



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

6th Meeting

DATE: Tuesday, March 16, 2021

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Daniel J. McKee's Executive Order No. 21-21, which extended Executive Order No. 20-46, 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/89280838304>
and using Webinar ID: 892 8083 8304
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 - +1 312 626 6799 or
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 - +1 669 900 9128 or
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 - 833 548 0276 (Toll Free) or
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- International numbers available:
<https://us02web.zoom.us/j/kdOzCYSjP3>
Webinar ID: 892 8083 8304

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 March 2, 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 upcoming 2020 filing period.
 - f.) Legislative Update: A review of, and possible discussion and vote on whether to take a position on, pending and anticipated legislation including:
 - 2021 H 5891 relative to virtual public meetings;
 - 2021 H 6009 relative to creating a state redistricting committee; and
 - 2021 H 6086 relative to amending the Code of Ethics.
5. Advisory Opinions (petitioners may participate remotely):
 - a.) The Honorable Mary Ann Shallcross Smith, a legislator serving as a member of the Rhode Island House of Representatives, requests an advisory opinion regarding whether she may participate in the General Assembly's discussions and vote on legislation that would eliminate the cost of obtaining a criminal-record check required for employment with child care providers, given that the Petitioner owns and/or manages a number of child care centers in Rhode Island and voluntarily reimburses the applicants she hires for the cost of obtaining a criminal-records check.
 - b.) Charles B. Allott, Esq., a member of the Newport Zoning Board of Review, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing oneself before one's own board, for purposes of seeking a dimensional variance to construct a storage shed at his personal residence.
 - c.) Jason J. Rainone, a member of the Town of Warren Zoning Board of Review, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing oneself before one's own board, in order to seek review and approval of proposed renovations to his primary residence and/or appeal a decision, if necessary, by the Warren Voluntary Historic District Commission relative to such renovations.

- d.) Caswell Cooke, Jr., a member of the Westerly Town Council, requests an advisory opinion regarding whether the Town Council may discuss and vote on the renewal of an existing lease agreement with the Misquamicut Business Association (“MBA”), given that the Petitioner is employed in his private capacity by the MBA as its Executive Director.
- e.) William J. Conley, Jr., Esq., a former legislator who served as a member of the Rhode Island Senate, requests an advisory opinion regarding whether he may, prior to the expiration of one year after leaving legislative office, provide legal services to the Rhode Island Senate Committee on Education in a purely voluntary capacity with no compensation.
- f.) Marisa Desautel, an attorney in private practice who represents the City of Newport as special counsel in an environmental litigation matter, requests an advisory opinion regarding whether the Code of Ethics prohibits her from appearing before the Newport Planning Board and/or the Newport Zoning Board on behalf of a client who seeks to retain the Petitioner as an environmental expert witness to testify in a land use application matter.
- g.) James Grundy, the Chairman of the North Kingstown Planning Commission, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics’ prohibition against representing oneself before one’s own board, for purposes of requesting a zone change for a lot owned by the Petitioner’s construction business that would allow road access to an abutting lot owned by the Petitioner’s brother, which the Petitioner and his brother then plan to develop in order to build commercial units to rent to commercial tenants.
- h.) Tom Furey, the Chairman of the Rhode Island Contractors Registration and Licensing Board (“CRLB”), requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in a matter currently pending before the CRLB, given that the appellant in said matter hired the Petitioner to perform work on the property that is the subject of the appeal.
- i.) John Cullen, the Secretary of the Block Island Tourism Council, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in discussions and decision-making by the Tourism Council concerning whether to publicly support a pilot program proposed by the Rhode Island Public Transit Authority (“RIPTA”) wherein RIPTA would operate two trolleys on Block Island during the 2021 summer season, given that the Petitioner is currently on a waiting list to receive a taxi license on Block Island.

- j.) Jessica Willi, the Executive Director of the Block Island Tourism Council, requests an advisory opinion regarding: (1) what limitations, if any, the Code of Ethics places upon her in the performance of her public duties, given that her spouse owns Captain Nick's Bar and Nightclub ("Captain Nick's") and Fishworks, a bait and tackle store and fishing charter business, and that her private employer owns Kimberly's Restaurant ("Kimberly's"), among others, and; (2) whether the Code of Ethics prohibits her from engaging in secondary private employment at Captain Nick's and/or Kimberly's.
- 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 March 2, 2021, 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 March 11, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: The Honorable Mary Ann Shallcross Smith

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether she may participate in the General Assembly's discussions and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, given that the Petitioner owns and/or manages a number of child care centers in Rhode Island and voluntarily reimburses the applicants she hires for the cost of obtaining a criminal-records check.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state elected position, may participate in the General Assembly's discussions and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the Petitioner owns and/or manages a number of child care centers in Rhode Island and voluntarily reimburses the applicants she hires for the cost of obtaining a criminal-records check because, notwithstanding the Petitioner's choice to voluntarily reimburse applicants for such fees, the direct financial impact of the legislation is upon the applicants rather than the child care centers at which they seek employment.

The Petitioner was elected to the Rhode Island House of Representatives in November of 2020 and represents the 46th District in Lincoln. In her private capacity, the Petitioner has owned and operated a number of child care centers since 1972. She states that she currently owns 10 for-profit licensed child care centers, and manages another 6 nonprofit licensed child care centers, all of which are located in Rhode Island. The Petitioner represents that, in the 1980s, legislation was passed in Rhode Island requiring any person seeking employment in a "family daycare home," "group family daycare home," or in a "child daycare center" to obtain a criminal-records check, including fingerprints ("background check"), prior to the start of employment. She further represents that, pursuant to the legislation, all child care staff applicants were able to obtain background checks at no cost at either local police departments or the state police barracks. The Petitioner states that two years ago the legislation was amended to add the Office of the Attorney General ("AG's Office") to the list of agencies providing background checks. She informs that, while the local and state police continued to provide background checks at no cost, the AG's Office charges \$40 - \$45 for background checks, the cost of which is to be borne by the applicant and/or the requesting agency. The Petitioner explains that, because of the COVID-19 pandemic, local

police departments have been restricting access to police stations and asking applicants to obtain their background checks at the AG's Office.

The Petitioner represents that some child care providers, including herself and the owners of the child care centers she manages, have chosen to reimburse applicants they hire for the expenses incurred in obtaining the background checks necessary for their employment. The Petitioner states that she was approached by fellow child care providers who expressed concern that some applicants seeking child care employment are reluctant to apply to positions with child care providers who do not reimburse for expense incurred for obtaining background checks, and who wish to see the current legislation amended to eliminate the cost for the background checks performed at the AG's Office. The Petitioner informs that, as a result, she sponsored a bill that, if passed, will remove the cost of background checks for all applicants, regardless of where the applicants go for their background checks. The Petitioner explains that the amendment will indirectly impact all child care providers who reimburse the applicants they hire for the costs associated with their background checks. The Petitioner states that, according to information obtained from the Rhode Island Department of Children, Youth, and Families ("DCYF"), there are approximately 400 child day care centers and approximately 400 group family day care homes and family day care homes, combined. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in the General Assembly's discussions and vote pertaining to the proposed amendment to the legislation that would eliminate the costs associated with background checks for persons seeking child care employment.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest in substantial conflict with her official duties if she has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of her official activity, to the official herself, her family member, her business associate, her employer, or any business that she represents. Section 36-14-7(a). Additionally, section 36-14-5(d) prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, her family member, her business associate or her employer.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether the Petitioner, a member of her family, her business associate or her employer will be financially impacted by the official action that is under consideration. If a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in discussions and voting on the issue. 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 on 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 direct financial impact of the Petitioner's proposed participation in the General Assembly's discussions and vote on the proposed amendment to the legislation would be upon all applicants seeking employment in a "family daycare home," "group family daycare home," or in a "child daycare center," and not necessarily upon the child care providers who hire those applicants. There would be an indirect financial impact upon child care providers, such as the Petitioner and the owners of the nonprofit child care centers that the Petitioner manages, who choose to reimburse the applicants they hire for the cost of obtaining a necessary background check.

Even if the impact on the child care providers who choose to reimburse the applicants they hire for the cost of obtaining a background check necessary to their employment were direct, based upon the foregoing representations, such impact would likely be substantially the same as that upon all similarly situated child care providers in Rhode Island, thereby justifying the application of the class exception found in section 36-14-7(b) of the Code of Ethics.¹ See, e.g., A.O. 2018-31 (applying the class exception and opining that a legislator serving in the Rhode Island Senate, who in her private capacity was an attorney, could participate in the legislative process regarding proposed legislation to eliminate the statute of limitations applicable to civil actions alleging sexual abuse, notwithstanding that her private law office represented one or two clients who would potentially benefit from the law, should it pass).

Accordingly, based upon the Petitioner's representations, a review of the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions, it is the opinion of the Ethics Commission that the Petitioner may participate in the General Assembly's discussions and vote on the proposed amendment to the legislation.

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)

¹ The class exception states that a public official will not have an interest in substantial conflict with his public duties if any benefit or detriment accrues to him or his family member, his employer or his business associate "as a member of a . . . group, or of any significant and definable class of persons within the . . . group, to no greater extent than any other similarly situated member of the . . . group, or the significant and definable class of persons within the . . . group." Section 36-14-7(b). When determining whether any particular circumstance supports and justifies the application of the class exception, the Commission will consider the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2019-25

A.O. 2018-31

A.O. 2012-2

Keywords:

Class Exception

Financial Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: Charles B. Allott, Esq.

QUESTION PRESENTED:

The Petitioner, a member of the Newport Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing oneself before one's own board, for purposes of seeking a dimensional variance to construct a storage shed at his personal residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport Zoning Board of Review, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself before one's own board, for purposes of seeking a dimensional variance to construct a storage shed at his personal residence.

The Petitioner represents that he has been serving on the Newport Zoning Board of Review ("Zoning Board") since his appointment in February of 2016 and that he is currently its chairperson. He states that he resides in the City of Newport ("City" or "Newport") in a home that he purchased with his partner in May of 2014. He explains that he would like to construct a storage shed in the backyard of his property. However, in order to do so, he will need to request a dimensional variance for set-back relief from the Zoning Board. Cognizant of the Code of Ethics, the Petitioner requests a hardship exception to allow him to appear either personally or through a representative before the Zoning Board to seek the variance needed to construct the shed.¹

¹ In his request letter, the Petitioner also inquires regarding whether, in the event that he chooses to retain the services of an attorney to represent him on the variance matter, the Petitioner is obligated to then recuse himself any time that attorney appears before the Zoning Board. The Ethics Commission has consistently opined 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. Therefore, if the Petitioner is to employ an attorney to represent him before the Zoning Board, then the Petitioner must recuse from any Zoning Board matter which may financially impact that attorney or in which the attorney appears or presents evidence or arguments before the Zoning Board. While the Code of Ethics clearly prohibits the Petitioner from participating in matters directly affecting his current business associates, the recusal provisions of the Code of Ethics do not apply to matters that involve or impact the Petitioner's *former* business associates. An attorney-client relationship ceases to constitute a business association once the attorney no longer represents the client in an ongoing matter, bills for prior representation have been paid, and there are no plans for specific representation in the near future. See A.O. 2013-21 (opining that a member of the State Labor Relations Board, a private attorney, was not required to recuse from matters involving his former law client, provided that the representation had concluded; that all outstanding legal fees had been paid in full; and there was no reasonable likelihood of reestablishing an attorney/client relationship in the foreseeable future). Given that the Petitioner's

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, 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). Further, the Code of Ethics prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, 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).

