner in the role of Chief, with the exception of responsibilities associated with the Police Department's budget.

Interim or otherwise, while not involved in the day-to-day supervision of his spouse, the possibility exists that he could be called upon to resolve a dispute concerning the level of discipline offered by the Director of the Department of Public Works in response to an event related to the performance by his spouse of her public duties. The Petitioner states that, in anticipation of such a possibility when he became the Interim Town Manager, he asked the Town's Personnel Director and the Town Council President to address any such disputes, adding that both the Town's Personnel Director and the Town Council President agreed to do so.

The Petitioner states that the Town Manager and the Town Finance Director are tasked with the preparation of the Town budget each year. He further states that he is prepared to recuse from participating in any discussion or decision-making relative to a budgetary line item that would address or affect his spouse's employment, compensation, or benefits, in which case responsibility for such matters would then lie with the Town's Finance Director. It is in the context of these facts that 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 Town Manager, Interim or otherwise, given that his spouse is employed as the Town's Solid Waste/Recycling Coordinator.

The Code of Ethics provides that a public official or 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 his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if the public official or employee has reason to believe or expect that he or any member of his family, among others, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Also, a public official or employee may not use his public position to obtain financial gain, other than that provided by law, for himself or any member of his 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 regulations aimed at curbing nepotism. Pursuant to Regulation 1.3.1(B)(1), a person subject to the Code of Ethics may 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" is a participant or party in such matter, or will derive a direct monetary gain, suffer a direct monetary loss, or obtain an employment advantage. Further, a person subject to the Code of Ethics 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). Finally, a public official is prohibited from participating "in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family." Regulation 1.3.1(B)(3)(a). The phrase "any person within his [] family" expressly includes "spouse." Regulation 1.3.1(A)(2).

The Ethics Commission has issued numerous advisory opinions approving an alternate chain of command in analogous situations involving family members working in the same department. For example, in Advisory Opinion 2021-5, the Ethics Commission opined that the Chief of the Lime Rock Fire Department, whose son-in-law was employed as a firefighter in the department, would not violate the Code of Ethics if he adhered to a particular proposed alternate chain of command.

Specifically, the petitioner represented that in the event that a particular lieutenant or captain in charge during any given shift was required to report any personnel matters involving the petitioner's son-in-law, said matters would be reported directly to the Chairperson of the Lime Rock Board of Fire Commissioners for review and decision, rather than to the petitioner. Also, in Advisory Opinion 2020-48, the Ethics Commission opined that the Deputy Chief of the Johnston Police Department, whose spouse was employed as the Administrative and Payroll Clerk for the department, would not violate the Code of Ethics if he adhered to a particular proposed alternate chain of command. Specifically, the petitioner represented that rather than report to the petitioner relative to any matters relating to her duties, responsibilities, and requests for time off, the petitioner's spouse would instead report directly to the Chief regarding all such matters and, in the event of the Chief's unavailability, to the Mayor's Chief of Staff, who was responsible for the supervision of all Department Heads in the Town of Johnston. See also A.O. 2010-40 (opining 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 wherein the Chief would recuse from the supervisory chain of command in matters involving his son, and that the Chairman of the Board of Fire Wardens had agreed to become the son's designated supervisor regarding all administrative matters such as the scheduling of work shifts and disciplinary actions.)

Here, the Petitioner has likewise proposed an alternate chain of command under which he would be removed from involvement in any potential disciplinary matters relating to his spouse's employment, with said matters to instead be brought before the Town's Personnel Director and the Town Council President. However, because the Town's Personnel Director is a subordinate of the Town Manager, approval by the Ethics Commission of the proposed alternate supervisory chain of command will be conditioned upon all disciplinary matters relating to the employment of the Petitioner's spouse being brought before the Town Council President only.

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 wherein any potential disciplinary matters relating to his spouse's employment would be brought before the Town Council President instead of the Petitioner is reasonable and sufficient to insulate the Petitioner from apparent conflicts of interest regarding his spouse's employment. Additionally, the Petitioner's representation that he will recuse from participating in any discussion or decision-making relative to a budgetary line item that would address or affect his spouse's employment, compensation, or benefits, is consistent with his obligations under the Code of Ethics. When recusing, the Petitioner must complete a statement of conflict of interest consistent with the provisions of section 36-14-6. Finally, the Petitioner is advised to remain vigilant in identifying and avoiding additional conflicts of interest involving his spouse that may arise while he is serving in the capacity of Town Manager, be it on an interim or more permanent basis, and is encouraged to seek further guidance from the Ethics Commission as needed.

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. 2021-5
A.O. 2020-48
A.O. 2010-40

Keywords:
Alternate Chain of Command
Conflict of Interest
Nepotism

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 2, 2021

Re: The Honorable Gayle Goldin

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from introducing and participating in the General Assembly's discussions and vote on legislation that would carve out an exemption to R.I. Gen Laws § 3-7-19 for a specific property, allowing a restaurant owner whose establishment is located at said property to apply for a liquor license, given that the restaurant owner and Petitioner's spouse are in an ongoing attorney-client relationship.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, is not prohibited by the Code of Ethics from introducing and participating in the General Assembly's discussions and vote on legislation that would carve out an exemption to R.I. Gen Laws § 3-7-19 for a specific property, allowing a restaurant owner whose establishment is located at said property to apply for a liquor license, notwithstanding that the restaurant owner and the Petitioner's spouse are in an ongoing attorney-client relationship, given that the Petitioner's spouse is not representing the restaurant owner on the matter in question, is not appearing before the Petitioner, and will not be financially impacted by the Petitioner's official actions.