Furthermore, the Code of Ethics prohibits a public official from representing himself 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) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid section 5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 36-14-5(e)(1) & (4). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter. Section 36-14-5(e)(1). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review ("BZB") and permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB's consideration of his request for relief).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition on representing oneself before a municipal agency of which he is a member. Having determined that section 5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the Zoning Board. The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved is the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved an existing business or a new commercial venture; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

question is general and hypothetical at this time, the Ethics Commission is unable to provide any specific advice and the Petitioner is advised to seek further guidance from the Ethics Commission when and if he is uncertain whether any particular future circumstances warrant his recusal.

Previously, the Ethics Commission has applied the hardship exception in analogous situations. In Advisory Opinion 2020-15, for example, under similar circumstances, the Ethics Commission opined that a member of the Exeter Zoning Board of Review (“EZB”) qualified for a hardship exception to the Code of Ethics’ prohibition against representing oneself before his own board, for purposes of seeking a dimensional variance to construct a shed at his personal residence, the ownership of which predated his appointment to the EZB. See also 2011-34 (granting a hardship exception to an East Greenwich Zoning Board member who needed a dimensional variance to build a storage shed at her personal residence that she acquired prior to her appointment to the Board).

In the present matter, the Petitioner would like to construct a storage shed at his residence, the ownership of which predates his appointment to the Zoning Board by two years. Considering the Petitioner’s above representations, consistent with prior advisory opinions issued, and the relevant provisions of the Code of Ethics, it is the opinion of the Ethics Commission that the totality of the circumstances justifies making an exception to section 5(e)’s prohibitions to allow the Petitioner to represent himself either personally, through a legal counsel, or other representative before the Zoning Board to seek a dimensional variance to construct a storage shed at his personal residence. However, the Petitioner must recuse himself from participating in the Zoning Board’s consideration of, and voting on, any matter relative to his request for dimensional variance. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the other Zoning Board members of his receipt of the instant advisory opinion and of his recusal in accord therewith. Notice of recusal shall be filed with the Ethics Commission consistent with 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(e)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2020-15

A.O. 2014-26

A.O. 2013-21

A.O. 2011-34

A.O. 2010-47

A.O. 2010-33

Keywords:
Hardship Exception
Property Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: Jason J. Rainone

QUESTION PRESENTED:

The Petitioner, a member of the Town of Warren Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing oneself before one's own board, in order to seek review and approval of proposed renovations to his primary residence and/or appeal a decision, if necessary, by the Warren Voluntary Historic District Commission relative to such renovations.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Town of Warren Zoning Board of Review, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition on representing oneself before one's own board, in order to seek review and approval of proposed renovations to his primary residence and/or appeal a decision, if necessary, by the Warren Voluntary Historic District Commission relative to such renovations.

The Petitioner is a member of the Town of Warren Zoning Board of Review ("Zoning Board"). He represents that he was first appointed by the Warren Town Council ("Town Council") as an alternate Zoning Board member for the period of 2016 to 2018. He further represents that, upon the expiration of that term, he was appointed as a full Zoning Board member and he has served as such since. The Petitioner states that, in 2013 and prior to his appointment to the Zoning Board, he purchased a home where he lives with his family and which is his primary residence. He adds that the home is located in the Warren Historic District and dates back to the early 1800's.

The Petitioner states that he and his wife have hired an architect and are in the planning stages of significant renovations to their home in order to provide an adequate disabled living space for his mother-in-law. He explains that the renovations will include modifications to both the interior and exterior of the home. The Petitioner represents that, because the home is considered a "zero-lot-line" property where the front face of the home sits on, or in very close proximity to, the street-side front property line, any renovations will require application to the Zoning Board for approval of dimensional variances. Additionally, he states that, because his home is located within the Warren Historic District, any changes to his home's exterior will also require approval by the Warren Voluntary Historic District Commission ("HDC"). The Petitioner represents that the Zoning Board does not have appointing authority over the HDC; rather, the HDC members are appointed by the Town Council. The Petitioner notes that the HDC ordinarily has its own Board

of Appeals that reviews appeals of decisions made by the HDC; however, due to current vacancies that prohibit achievement of a quorum, the HDC's Board of Appeals is presently unable to review such appeals and, therefore, the appeals are reviewed by the Zoning Board sitting as the Building Board of Appeals. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may appear before the Zoning Board in order to seek review and approval of his renovation plans and/or appeal, if necessary, any HDC decision(s) relative to those renovations.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, 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). Further, the Code of Ethics prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, 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).

Furthermore, the Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf 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) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid section 5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 36-14-5(e)(1) & (4). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter. Section 36-14-5(e)(1). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review ("BZB") and permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB's consideration of his request for relief).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition on representing oneself before a municipal agency of which he is a member. Having determined that section 5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the Petitioner's specific circumstances represented herein justify a finding of hardship to permit him or his authorized representative to appear before the Zoning Board.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's

interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

Previously, the Ethics Commission has applied the hardship exception in somewhat similar situations. In Advisory Opinion 2020-15, for example, the Ethics Commission opined that a member of the Exeter Zoning Board of Review ("EZB") qualified for a hardship exception, allowing him to appear before the EZB for purposes of seeking a dimensional variance to construct a shed at his personal residence, the ownership of which predated his appointment to the EZB by at least a decade. See also A.O. 2017-37 (granting a hardship exception to a member of the Tiverton Harbor and Coastal Water Management Commission ("Commission"), allowing him to appear before that agency to appeal a denial of his mooring registration renewal application, given that he had owned the mooring for 37 years prior to his appointment to the Commission and had utilized the mooring in connection with his business that he had owned for 28 years, 8 years prior to his appointment); 2011-34 (granting a hardship exception to a member of the East Greenwich Zoning Board ("EGZB"), allowing her to appear before the EGZB to seek a dimensional variance needed to build a storage shed at her personal residence that she had acquired prior to her appointment to the EGZB).

Here, the Petitioner would like to renovate his home that he has owned since 2013, three years prior to his initial appointment to the Zoning Board. The Petitioner states that such renovations are necessary in order to create an adequate disabled living space for his mother-in-law. Considering the Petitioner's above representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the totality of the circumstances justifies making an exception to section 5(e)'s prohibitions. Accordingly, the Petitioner may represent himself, either personally, or through legal counsel or other representative, before the Zoning Board relative to the proposed renovations to his primary residence. This would include seeking the dimensional variance and/or appealing a decision of the HDC before the Zoning Board sitting as the Building Board of Appeals, when such HDC decision is relative to changes to the exterior of the Petitioner's residence associated with the proposed renovation. However, the Petitioner must recuse himself from participating in the Zoning Board's consideration of, and voting on, any matter relative to the renovations of his home. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the other Zoning Board members of his receipt of the instant advisory opinion and of his recusal in accord therewith. Notice of recusal shall be filed with the Ethics Commission consistent with 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)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2020-15

A.O. 2017-37

A.O. 2014-26

A.O. 2011-34

Keywords:

Hardship Exception

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: Caswell Cooke, Jr.

QUESTION PRESENTED:

The Petitioner, a member of the Westerly Town Council, a municipal elected position, requests an advisory opinion regarding whether the Town Council may discuss and vote on the renewal of an existing lease agreement with the Misquamicut Business Association ("MBA"), given that the Petitioner is employed in his private capacity by the MBA as its Executive Director.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Westerly Town Council may discuss and vote on the renewal of an existing lease agreement with the Misquamicut Business Association ("MBA"), notwithstanding that the Petitioner, a member of the Westerly Town Council, a municipal elected position, is employed in his private capacity by the MBA as its Executive Director. However, the Petitioner is required to recuse himself from participation in the Town Council's discussions and vote concerning the renewal of the existing lease, and from any matters in which the MBA or its representatives appear or present evidence or arguments on behalf of the MBA before the Town Council. The Petitioner is further prohibited by the Code of Ethics from representing the MBA before the Town Council, or any other municipal agency over which the Town Council has appointing authority, and 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 person by which he is employed or whom he represents.

The Petitioner is a member of the Westerly Town Council ("Town Council") and he has served in that position since 2018.¹ The Petitioner represents that, in his private capacity for the past 20 years, he has been employed part-time as the Executive Director of the Misquamicut Business Association ("MBA"), a nonprofit organization founded in 2000. He informs that the MBA is governed by a Board of Directors, of which he is not a member, and that the MBA works to promote all businesses on Misquamicut Beach ("beach"), as well as cleaning the beach, and organizing beach events.

The Petitioner states that, approximately 15 years ago, the MBA entered into a lease agreement ("lease agreement") with the Town of Westerly ("Westerly" or "Town") to maintain and staff a small facility at the beach which houses two public restrooms and a counter space which is utilized by the MBA to provide tourist information. The Petitioner represents that, five years after entering

¹ The Petitioner previously served on the Town Council from 2002-2014.

into the lease agreement, the MBA inquired and was allowed to use the Town's beach parking lot at night to operate a drive-in theater. He informs that the lease agreement was amended to include the drive-in theater activities. The Petitioner represents that the lease agreement has since been renewed several times and that the latest lease agreement expired in September of 2020. He states that the Town has not offered a new lease agreement to the MBA because of the Town's concern that the Petitioner's simultaneous service as the Executive Director of the MBA and as a Town Council member presents a conflict of interest under the Code of Ethics prohibiting the Town from renewing the lease agreement with the MBA. The Petitioner represents that any discussions on behalf of the MBA relative to the renewal of the lease agreement will be performed by the President of the MBA's Board of Directors, without any participation by the Petitioner. The Petitioner states that any Town Council vote to approve the lease agreement or to authorize the Town Manager to sign it, is conducted in open session. He represents that he will recuse from any and all Town Council discussions and voting relative to the lease agreement.² The Petitioner adds that he is a salaried employee of the MBA and that his salary does not depend on renewal of the lease agreement. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Town Council may negotiate and potentially enter into a new lease with the MBA.

Under the Code of Ethics, a public official shall not have any interest, financial or otherwise, or engage in any business, employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, 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). Additionally, a public official is prohibited 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 person by which he is employed or whom he represents. Section 36-14-5(d). Further, a public official must recuse from participation when his business associate or employer appears or presents evidence or arguments before his state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1"); section 36-14-5(f). Lastly, Section 36-14-5(e) ("section 5(e)") prohibits a public official or employee from representing himself, representing another person, or acting as an expert witness before a state or municipal agency of which he is a member or by which he is employed. Section 36-14-5(e)(1), (2) & (3); see also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Section 5(e)'s prohibitions continue while the official remains in office and for a period of one (1) year thereafter. Section 36-14-5(e)(4).

In Advisory Opinion 2012-30, the Superintendent of State Piers for the Rhode Island Department of Environmental Management ("DEM") sought guidance from the Ethics Commission regarding whether the Code of Ethics restricted his wife from entering into a land lease with DEM, given that the petitioner was a DEM employee and worked in and was responsible for the day-to-day operations of the same port where the subject land was located. The Ethics Commission opined

² The Petitioner represents that the most recent lease agreement was renewed while he was not a member of the Town Council and was signed by him in his capacity as the MBA's Executive Director. The Petitioner informs that he has not in the past participated in Town Council discussions and voting relative to the lease agreement.

that the Code of Ethics did not prohibit the wife from entering into the land lease with DEM based on the petitioner's representations that his work was limited to the maintenance and supervision of the state piers and their use by commercial vessels, that he had no involvement, oversight, or authority over the management of DEM land leases in the port nor would he have any involvement in the day-to-day operations of his wife's store located on the leased premises, which would be managed and operated by his wife. Additionally, the petitioner represented that he would not appear or represent himself or his wife before DEM. Likewise, in Advisory Opinion 2007-6, the Ethics Commission opined that the Code of Ethics did not prohibit an attorney with whom the Solicitor for the Town of Smithfield shared office space and expenses from appearing before the Town Council and the Planning and Zoning Board, provided that the petitioner recused himself from participation in any matter brought by the attorney. See also A.O. 2011-47 (opining that a member of the Rhode Island Board of Governors for Higher Education was required to recuse from discussion and voting relative to contract negotiations involving his employer); A.O. 2009-1 (opining that a member of the Scituate Town Council was required to recuse from matters before the Town Council concerning school related issues involving the interests of his employer which provided busing services to the Scituate School Department).

Here, the Petitioner represents that he will recuse from participating in any and all Town Council discussions and voting on matters pertaining to the lease agreement, and that the lease agreement will be negotiated and signed by the President of the MBA on behalf of the MBA. As anticipated by the Petitioner, such recusal is required under the Code of Ethics. The Petitioner must also recuse from participation in discussions and voting on any Town Council matters that may have a direct financial impact upon the MBA, and matters in which the MBA or its representatives appear or present evidence or arguments on behalf of the MBA before the Town Council. Additionally, the Petitioner is prohibited by the Code of Ethics from representing the MBA before the Town Council, or any other municipal agency over which the Town Council has appointing authority. Lastly, the Petitioner is prohibited by the Code of Ethics 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 person by which he is employed or whom he represents. Notice of recusal shall be filed with the Ethics Commission consistent with section 36-14-6.

However, under these circumstances, the restrictions that apply to the Petitioner based upon his employment relationship with the MBA do not, in and of themselves, extend to the other members of the Town Council. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner's employment by the MBA does not disqualify any other Town Council member from discussing and/or voting on the renewal of the lease agreement.

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)

§ 36-14-5(e)

§ 36-14-5(f)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2012-30

A.O. 2011-47

A.O. 2009-1

A.O. 2007-6

Keywords:

Financial Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: William J. Conley, Jr., Esq.

QUESTION PRESENTED:

The Petitioner, a former legislator who served as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether he may, prior to the expiration of one year after leaving legislative office, provide legal services to the Rhode Island Senate Committee on Education in a purely voluntary capacity with no compensation.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former legislator who served as a member of the Rhode Island Senate, a state elected position, may, prior to the expiration of one year after leaving legislative office, provide legal services to the Rhode Island Senate Committee on Education in a purely voluntary capacity with no compensation.

The Petitioner served as a member of the Rhode Island Senate, representing District 18, until January 4, 2021. In his private capacity, the Petitioner is a licensed attorney in the State of Rhode Island and a principal of The Law Office of William J. Conley, Jr. He informs that his legal practice includes extensive experience in Rhode Island Education Law. The Petitioner represents that he has been asked to provide legal services to the Rhode Island Senate Committee on Education ("Committee"). The Petitioner states that said legal services would include: reviewing the bills assigned to the Committee for hearing; answering the Committee's legal questions regarding Committee procedure and proposed legislation; potentially editing legislation under the Committee's consideration; and possibly assisting the Committee Chair in preparing to discuss legal aspects of a bill on the Senate floor. The Petitioner states that his work would be supervised by, and he would report, to the Senate President's Chief Legal Counsel. The Petitioner further states that, typically, the provision of these legal services is subject to a six-month contract for the period of January 1, 2021 to June 30, 2021, that is executed by the Executive Director of the Joint Committee on Legislative Services, the Operational and Management Committee for the General Assembly, and the legal counsel providing the services would normally be retained as an independent contractor. However, he explains that because he will provide the legal services without compensation, there will be no need for him to sign a contract and he will neither be considered an employee of, nor an independent contractor for, the General Assembly. Additionally, the Petitioner states that should he continue to provide legal services to the Committee beyond the anniversary of the end of his term as a Senator, he will continue to do so without accepting any compensation.

The Code of Ethics contains both statutory and regulatory “revolving door” provisions that are applicable to many public officials, including current and former members of the legislature, requiring a one-year “cooling off” period after leaving public office before seeking or accepting other paid positions in state government. The statutory revolving door provision at issue in the instant request for an advisory opinion is R.I. Gen. Laws § 36-14-5(n)(1) (“section 5(n)”) which provides:

No state elected official, while holding state office and for a period of one (1) year after leaving state office, shall seek or accept employment with any other state agency, as defined in section 36-14-2(8)(i), other than employment which was held at the time of the official’s election . . . except as provided herein.

The General Assembly and any agency or committee thereof are expressly included within section 36-14-2(8)(i)’s definition of “state agency.” Accordingly, absent application of an enumerated exception, the clear language of section 5(n) prohibits the Petitioner from seeking or accepting employment with the General Assembly.

In addition to the statutory revolving door proscriptions set forth in section 5(n), which are applicable generally to all state elected officials, the Code of Ethics also contains a regulatory prohibition that applies only to members of the General Assembly and reads:

No member of the General Assembly shall seek or accept state employment, not held at the time of the member’s election, while serving in the General Assembly and for a period of one (1) year after leaving legislative office. For purposes of this regulation, “employment” shall include service as defined in R.I. Gen Laws § 36-14-2(4) and shall also include service as an independent contractor or consultant to the state or any state agency, whether as an individual or a principal of an entity performing such service.

Commission Regulation 520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007) (“Regulation 1.5.2”). Unlike its statutory counterpart, Regulation 1.5.2 does not authorize the Ethics Commission to grant any exceptions to its strict prohibition. As such, Regulation 1.5.2 serves as an absolute bar to the Petitioner seeking or accepting potential employment as legal counsel to the Committee within one year after leaving legislative office.

The Ethics Commission has on several occasions in the past reviewed and applied section 5(n) and Regulation 1.5.2 (formerly known as Regulation 36-14-5007) to legislators. For example, in Advisory Opinion 2006-25, the Ethics Commission opined that Regulation 1.5.2 prohibited a member of the House of Representatives from providing insurance brokerage services as a consultant to a quasi-public state agency for which he would have been paid a commission. Likewise, in Advisory Opinion 2009-44, the Ethics Commission opined that section 5(n) and Regulation 1.5.2 both prohibited a member of the Rhode Island Senate from providing paid arbitration or mediation services to a state agency, although he could continue to be listed on the Department of Administration’s master price agreement as qualified to provide such services to non-state entities.

A third revolving door provision of the Code of Ethics, Regulation 520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006) ("Regulation 1.5.1"), also restricts a public official's ability to accept a paid position that requires the approval of the public body of which the public official was a member prior to expiration of the requisite one-year "cooling off" period. Regulation 1.5.1 provides that "no elected or appointed official may accept any appointment or election that requires approval by the body of which he or she is or was a member, to any position which carries with it any financial benefit or remuneration, until the expiration of one (1) year after termination of his or her membership in or on such body." See, e.g., A.O. 2016-43 (opining that a North Smithfield Planning Board member was required to wait one year following his resignation to accept, if offered, appointment by the Town Administrator to the position of Town Planner where the selection process and final decision required the Board's approval). Contra 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).

Notably, however, the receipt of compensation for services rendered is a necessary element in the application of the provisions of the Code of Ethics cited above. See 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 a Commissioner, and for one year after because volunteer firefighters were paid for their services as independent contractors); A.O. 2004-36 (opining that a state employee sitting on the Rhode Island Water Resources Board as the designee of the Director of Administration could not accept, if offered, employment in the position of General Manager of the Water Resources Board).

Here, cognizant of the revolving door provisions of the Code of Ethics, the Petitioner states that he will forgo any compensation associated with the position of legal counsel to the Committee. Under similar circumstances, the Ethics Commission has previously permitted public officials to accept employment or appointment to a position during their public service, or within one year after leaving public service, provided that the employment or appointment was to a volunteer position or where the public official agreed to waive the receipt of compensation and benefits and serve in a volunteer capacity. See, e.g., 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. 2016-46 (opining that a member of Pawtucket City Council could be appointed to the Pawtucket Water Supply Board, an unpaid position, within one year of the petitioner's official severance from his position as City Councilor).

In line with article III, section 7 of the Rhode Island Constitution, which requires public officials to hold themselves to ethical standards that go beyond the legal requirements of the Code of Ethics by "adher[ing] to the highest standards of ethical conduct, respect[ing] the public trust and . . . avoid[ing] the appearance of impropriety[.]" the provision of the legal services on a voluntary basis must not be temporary as a means to circumvent the revolving door provisions of the Code of Ethics in order to later secure a paid position at the expiration of the one-year "cooling off" period. See, e.g., A.O. 97-117 (concluding that a former Town Councilor could not circumvent the Code of Ethics by assuming a Senior Center Director ("Director") position and serving as a

volunteer only for the period of one year after her term in office ended and then accept financial and other benefits as compensation for her work as Director as soon as the one-year period ended).