The Petitioner is a legislator serving in the Rhode Island Senate representing District 3, Providence. The Petitioner informs that R.I. Gen. Laws § 3-7-19 ("section 19") prevents most properties located within 200 feet of a church or school in the City of Providence from holding a liquor license unless legislation is passed exempting a specific property from such restrictions. The Petitioner represents that the owner of Little Sister ("restaurant owner"), a restaurant located within District 3, at 737 Hope Street ("property"), has applied to the City of Providence Board of Licenses ("Licensing Board") for a liquor license, but was informed by the Licensing Board that a liquor license cannot be issued unless enabling legislation is passed that will exempt the property from the restrictions under section 19. As a result, the Petitioner has been asked by the restaurant owner to introduce legislation that, if passed, will exempt the property from the section 19's restrictions. The Petitioner represents that the restaurant owner does not own the property and that, if passed, the legislation will benefit not only the restaurant owner, but the property and all of its occupants.

The Petitioner states that the restaurant owner is a current client of the Petitioner's spouse who is an attorney in private practice. The Petitioner further states the restaurant owner owns and operates a second establishment called Rebelle Bagels which has been subject to legal representation by the Petitioner's spouse. Rebelle Bagels, however, is not located at 737 Hope Street. The Petitioner states that her spouse is not currently representing the restaurant owner on matters related to Little Sister; has never appeared before the Licensing Board, as such matters do not fall within the purview of his legal practice; does not plan to appear before the Licensing Board in connection to the Little Sister's liquor application; and is neither involved in the restaurant owner's request relative to introducing the enabling legislation, nor would he appear before the General Assembly relative to the legislation. The Petitioner adds that her spouse does not represent any other business located at the property. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may introduce and participate in General Assembly discussions and vote on the aforementioned proposed legislation.

The Code of Ethics provides that a public official shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of her duties in the public interest. Section 36-14-5(a). A public official has an interest which is in substantial conflict with the proper discharge of her duties in the public interest if she has reason to believe or expect that she or any person within her family, her business associate, or any business by which she is employed or represents 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," specifically, when the probability is greater than "conceivably," but the conflict of interest need not be certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001).

A public official is further prohibited by the Code of Ethics from using her public office or confidential information received through her holding any public office to obtain financial gain, other than that provided by law, for herself, her business associate, her employer or her family member. Section 36-14-5(d). Additionally, a public official is required to recuse herself from participation when any person within her family or her business associate appears or presents evidence or arguments before her public agency or authorizes another person, on his or her behalf, to appear or present evidence or arguments before the public official's state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A) Additional Circumstances Warranting Recusal (36-14-5002). The Code of Ethics also provides that a public official shall not participate in any matter as part of her public duties if she has reason to believe or expect that any person within her family is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be. 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 [] her family" specifically includes "spouse." Regulation 1.3.1(A)(2). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3).

Applying these provisions of the Code of Ethics, it is clear that that Petitioner must recuse in her public capacity from any matter that involves or financially impacts herself, any member of her family, or her current business associates. See, e.g., A.O. 2016-45 (opining that a member of the

Tiverton Planning Board ("Planning Board") was prohibited from participating in the Planning Board's discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects, often referred work and clients to each other, and would continue to refer work and clients to each other).

However, the Code of Ethics does not generally require a public official to recuse from participating in matters that involve or financially impact a family member's business associate, unless there is also a corresponding benefit flowing to that family member. See A.O. 2019-40 (opining that a member of the Smithfield School Committee who was also a member of the Smithfield School Building Committee was not prohibited by the Code of Ethics from participating in the review of a Request for Proposal for, and the selection of, a construction manager for an elementary school reconfiguration project, and from all other Building Committee matters concerning the selected construction manager, notwithstanding that his daughter was employed by a company that was expected to bid on the project, since his daughter would not be financially impacted by the Building Committee's decision); A.O. 2008-69 (opining that a member of the Woonsocket Zoning Board of Review was permitted to participate in discussion and voting on a petition for a variance brought by CVS, notwithstanding that the petitioner's sister was employed as an accounting analyst with CVS, since his sister would not be financially impacted by the Zoning Board of Review's decision regarding the petition).

In prior advisory opinions, the Ethics Commission has consistently found that an ongoing attorney-client relationship creates a business association for purposes of the Code of Ethics. See, e.g., A.O. 2010-47; A.O. 2010-33; A.O. 2009-23; A.O. 2008-67. Accordingly, in the instant matter, the restaurant owner and the Petitioner's spouse are considered "business associates" under the Code of Ethics, given their ongoing attorney-client relationship. Further, the restaurant owner would be directly financially impacted by the Petitioner introducing and participating in the General Assembly's discussions and voting on the legislation. However, the Petitioner represents that her spouse will not be financially impacted, directly or otherwise, by reason of her official activity as a Senator in relation to the legislation. Additionally, the Petitioner's spouse is neither appearing nor representing the restaurant owner before the Petitioner or the General Assembly. Based on all of the Petitioner's representations, the applicable provisions of the Code of Ethics, and a review of prior advisory opinions, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from introducing and participating in the General Assembly's discussions and voting on the legislation that would exempt the property located at 737 Hope Street from the restrictions of section 19 and allow the owner of Little Sister to apply for a liquor license.

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)
§ 36-14-5(a)

§ 36-14-5(d)
§ 36-14-7(a)
520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)
520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)
520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:
A.O. 2019-40
A.O. 2016-45
A.O. 2010-47
A.O. 2010-33
A.O. 2009-23
A.O. 2008-67
A.O. 2008-69

Keywords:
Business Associate