Accordingly, given the Petitioner's representations, the applicable provisions of the Code of Ethics, and the review of prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may provide legal services to the Committee, provided that he waives the receipt of any compensation for the performance of such services, even beyond the expiration of one year following his severance from legislative office on January 4, 2021.

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)(i)

§ 36-14-5(n)

520-RICR-00-00-1.5.1 Employment from Own Board (36-14-5006)

520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007)

Constitutional Authority:

R.I. Const., art. III, sec. 7

Related Advisory Opinions:

A.O. 2018-7

A.O. 2016-46

A.O. 2016-43

A.O. 2013-11

A.O. 2009-44

A.O. 2006-25

A.O. 2004-36

A.O. 2003-65

A.O. 97-117

Keywords:

Prospective Employment

Revolving Door

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: Marisa Desautel

QUESTION PRESENTED:

The Petitioner, an attorney in private practice who represents the City of Newport as special counsel in an environmental litigation matter, requests an advisory opinion regarding whether the Code of Ethics prohibits her from appearing before the Newport Planning Board and/or the Newport Zoning Board on behalf of a client who seeks to retain the Petitioner as an environmental expert witness to testify in a land use application matter.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an attorney in private practice who represents the City of Newport as special counsel in an environmental litigation matter, is an independent contractor and, therefore, is not subject to the Code of Ethics or limited by prohibitions therein that might otherwise prevent her from appearing before the Newport Planning Board and/or the Newport Zoning Board on behalf of a client who seeks to retain the Petitioner as an environmental expert witness to testify in a land use application matter.

The Petitioner represents that she is an attorney licensed in the State of Rhode Island and the focus of her practice is environmental law. She states that in 2019 she was retained by the City of Newport ("City" or "Newport") to provide legal services to the City relative to an environmental litigation matter ("litigation matter") in which the City is a party. The Petitioner represents that, following her interview with the Newport Solicitor, she was selected by the City Manager to assist with the litigation matter because of her environmental expertise. The Petitioner emphasizes that she has not been hired or sworn in by the City as a solicitor, nor has any other attorney in her firm been so hired or sworn in. She adds that her law firm is not handling any other legal or business matters with or against the City at this time. The Petitioner explains that the litigation matter is presently in the remediation phase before both the Environmental Protection Agency ("EPA") and the Rhode Island Department of Environmental Management ("RIDEM"). The Petitioner further explains that she presently appears before both the EPA and the RIDEM relative to the remediation, as she has for some time and expects to for the foreseeable future. She states that, while environmental cases of this nature can continue for a long period of time, it is possible that the litigation matter could eventually be settled without having to be tried in court. The Petitioner states that she bills the City for her legal services and that she receives a Form 1099 from the City each year for income tax purposes.

The Petitioner represents that one of her private law clients seeks to retain the Petitioner as an environmental expert witness to testify in a land use application matter before the Newport Planning Board ("Planning Board") and the Newport Zoning Board ("Zoning Board"). She further represents that, in her capacity as special counsel to the City in the litigation matter, she will not be required to appear before either the Planning Board or the Zoning Board. It is in the context of the foregoing facts that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from appearing before the Planning and/or Zoning Boards as an environmental expert witness on behalf of her private client.

As a threshold determination, the Ethics Commission must determine whether the Petitioner, in her role as special counsel to the City, is a person subject to the Code of Ethics. Pursuant to R.I. Gen. Laws § 36-14-4, the following groups of individuals shall be subject to the Code of Ethics: "(1) State and municipal elected officials; (2) State and municipal appointed officials; and (3) Employees of state and local government, of boards, commissions, and agencies." As the Petitioner is indisputably not an elected official of any sort, the question that remains is whether she is to be considered a municipal appointed official or an employee of a local government.

The Code of Ethics defines a municipal appointed official as "any officer or member of a . . . municipal agency as defined herein who is appointed for a term of office specified by the constitution or a statute of this state or a charter or ordinance of any city or town or who is appointed by or through the governing body or highest official of state or municipal government." Section 36-14-2(9). Commission Regulation 520-RICR-00-00-1.1.3(B) Additional Definitions (36-14-2002) ("Regulation 1.1.3") expands upon this definition to include "any officer or member of a . . . municipal agency as defined herein who is appointed to an office specified by the constitution or a statute of this state or a charter or ordinance of any city or town or who is appointed by, through or with the advice and consent of a governing body, or any court, in state or municipal government, or highest official of state or municipal government." Here, the Petitioner was not appointed to any term of office but, rather, was selected by the City Manager to provide legal services to the City relative to an environmental litigation matter in which the City is a party because of the Petitioner's expertise in environmental law. Therefore, the Petitioner is not a municipal appointed official as that term is defined in the Code of Ethics.

As to "employees of state and local government, of boards, commissions and agencies," the Code of Ethics defines these individuals as "any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation." Section 36-14-2(4). Regulation 1.1.3(C) further broadens this definition to include: "(1) any individual receiving a salary from a state or municipal agency, whether elected or not, on a full-time or part-time basis; (2) any individual in the classified, non-classified and unclassified service of the judicial, executive and legislative branches of state government; (3) any individual in the classified, non-classified and unclassified service of any municipality within the state; (4) any individual receiving a salary from any public or quasi-public state or municipal board, commission, corporation, or other public or quasi-public agency however named; and, (5) any state or municipal appointed official who receives a salary or stipend for their appointed service." The Petitioner represents that she is not

a salaried employee of the City, but rather, bills the City for her legal services and receives a Form 1099 from the City each year for income tax purposes.

The Ethics Commission has repeatedly opined that attorneys in private practice performing legal work for public agencies are independent contractors and, therefore, are not subject to the Code of Ethics, nor constrained by its conflict of interest provisions. See, e.g., A.O. 2009-46 (opining that an attorney in private practice who performed legal work on an hourly basis for the Town of Johnston Zoning Board of Review (“Zoning Board”) through the Town Solicitor’s Office was an independent contractor and, therefore, was not subject to the Code of Ethics or limited by its prohibitions in seeking zoning relief before the Zoning Board); A.O. 2007-43 (opining that an attorney whose law firm served as legal counsel to the North Providence School Committee was an independent contractor and, as such, did not fall under the jurisdiction of the Ethics Commission); A.O. 2004-19 (opining that the petitioner, who served as legal counsel to both the Planning Board and the Zoning Board of Review for the Town of West Warwick, was not subject to the Code of Ethics in that capacity, because independent contractors of state or municipal government are neither “employees” nor appointed officials subject to the provisions of the Code of Ethics); A.O. 2001-34 (opining that the petitioner, who served as legal counsel to the Rhode Island Ethics Commission, was an independent contractor and not subject to the Code of Ethics). See also Gemma v. Rhode Island Ethics Commission, No. PC94-3404 (R.I. Super. Ct., Sept. 17, 1994) (concluding that an attorney contractually retained by the State was not an employee, but an independent contractor and, accordingly, was not subject to the revolving door provisions set forth in R.I. Gen. Laws § 36-14-5(o)).

Here, the Petitioner was not elected or appointed to represent the City of Newport, nor is she an employee of the City as that term is defined in the relevant provisions of the Code of Ethics. She provides legal services to the City in the litigation matter in the capacity of independent contractor. As such, she does not fall under the jurisdiction of the Ethics Commission and is not subject to the Code of Ethics.

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(9)

§ 36-14-4

§ 36-14-5(o)

520-RICR-00-00-1.1.3 Additional Definitions (36-14-2002)

Related Advisory Opinions:

A.O. 2009-46

A.O. 2007-43

A.O. 2004-19
A.O. 2001-34

Related Case Law:

Gemma v. Rhode Island Ethics Commission, No. PC94-3404 (R.I. Super. Ct., Sept. 17, 1994)

Keywords:

Code Jurisdiction

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: James Grundy

QUESTION PRESENTED:

The Petitioner, the Chairman of the North Kingstown Planning Commission, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself before one's own board, for purposes of requesting a zone change for a lot owned by the Petitioner's construction business that would allow road access to an abutting lot owned by the Petitioner's brother, which the Petitioner and his brother then plan to develop in order to build commercial units to rent to commercial tenants.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chairman of the North Kingstown Planning Commission, a municipal appointed position, does not qualify for a hardship exception to the Code of Ethics' prohibition against representing oneself before one's own board, for purposes of requesting a zone change for a lot owned by the Petitioner's construction business that would allow road access to an abutting lot owned by the Petitioner's brother, which the Petitioner and his brother then plan to develop in order to build commercial units to rent to commercial tenants.

The Petitioner was initially appointed by the North Kingstown Town Council in 2007 to serve as a member of the North Kingstown Planning Commission ("Planning Commission") and has served continuously in that capacity since. The Petitioner is currently the Planning Commission Chair and his term will expire in 2025. The Petitioner represents that, in his private capacity, he is the sole owner of Atlantic Control Systems, Inc. ("Atlantic"), a construction company that performs primarily commercial construction. The Petitioner represents that he has owned Atlantic since 1992 and that, in October of 2020, Atlantic purchased a lot that is adjacent ("adjacent lot") to the lot on which Atlantic is situated. The Petitioner further represents that his brother owns a lot which is located east of Allegra Lane in North Kingstown ("Allegra Lane") which has been in the Petitioner's family since 1986. The Petitioner states that Allegra Lane abuts the adjacent lot, does not have any frontage, and has been landlocked since approximately 1990. The Petitioner further states that, in order for Allegra Lane to acquire frontage that would facilitate its industrial development, the zone designation of the adjacent lot owned by Atlantic must be changed from residential to light industrial, since a residential lot cannot be used to create frontage for a light industrial lot.

The Petitioner describes the anticipated development of Allegra Lane to include the construction of commercial units that will eventually be rented to tenants who are unknown at this time. The Petitioner states that he, as the president and sole shareholder of Atlantic, and his brother, as the owner of Allegra Lane, would be co-developers of the commercial units planned for Allegra Lane, and that both the Petitioner and his brother would be significantly financially impacted by the development of Allegra Lane.

The Petitioner represents that, while the desired zone change would allow for more convenient access to Allegra Lane, the commercial development of Allegra Lane will occur with or without it. He further represents that both the lot on which Atlantic is located and the adjacent lot are presently inconsistent with the Future Land Use Map within the North Kingstown Comprehensive Plan, but that the lots will be made consistent with the Comprehensive Plan if the zone change is granted. The Petitioner states that, if he is granted a hardship exception from the Ethics Commission allowing him to appear before the Planning Commission for purposes of seeking the zone change, he expects that he will also need to appear before the Planning Commission on future occasions relative to the development of Allegra Lane. He adds that he is prepared to recuse from voting on or otherwise participating in the Planning Commission's consideration and disposition of this matter. It is in the context of these facts that the Petitioner requests a hardship exception from the Ethics Commission to appear before the Planning Commission.

The Code of Ethics prohibits a public official from representing himself, or authorizing another person to appear on his behalf, 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. R.I. Gen. Laws § 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid section 5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, section 5(e)'s prohibitions continue while the public official remains in office and for a period of one year thereafter. Section (e)(1) & (4). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter. Section 5(e)(1)(i-iii). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review ("BZB"), permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring him to recuse himself from participating and voting during the BZB's consideration of his request for relief).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing himself before an agency of which he is a member. Having determined that section 5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the Planning Commission.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

In prior advisory opinions, the Ethics Commission has declined to grant a hardship exception for matters involving new commercial ventures. In Advisory Opinion 2006-43, the Ethics Commission declined to grant a hardship exception to a member of the Barrington Planning Board ("BPP") who sought approval from his own board to construct an affordable housing development because the property was not the petitioner's residence or principal place of business; the development appeared to be in furtherance of a commercial venture; and the petitioner's legal interest in the property did not predate his appointment to the BPP. The Ethics Commission also declined to grant a hardship exception in Advisory Opinion 2003-49, where the Assistant Solicitor for the Town of Lincoln ("Lincoln") wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board relative to the development of two parcels of real estate that he owned in Lincoln. The hardship exception was not granted because the petitioner's ownership of the lots did not predate his appointment as Assistant Solicitor, and it was uncertain as to whether either lot would be used as the petitioner's primary residence or simply resold in commercial transactions after development. See also A.O. 2000-41 (declining to grant a hardship exception to a member of the Exeter Zoning Board who sought to generate additional income by entering into a contract to locate a cellular communications tower on his residential property because the proposed commercial venture served only to generate additional income for the petitioner).

In contrast, the Ethics Commission has occasionally granted a hardship exception in situations involving commercial ventures where exceptional circumstances were present. For example, in Advisory Opinion 2018-24, the Ethics Commission granted a hardship exception to a member of the Scituate Town Council ("Town Council") allowing him to represent himself, either personally or through a representative, before the Scituate Plan Commission, for which the Town Council was the appointing authority, to obtain a preliminary/final approval of a Comprehensive Permit Application ("application"). The application related to a parcel of undeveloped land on which the petitioner had planned to build a housing development consisting of 18 condominium units, a number of which would be deemed affordable housing under circumstances where affordable housing in the Town of Scituate fell below the required percentage. In opining that the totality of the circumstances justified granting a hardship exception to section 5(e)'s prohibitions, the Ethics Commission relied upon the petitioner's representation that he had purchased the property, filed the Comprehensive Permit Application, and obtained a Master Plan Approval prior to his election to the Town Council. The petitioner had further represented that, absent preliminary/final approval from the Scituate Plan Commission, he stood to suffer significant economic impact due to his considerable investment to date.

Additionally, in Advisory Opinion 2018-5, the Ethics Commission granted a hardship exception allowing another member of the Scituate Town Council to appear before various boards for which the Town Council was the appointing authority to obtain approvals to restore and renovate his

commercial property which had been damaged in a fire. There, the circumstances were such that the petitioner had operated a store on the property for several years prior to his election to the Town Council. The property had been extensively damaged by fire and could not reopen absent certain approvals by one or more of the boards. The petitioner was not seeking any extraordinary relief from the Town of Scituate's building and zoning ordinances and had suffered a substantial financial hardship due to the continuing loss of income from his business. See also A.O. 2002-8, (granting a hardship exception to a Narragansett Town Council member, allowing him to appear before the Town Council in order to establish the appropriate zone determination for his property which he had purchased several months prior to his election to the Town Council, given that the zoning of the property was uncertain due to prior Town Council error).

In the present matter, the Petitioner seeks a zone change to a lot that is adjacent to the lot on which his principal place of business is located, and which is owned by that business. The Petitioner's ownership of the property for which he seeks the zone change did not predate his appointment to public office and was only recently acquired. Further, the relief sought involves a new commercial venture of significant economic impact for the Petitioner and his brother. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of Ethics Commission that the circumstances described herein do not justify the granting of a hardship exception to the Code of Ethics' prohibition against the Petitioner appearing before his own board to seek a zone change. Therefore, the Petitioner may not appear before the Planning Commission, whether individually, through legal counsel, or through any other representative, relative to the application for a zone change on the adjacent lot. The Petitioner is further advised that, in the event that his brother or any representative for his brother appears before the Planning Commission with regard to any matter involving the proposed commercial development of Allegra Lane, the Petitioner must either recuse from participating consistent with section 36-14-6 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:

§ 36-14-5(e)

§ 36-14-6

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5006)

Related Advisory Opinions:

A.O. 2018-24

A.O. 2018-5

A.O. 2014-26

A.O. 2006-43

A.O. 2003-49

A.O. 2002-8
A.O. 2000-41

Keywords:
Hardship Exception
Property Interest

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: Tom Furey

QUESTION PRESENTED:

The Petitioner, the Chairman of the Rhode Island Contractors Registration and Licensing Board ("CRLB"), a state appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in a matter currently pending before the CRLB, given that the appellant in said matter hired the Petitioner to perform work on the property that is the subject of the appeal.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, the Chairman of the Rhode Island Contractors Registration and Licensing Board ("CRLB"), a state appointed position, is not prohibited by the Code of Ethics from participating in a matter currently pending before the CRLB wherein the appellant in said matter hired the Petitioner to perform work on the property that is the subject of the appeal. However, in consideration of the appearance of impropriety that would result from his participation, the Petitioner is advised to recuse from so participating.

The Petitioner is the Chairman of the Rhode Island Contractors Registration and Licensing Board ("CRLB"). He states that the CRLB oversees contractor and homeowner disputes on appeal. The Petitioner further states that the CRLB is soon expected to hear an appeal in the case of *CRLB vs. Steven Gianlorenzo*,¹ d/b/a *Gianlorenzo & Sons, Construction* ("appeal"). The Petitioner explains that Steven Gianlorenzo ("Mr. Gianlorenzo" or "Appellant") is appealing the amount of a fine imposed by the CRLB staff following a decision in favor of a homeowner who had filed a complaint against Mr. Gianlorenzo as a result of work performed by Mr. Gianlorenzo at the request of the homeowner on the homeowner's property. The Petitioner states that, in his private capacity he is the owner of Furey Roofing, and that he was hired by Mr. Gianlorenzo to install a roof on the property that is the subject of the appeal. The Petitioner adds that, to the best of his knowledge, no part of the dispute between the homeowner and Mr. Gianlorenzo involves the roofing work performed by the Petitioner. The Petitioner represents that he performed his work on the subject property in 2019 and was paid in full for that work by Mr. Gianlorenzo on August 22, 2019. He adds that he does not anticipate any future business relationship with Mr. Gianlorenzo, and that he would be able to participate in the matter in which Mr. Gianlorenzo is the Appellant in a fair and impartial matter. It is in the context of these facts that the Petitioner seeks guidance from the

¹ The Petitioner states that Steven Gianlorenzo is both a former member and a former employee of the CRLB.

Ethics Commission regarding whether he is prohibited from participating in the matter currently before the CRLB in which Mr. Gianlorenzo is the appellant.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, 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 further prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). Additionally, under the Code of Ethics, a public official must recuse himself from participation in a matter when his business associate or employer, or a person authorized by his business associate or employer, appears or presents evidence or arguments before his state agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2)&(3) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” R.I. Gen. Laws § 36-14-2(3).

Here, based on the Petitioner’s representations that he has been paid in full for the work he performed on the property that is the subject of the appeal, and that the Petitioner’s work is not the subject of the dispute which led to the appeal, there is no reason to believe or expect that the Petitioner will be personally financially impacted were he to participate in hearing the appeal. For that reason, the focus of the following analysis will be the relationship between the Petitioner and Mr. Gianlorenzo.

In past advisory opinions, the Ethics Commission has required a public official to recuse from consideration of a matter if the public official had an ongoing business relationship with an individual or entity appearing before his or her public body. See 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); A.O. 2005-64 (opining that a member of the Burrillville Redevelopment Agency (“Agency”) could not participate in discussions or votes on matters coming before the Agency regarding a nonprofit developer’s request for approval of a project, given that the petitioner was a partner in an accounting firm that provided accounting services to that developer on a continuing basis).

While the Code of Ethics clearly prohibits a public official from participating in matters directly affecting his or her current business associate, the Ethics Commission has permitted a public official to participate in matters involving or impacting a former business associate, assuming no other conflicts were present. In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, and/or whether there exists an anticipated future relationship. For example, in Advisory Opinion 2021-

11, the Ethics Commission opined that a member of the State Housing Appeals Board (“SHAB”) was not prohibited by the Code of Ethics from participating in a matter before the SHAB in which the appellant was represented by legal counsel who once provided legal services to the petitioner. The circumstances were such that the attorney-client relationship between the appellant’s legal counsel and the petitioner had ended some four years prior, with the petitioner having paid the attorney in full for all legal services provided to her, and with no expectation that she would require the attorney’s services in the future. See also A.O. 2013-21 (opining that a member of the State Labor Relations Board, a private attorney, was not required to recuse from matters involving his former law client provided that the representation had concluded, that all outstanding legal fees had been paid in full, and that there was no reasonable likelihood of reestablishing an attorney-client relationship in the foreseeable future); A.O. 2007-5 (opining that a Smithfield Town Council member’s prior attorney-client relationship with an individual who sought legal advice related to his property that abutted the Slacks Reservoir dam did not prohibit the petitioner from participating in the Town Council’s consideration of a matter related to the release of funds to repair the Slacks Reservoir dam, given that the attorney-client relationship, during which the client had not been charged, had ended more than a year prior with no plans for future representation).

In the present matter, the Petitioner represents that the business relationship between the Appellant and himself ended in 2019. He states that the Appellant has paid him in full for the roofing services he provided. He further states that he does not anticipate any occasion for which he might engage in a future business relationship with the Appellant. The Petitioner is a former business associate of the Appellant, which means that the Code of Ethics does not prohibit the Petitioner from participating in the CRLB’s consideration of the appeal. That notwithstanding, public officials are advised by the Rhode Island Constitution to hold themselves to ethical standards that go beyond the legal requirements of the Code of Ethics by “adher[ing] to the highest standards of ethical conduct, respect[ing] the public trust and . . . avoid[ing] the appearance of impropriety[.]” R.I. Const. art. III, sec. 7. Accordingly, it is the opinion of the Ethics Commission that the Petitioner should not participate in the matter currently pending before the CRLB. Although there is no current business association between the Petitioner and the Appellant, the Petitioner states that he performed work for the Appellant on the very property that is the subject of the appeal before the CRLB. Were this a situation in which the CRLB would not be able to achieve a necessary quorum to hear the matter without the Petitioner’s participation, then perhaps the appearance of impropriety might be outweighed by the necessity of the Petitioner’s participation. Where no facts have been presented to suggest that is the case, the Petitioner is advised to recuse from participation in Mr. Gianlorenzo’s appeal, consistent with 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:

§ 36-14-2(3)

§ 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)

Constitutional Authority:

R.I. Const., art III, sec. 7

Related Advisory Opinions:

A.O. 2021-11

A.O. 2016-45

A.O. 2013-21

A.O. 2007-5

A.O. 2005-64

Keywords:

Appearance of Impropriety

Business Associate

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: John Cullen

QUESTION PRESENTED:

The Petitioner, the Secretary of the Block Island Tourism Council, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in discussions and decision-making by the Tourism Council concerning whether to publicly support a pilot program proposed by the Rhode Island Public Transit Authority ("RIPTA") wherein RIPTA would operate two trolleys on Block Island during the 2021 summer season, given that the Petitioner is currently on a waiting list to receive a taxi license on Block Island.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Secretary of the Block Island Tourism Council, a municipal appointed position, is not prohibited by the Code of Ethics from participating in discussions and decision-making by the Tourism Council concerning whether to publicly support a pilot program proposed by the Rhode Island Public Transit Authority ("RIPTA") wherein RIPTA would operate two trolleys on Block Island during the 2021 summer season, notwithstanding that the Petitioner is currently on a waiting list to receive a taxi license on Block Island.

The Petitioner currently serves as the Secretary of the Block Island Tourism Council ("Tourism Council"), having been appointed to membership on the Tourism Council by the Town of New Shoreham¹ ("Town" or "Block Island") Town Council ("Town Council"). He states that the mission of the Tourism Council is to promote and market Block Island as a tourist destination and to assist the Town with issues impacting tourism.

The Petitioner represents that RIPTA has recently proposed to the Town Council a pilot program wherein RIPTA would operate two trolleys on Block Island for the upcoming 2021 summer season, the intent being to reduce congestion on the roads and to disperse crowds more efficiently as they disembark from arriving ferries. The Petitioner offers that the Block Island Commission on Motor Vehicles for Hire, which is the governing body over the Block Island Taxi Cab License Holders, as well as a majority of taxi license holders on Block Island, are opposed to RIPTA's proposal because they fear that the trolleys will have a negative economic impact on the taxi

¹ The Town of New Shoreham is also known as Block Island.

owners' ability to make a living, given the potential for visitors to Block Island to opt to use a trolley instead of a taxi, which would take business away from taxi drivers. The Petitioner states that a Block Island taxi driver has asked the Tourism Council to take a public position against RIPTA's proposal. The Petitioner emphasizes that it is the Town Council that will decide whether or not to adopt RIPTA's proposal, adding that any involvement by the Tourism Council, should it opt to take a public position, be it for or against the proposal, would be in the form of a letter to the Town Council. He adds that the Town Council has not sought an opinion from the Tourism Council.

The Petitioner represents that he has been on a waiting list to receive a taxi license on Block Island for some twenty years and estimates that, given his current position on the waiting list, he will not be granted a taxi license for another five to seven years. The Petitioner represents that no members of his family hold taxi licenses on Block Island, nor does anyone with whom he does business. The Petitioner further represents that in his private capacity he is the owner of B.I.T.'s, a retail store on Block Island. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in discussions and decision-making by the Tourism Council regarding whether to advise the Town Council of its position regarding the RIPTA proposal.

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 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 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). Further, a public official 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).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether the Petitioner will be financially impacted by the official action that is under consideration. If a financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in discussions and decision-making on the issue. 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 on 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, there is nothing to

indicate that the Petitioner would be financially impacted by his participation in the discussions and decision-making relative to RIPTA's proposal because the Petitioner does not currently hold a taxi license on Block Island, has been on the waiting list for a taxi license for twenty years, and is not expected to obtain a taxi license for an estimated five to seven years.

Accordingly, based upon the Petitioner's representations, the application 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 participating in discussions and decision-making by the Tourism Council concerning whether to publicly support a pilot program proposed by RIPTA wherein RIPTA would operate two trolleys on Block Island during the 2021 summer season. The Petitioner is advised, however, that should circumstances change such that it does become reasonably foreseeable that he, or a member of his family, his business associate, or any business by which he is employed could be financially impacted by his participation, he must recuse from further participation consistent with section 36-14-6, 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:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2019-25

A.O. 2012-2

Keywords:

Conflict of Interest

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: March 16, 2021

Re: Jessica Willi

QUESTION PRESENTED:

The Petitioner, the Executive Director of the Block Island Tourism Council, a municipal employee position, requests an advisory opinion regarding: (1) what limitations, if any, the Code of Ethics places upon her in the performance of her public duties, given that her spouse owns Captain Nick's Bar and Nightclub ("Captain Nick's") and Fishworks, a bait and tackle store and fishing charter business, and that her private employer owns Kimberly's Restaurant ("Kimberly's"), among others, and; (2) whether the Code of Ethics prohibits her from engaging in secondary private employment at Captain Nick's and/or Kimberly's.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, the Executive Director of the Block Island Tourism Council, a municipal employee position: (1) is prohibited by the Code of Ethics from participating in any matter as part of her public duties that would financially impact her spouse and/or her private employer; and (2) is not prohibited by the Code of Ethics from engaging in secondary private employment at Captain Nick's and/or Kimberly's, provided that all work is performed on her own time and without the use of public resources or confidential information obtained as part of her municipal employment at the Tourism Council and, further provided, that the Petitioner shall not use her public position to promote or advertise her husband's businesses or the businesses of her private employer beyond the scope of the ministerial duties described by the Petitioner herein.

The Petitioner is employed as the Executive Director of the Block Island Tourism Council ("Tourism Council"). She states that the Tourism Council is composed of seven members who were appointed by the Town Council, and that the general mission of the Tourism Council is to promote and encourage tourism in the Town of New Shoreham¹ ("Town" or "Block Island" or "the island"). The Petitioner further states that she was hired by the Tourism Council in 2007, is the Tourism Council's sole employee, and that her contract is renewable on a year-to-year basis. She explains that she is a salaried employee and, while she has no set hours, generally works for the Tourism Council from 9:00 am until 5:00 pm each Monday through Friday. The Petitioner identifies among her responsibilities at the Tourism Council: attending to marketing and public relations for Block Island as a vacation destination; working in cooperation with the Town to help

¹ The Town of New Shoreham is also known as Block Island.

mitigate the effects of tourism on Block Island's infrastructure and environment; facilitating monthly meetings of the Tourism Council, and running the Tourism Council's website, social media, and advertising campaigns.

The Petitioner represents that, in her private capacity, she has worked for the last thirty years as a seasonal employee at Kimberly's Restaurant ("Kimberly's") on Block Island as a bartender, waitress, hostess, and manager. The Petitioner further states that she usually works at Kimberly's during the months of July and August, two weekend nights each week, from 6:00 pm until 11:00 pm. The Petitioner informs that the owner of Kimberly's also owns Block Island Oyster Bar and Block Island Cookie Company, adding that she (the Petitioner) does not work at either of those establishments. The Petitioner represents that she has also worked for the last ten years as a seasonal employee at Captain Nick's Bar and Nightclub ("Captain Nick's") on the island as a bartender each July and August, one to two nights each week, usually from 9:00 pm until 3:00 am. The Petitioner represents that her husband purchased Captain Nick's in June of 2020. She further represents that her husband also owns and operates Fishworks, a bait and tackle store and fishing charter business on the island at which the Petitioner does not work.

The Petitioner states that all thirty of the restaurants on the island, including Kimberly's, Block Island Oyster Bar, and Block Island Cookie Company, are identified on the Tourism Council's website. She explains that there is no charge for any restaurant to be listed on the website, and that the names of all of the restaurants appear in alphabetical order. She further states that Captain Nick's is one of the establishments identified on the website under the category of Taverns/Nightclubs, of which there are a total of five on the island, and which are also listed in alphabetical order at no charge to the owner. The Petitioner informs that her spouse's other business, Fishworks, is one of the ten businesses on the island listed under the category of Recreation and one of the twenty-five establishments on the island listed under the category of Shopping. The Petitioner explains that all business owners whose establishments appear on the Tourism Council's website are given the option to pay \$150 per year for an expanded listing on the website which, while still appearing alphabetically on the corresponding list of establishments of its type, also includes a photo and website link. She states that Kimberly's, RI Oyster Bar & Grille, and Fishworks have all paid for and received expanded listings on the Tourism Council website.²

The Petitioner represents that, in her capacity as Executive Director for the Tourism Council, she has minimal contact with the business owners on the island. She states that, at one time, grants were sometimes awarded to island businesses by the Tourism Council, but that has not happened for years. The Petitioner states that, if asked by anyone to recommend a particular restaurant, nightclub, or other business on the island, rather than do so, she will direct the person making the inquiry to the entire list available through the Tourism Council. She emphasizes that she does not promote any specific businesses on the island, all of which are given equal treatment by the Tourism Council. The Petitioner states that, if pressed by a person for a specific recommendation,

² The Petitioner states that business owners on the island also have the option of paying a \$600 fee for an expanded premiere listing on the Tourism Council's website, for which their businesses are listed at the top of a category rather than alphabetically, and with an advertisement and larger picture than that afforded those who have paid for an extended listing. She further states that neither her husband nor her employer has paid for or received expanded premiere listings for the businesses that they own.

she will refer that person to the State Tourism Office. It is at the suggestion of the Tourism Council, and 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 the exercise of her public duties, and whether she may engage in secondary employment at Kimberly's and Captain Nick's.

Under the Code of Ethics, a public official or employee may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official or employee has reason to believe or expect that she, any person within her family, her business associate, or her employer will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). Additionally, the Code of Ethics prohibits a public official or employee from using her public office or confidential information received through her public office to obtain financial gain 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). "Any person within her family" includes a spouse. Section 36-14-2(1). Additionally, under Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) ("Regulation 1.3.1"), a public official or employee 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, or any household member, is a party to or a participant in such matter, or will derive a direct monetary gain, suffer a direct monetary loss, or obtain an employment advantage. Regulation 1.3.1(B)(1). Further, the Code of Ethics provides that a public official or employee shall not accept other employment that would impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of her official duties. Section 36-14-5(b).

Limitations in Performance of Public Duties

The Ethics Commission recently addressed the limitations placed by the Code of Ethics upon a municipal employee concerning her private employment. In Advisory Opinion 2021-3, the Ethics Commission opined that the Director of Social Services for the Town of Exeter, who in her private capacity was employed as a grant writer for the Rhode Island Center Assisting Those In Need ("RICAN"), was prohibited by the Code of Ethics from taking any non-ministerial official actions in her public capacity that would financially impact her private employer. There, the petitioner represented that opportunities for RICAN to receive grant funding could be reasonably expected to depend upon the number of people who benefitted from RICAN programs, including Exeter residents who might be directed to RICAN by the petitioner in her public capacity. The petitioner was prohibited from taking official action including, but not limited to, directing Exeter residents who sought an alternative to the Exeter food pantry either to or away from RICAN. The Ethics Commission opined that, 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 was 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. The Ethics Commission provided, by way of example, that 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.

Similarly, in the instant matter, the appearance in alphabetical order of the names of the establishments owned by the Petitioner's husband and her private employer on the Tourism Council website appears to be a ministerial act on the part of the Petitioner which does not involve discretion or decision-making. The same can be said for the appearance of Kimberly's, RI Oyster Bar & Grille, and Fishworks as expanded listings on the Tourism Council's website following the payment of a set fee of \$150. Under these circumstances, coupled with the Petitioner's representation that she does not in her public capacity direct anyone to or away from patronizing any establishment on the island, there appears to be no violation of the Code of Ethics on the part of the Petitioner. Nonetheless, the Petitioner is advised to remain vigilant about her responsibility under the Code of Ethics to recuse from participating in any matter in her public capacity in which it is reasonably foreseeable that either her spouse or her employer will be financially impacted by reason of her official activity. The Petitioner is further advised that she may not use her public office, or confidential information received through her public office, to obtain financial gain for her spouse or her employer. All recusals shall be consistent with section 36-14-6.

Secondary Private Employment

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or positions subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties. The Ethics Commission examines several factors when considering potential conflicts of interest regarding secondary employment. These factors include, but are not limited to, the nexus between the official's public duties and private employment; whether the employee completes such work outside his or her normal working hours and without the use of public resources; whether the employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.

For example, in Advisory Opinion 2019-67, the Ethics Commission opined that a Rhode Island Family Court Investigator was not prohibited by the Code of Ethics from owning and operating a private investigation firm, provided that all of the work was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment with the Family Court. Further, the petitioner could not use his public position to promote or advertise his private employment, nor could he list his public employment as part of the advertisement of his private work. Additionally, the petitioner was required to recuse from any matter that came before him as a Family Court Investigator that involved any of the attorneys or entities for which he either provided private investigative services or with which he contracted on a regular basis. See also A.O. 2012-32 (opining that the Acting Director of the Department of Planning and Development for the City of Providence was not prohibited by the Code of Ethics from teaching a course at Brown University, provided that all teaching work was performed on his

own time and he did not use public resources or confidential information obtained as part of his employment with the City; however the petitioner was required to recuse from any matters relating to Brown University that might come before him in his public capacity as Acting Director of the Department of Planning and Development and to refer such matters to his superiors); A.O. 2019-53 (opining that a Vocational Rehabilitation Counselor for the Rhode Island Department of Human Services, Office of Rehabilitation Services (“ORS”), was not prohibited by the Code of Ethics from working as a certified yoga instructor for young children and/or adults with disabilities, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment at ORS and, further provided that the Petitioner did not use her public position to promote or advertise her private employment, or list her public employment as part of the advertisement of her private work).

In the present matter, the Petitioner’s representations do not indicate that her secondary employment as a bartender, waitress, hostess, or manager would either impair her independence of judgement or create an interest in substantial conflict with her public duties at the Tourism Council. Accordingly, the Code of Ethics does not prohibit the Petitioner from working in her private capacity as a bartender at Captain Nick’s, and/or as a bartender, waitress, hostess, or manager at Kimberly’s, provided that all of the work is performed on her own time and without the use of public resources or confidential information obtained as part of her municipal employment at the Tourism Council. Further, the Petitioner shall not use her public position to promote or advertise her husband’s businesses or the businesses of her private employer beyond the scope of the ministerial duties described by the Petitioner herein. Finally, the Petitioner is advised that if there are any changes in her employment at the Tourism Council whereby a particular matter that comes before her could present a conflict of interest under the Code of Ethics, she must either recuse from participation in such matter consistent with section 36-14-6, 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(1)

§ 36-14-5(a)

§ 36-14-5(b)

§ 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:

General Commission Advisory No. 2009-4

A.O. 2021-3

A.O. 2019-67
A.O. 2019-53
A.O. 2012-32

Keywords:

Conflict of Interest

Secondary Employment

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS

Introduced By: Representative Alex D. Marszalkowski

Date Introduced: February 24, 2021

Referred To: House State Government & Elections

(Dept. of Business and Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-46-2, 42-46-3, 42-46-5, 42-46-6 and 42-46-7 of the General
2 Laws in Chapter 42-46 entitled "Open Meetings" are hereby amended to read as follows:

3 **42-46-2. Definitions. Definitions. (Effective until July 1, 2023)**

4 As used in this chapter:

5 (1) "Adequate, alternative means of public access" means measures that provide
6 transparency and permit timely and effective public access to the deliberations of the public body
7 to include, but not be limited to, providing public access through telephone, Internet or satellite-
8 enabled audio or video conferencing, livestreaming or any other technology that enables the public
9 to clearly follow the proceedings of the public body while those activities are occurring.

10 ~~(1)~~(2) "Meeting" means the convening of a public body to discuss and/or act upon a matter
11 over which the public body has supervision, control, jurisdiction, or advisory power. As used
12 herein, the term "meeting" expressly includes, without limiting the generality of the foregoing, so-
13 called "workshop," "work~~ing~~," or "work" sessions.

14 ~~(2)~~(3) "Open call" means a public announcement by the chairperson of the committee that
15 the meeting is going to be held in executive session and the chairperson must indicate which
16 exception of § 42-46-5 is being involved.

17 ~~(3)~~(4) "Open forum" means the designated portion of an open meeting, if any, on a properly
18 posted notice reserved for citizens to address comments to a public body relating to matters
19 affecting the public business.

1 (4)(5) "Prevailing plaintiff" includes those persons and entities deemed "prevailing parties"
2 pursuant to 42 U.S.C. § 1988.

3 (5)(6) "Public body" means any department, agency, commission, committee, board,
4 council, bureau, or authority, or any subdivision thereof, of state or municipal government or the
5 board of directors of any library that funded at least twenty-five percent (25%) of its operational
6 budget in the prior budget year with public funds, and shall include all authorities defined in § 42-
7 35-1. For purposes of this section, any political party, organization, or unit thereof meeting or
8 convening is not and should not be considered to be a public body; provided, however, that no such
9 meeting shall be used to circumvent the requirements of this chapter.

10 (6)(7) "Quorum," unless otherwise defined by applicable law, means a simple majority of
11 the membership of a public body.

12 **42-46-3. Open meetings- Open meetings. (Effective until July 1, 2023)**

13 Every meeting of all public bodies shall be open to the public including through adequate
14 means of public access unless closed pursuant to §§ 42-46-4 and 42-46-5.

15 ~~**42-46-5. Purposes for which meeting may be closed -- Use of electronic**~~
16 ~~**communications -- Judicial proceedings -- Disruptive conduct. Purposes for which meeting**~~
17 ~~**may be closed -- Use of electronic communications -- Judicial proceedings -- Disruptive**~~
18 ~~**conduct. (Effective until July 1, 2023)**~~

19 (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one
20 or more of the following purposes:

21 (1) Any discussions of the job performance, character, or physical or mental health of a
22 person or persons provided that such person or persons affected shall have been notified in advance
23 in writing and advised that they may require that the discussion be held at an open meeting.

24 Failure to provide such notification shall render any action taken against the person or
25 persons affected null and void. Before going into a closed meeting pursuant to this subsection, the
26 public body shall state for the record that any persons to be discussed have been so notified and
27 this statement shall be noted in the minutes of the meeting.

28 (2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to
29 collective bargaining or litigation.

30 (3) Discussion regarding the matter of security including, but not limited to, the deployment
31 of security personnel or devices.

32 (4) Any investigative proceedings regarding allegations of misconduct, either civil or
33 criminal.

34 (5) Any discussions or considerations related to the acquisition or lease of real property for

1 public purposes, or of the disposition of publicly held property wherein advanced public
2 information would be detrimental to the interest of the public.

3 (6) Any discussions related to or concerning a prospective business or industry locating in
4 the state of Rhode Island when an open meeting would have a detrimental effect on the interest of
5 the public.

6 (7) A matter related to the question of the investment of public funds where the premature
7 disclosure would adversely affect the public interest. Public funds shall include any investment
8 plan or matter related thereto, including, but not limited to, state lottery plans for new promotions.

9 (8) Any executive sessions of a local school committee exclusively for the purposes: (i) of
10 conducting student disciplinary hearings; or (ii) of reviewing other matters which relate to the
11 privacy of students and their records, including all hearings of the various juvenile hearing boards
12 of any municipality; provided, however, that any affected student shall have been notified in
13 advance in writing and advised that he or she may require that the discussion be held in an open
14 meeting.

15 Failure to provide such notification shall render any action taken against the student or
16 students affected null and void. Before going into a closed meeting pursuant to this subsection, the
17 public body shall state for the record that any students to be discussed have been so notified and
18 this statement shall be noted in the minutes of the meeting.

19 (9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining
20 agreement.

21 (10) Any discussion of the personal finances of a prospective donor to a library.

22 ~~(b) No meeting of members of a public body or use of electronic communication, including~~
23 ~~telephonic communication and telephone conferencing, shall be used to circumvent the spirit or~~
24 ~~requirements of this chapter; provided, however, these meetings and discussions are not prohibited.~~

25 ~~(1) Provided, further however, that discussions of a public body via electronic~~
26 ~~communication, including telephonic communication and telephone conferencing, shall be~~
27 ~~permitted only to schedule a meeting.~~

28 ~~(2) Provided, further however, that a member of a public body may participate by use of~~
29 ~~electronic communication or telephone communication while on active duty in the armed services~~
30 ~~of the United States.~~

31 ~~(3) Provided, further however, that a member of that public body, who has a disability as~~
32 ~~defined in chapter 87 of title 42 and:~~

33 ~~(i) Cannot attend meetings of that public body solely by reason of his or her disability; and~~

34 ~~(ii) Cannot otherwise participate in the meeting without the use of electronic~~

1 communication or telephone communication as reasonable accommodation, may participate by use
2 of electronic communication or telephone communication in accordance with the process below.

3 (4) The governor's commission on disabilities is authorized and directed to:

4 (i) Establish rules and regulations for determining whether a member of a public body is
5 not otherwise able to participate in meetings of that public body without the use of electronic
6 communication or telephone communication as a reasonable accommodation due to that member's
7 disability;

8 (ii) Grant a waiver that allows a member to participate by electronic communication or
9 telephone communication only if the member's disability would prevent him/her from being
10 physically present at the meeting location, and the use of such communication is the only
11 reasonable accommodation; and

12 (iii) Any waiver decisions shall be a matter of public record.

13 (e) This chapter shall not apply to proceedings of the judicial branch of state government
14 or probate court or municipal court proceedings in any city or town.

15 (d) This chapter shall not prohibit the removal of any person who willfully disrupts a
16 meeting to the extent that orderly conduct of the meeting is seriously compromised.

17 **42-46-6. Notice. Notice. (Effective until July 1, 2023)**

18 (a) Annual meeting calendar. All public bodies shall give written notice of their regularly
19 scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times,
20 and places of the meetings and shall be provided to members of the public upon request and to the
21 secretary of state at the beginning of each calendar year in accordance with subsection (f).

22 (b) Public bodies shall give supplemental written public notice of any meeting within a
23 minimum of forty-eight (48) hours, excluding weekends and state holidays in the count of hours,
24 before the date. This notice shall include the date the notice was posted; the date, time, and place
25 of the meeting; information on how to attend the meeting remotely and/or view the livestream, if
26 applicable; and a statement specifying the nature of the business to be discussed. Copies of the
27 notice shall be maintained by the public body for a minimum of one year. Nothing contained herein
28 shall prevent a public body, other than a school committee, from adding additional items to the
29 agenda by majority vote of the members. School committees may, however, add items for
30 informational purposes only, pursuant to a request, submitted in writing, by a member of the public
31 during the public comment session of the school committee's meetings. Said informational items
32 may not be voted upon unless they have been posted in accordance with the provisions of this
33 section. Such additional items shall be for informational purposes only and may not be voted on
34 except where necessary to address an unexpected occurrence that requires immediate action to

1 protect the public or to refer the matter to an appropriate committee or to another body or official.

2 (c) Written public notice shall include, but need not be limited to, posting a copy of the
3 notice at the principal office of the public body holding the meeting, or if no principal office exists,
4 at the building in which the meeting is to be held, and in at least one other prominent place within
5 the governmental unit, and electronic filing of the notice with the secretary of state pursuant to
6 subsection (f); however, nothing contained herein shall prevent a public body from holding an
7 emergency meeting, upon an affirmative vote of the majority of the members of the body when the
8 meeting is deemed necessary to address an unexpected occurrence that requires immediate action
9 to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted
10 as soon as practicable and shall be electronically filed with the secretary of state pursuant to
11 subsection (f) and, upon meeting, the public body shall state for the record and minutes why the
12 matter must be addressed in less than forty-eight (48) hours in accordance with subsection (b) of
13 this section and only discuss the issue or issues that created the need for an emergency meeting.
14 Nothing contained herein shall be used in the circumvention of the spirit and requirements of this
15 chapter.

16 (d) Nothing within this chapter shall prohibit any public body, or the members thereof,
17 from responding to comments initiated by a member of the public during a properly noticed open
18 forum even if the subject matter of a citizen's comments or discussions were not previously posted,
19 provided such matters shall be for informational purposes only and may not be voted on except
20 where necessary to address an unexpected occurrence that requires immediate action to protect the
21 public or to refer the matter to an appropriate committee or to another body or official. Nothing
22 contained in this chapter requires any public body to hold an open-forum session to entertain or
23 respond to any topic nor does it prohibit any public body from limiting comment on any topic at
24 such an open-forum session. No public body, or the members thereof, may use this section to
25 circumvent the spirit or requirements of this chapter.

26 (e) A school committee may add agenda items not appearing in the published notice
27 required by this section under the following conditions:

28 (1) The revised agenda is electronically filed with the secretary of state pursuant to
29 subsection (f), and is posted on the school district's website and the two (2) public locations required
30 by this section at least forty-eight (48) hours in advance of the meeting in accordance with
31 subsection (b) of this section;

32 (2) The new agenda items were unexpected and could not have been added in time for
33 newspaper publication;

34 (3) Upon meeting, the public body states for the record and minutes why the agenda items

1 could not have been added in time for newspaper publication and need to be addressed at the
2 meeting;

3 (4) A formal process is available to provide timely notice of the revised agenda to any
4 person who has requested that notice, and the school district has taken reasonable steps to make the
5 public aware of this process; and

6 (5) The published notice shall include a statement that any changes in the agenda will be
7 posted on the school district's website and the two (2) public locations required by this section and
8 will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of
9 the meeting in accordance with subsection (b) of this section.

10 (f) All notices required by this section to be filed with the secretary of state shall be
11 electronically transmitted to the secretary of state in accordance with rules and regulations that shall
12 be promulgated by the secretary of state. This requirement of the electronic transmission and filing
13 of notices with the secretary of state shall take effect one year after this subsection takes effect.

14 (g) If a public body fails to transmit notices in accordance with this section, then any
15 aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

16 ~~42-46-7. Minutes. Minutes. (Effective until July 1, 2023)~~

17 (a) All public bodies shall keep written minutes of all their meetings. The minutes shall
18 include, but need not be limited to:

19 (1) The date, time, and place of the meeting;

20 (2) The members of the public body recorded as either present or absent, and for all
21 members of the public body who are present, record whether attendance is in person or remote via
22 electronic means;

23 (3) A record by individual members of any vote taken; and

24 (4) Any other information relevant to the business of the public body that any member of
25 the public body requests be included or reflected in the minutes.

26 (b)(1) A record of all votes taken at all meetings of public bodies, listing how each member
27 voted on each issue, shall be a public record and shall be available to the public at the office of the
28 public body within two (2) weeks of the date of the vote. The minutes shall be public records and
29 unofficial minutes shall be available to the public at the office of the public body within thirty-five
30 (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except
31 where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body
32 by majority vote extends the time period for the filing of the minutes and publicly states the reason.

33 (2) In addition to the provisions of subsection (b)(1), all volunteer fire companies,
34 associations, fire district companies, or any other organization currently engaged in the mission of

1 extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is
2 a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21)
3 days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting,
4 whichever is earlier, on the secretary of state's website.

5 (c) The minutes of a closed session shall be made available at the next regularly scheduled
6 meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4
7 and 42-46-5.

8 (d) All public bodies shall keep official and/or approved minutes of all meetings of the
9 body and shall file a copy of the minutes of all open meetings with the secretary of state for
10 inspection by the public within thirty-five (35) days of the meeting; provided that this subsection
11 shall not apply to public bodies whose responsibilities are solely advisory in nature.

12 (e) All minutes and unofficial minutes required by this section to be filed with the secretary
13 of state shall be electronically transmitted to the secretary of state in accordance with rules and
14 regulations that shall be promulgated by the secretary of state. If a public body fails to transmit
15 minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may
16 file a complaint with the attorney general in accordance with § 42-46-8.

17 SECTION 2. Chapter 42-46 of the General Laws entitled "Open Meetings" is hereby
18 amended by adding thereto the following sections:

19 **42-46-15. Virtual participation in open meetings by members of the public body.**
20 **(Effective until July 1, 2023).**

21 (a) Members of public bodies may participate in public meetings by virtual means through
22 telephone or audio/video conferencing and such members shall be included in the quorum.

23 (b) Public bodies shall not deny any person including a member of the public body the
24 ability to participate remotely in a meeting for any reason.

25 **42-46-16. Livestreaming of meetings and virtual public access. (Effective until July 1,**
26 **2023).**

27 All meetings subject to this chapter, whether held as an in-person meeting, hybrid meeting
28 or all-virtual meeting, that are required to be public pursuant to this chapter shall be accessible to
29 the public through adequate, alternative means of public access, that:

30 (1) Are offered to the public without subscription, toll, or similar charge to the public;

31 (2) Enable the public to clearly follow the proceedings of the public body in real time;

32 (3) Allow members of the public to provide live testimony or public comment through
33 virtual means; and

34 (4) Ensure that any party entitled or required to appear before it, shall be able to do so

1 remotely.

2 **42-46-17. Use of electronic communications by and between members of public**
3 **bodies. (Effective until July 1, 2023).**

4 The use of electronic communication, including telephonic, text, email, facsimile,
5 teleconferencing, instant messaging, social networking/media, or similar means of communications
6 shall not be used by any member of a public body to circumvent the spirit or requirement of this
7 chapter; provided, that electronic communication may be used to:

8 (1) Participate in a meeting by virtual means as may be permitted by this chapter; and

9 (2) Schedule a meeting or determine the availability of members of a public body for the
10 purpose of conducting a meeting under this chapter.

11 **42-46-18. Exclusion of judiciary. (Effective until July 1, 2023).**

12 This chapter shall not apply to proceedings of the judicial branch of state government or
13 probate court or municipal court proceedings in any city or town.

14 **42-46-19. Disruptive conduct. (Effective until July 1, 2023).**

15 This chapter shall not prohibit the removal of any person who willfully disrupts a meeting
16 to the extent that orderly conduct of the meeting is seriously compromised.

17 **42-46-20. Sunset.**

18 The provisions and requirements of §§ 42-46-2, 42-46-3, 42-46-5, 42-46-6, 42-46-7, 42-
19 46-15, 42-46-16, 42-46-17, 42-46-18 and 42-46-19 shall expire on July 1, 2023.

20 SECTION 3. Chapter 42-46 of the General Laws entitled "Open Meetings" is hereby
21 amended by adding thereto the following sections:

22 **42-46-2.1. Definitions. (Effective July 1, 2023)**

23 As used in this chapter:

24 (1) "Meeting" means the convening of a public body to discuss and/or act upon a matter
25 over which the public body has supervision, control, jurisdiction, or advisory power. As used
26 herein, the term "meeting" expressly includes, without limiting the generality of the foregoing, so-
27 called "workshop," "working," or "work" sessions.

28 (2) "Open call" means a public announcement by the chairperson of the committee that the
29 meeting is going to be held in executive session and the chairperson must indicate which exception
30 of § 42-46-5 is being invoked.

31 (3) "Open forum" means the designated portion of an open meeting, if any, on a properly
32 posted notice reserved for citizens to address comments to a public body relating to matters
33 affecting the public business.

34 (4) "Prevailing plaintiff" includes those persons and entities deemed "prevailing parties"

1 pursuant to 42 U.S.C. § 1988.

2 (5) "Public body" means any department, agency, commission, committee, board, council,
3 bureau, or authority, or any subdivision thereof, of state or municipal government or the board of
4 directors of any library that is funded at least twenty-five percent (25%) of its operational budget
5 in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1.
6 For purposes of this section, any political party, organization, or unit thereof meeting or convening
7 is not and should not be considered to be a public body; provided, however, that no such meeting
8 shall be used to circumvent the requirements of this chapter.

9 (6) "Quorum," unless otherwise defined by applicable law, means a simple majority of the
10 membership of a public body.

11 **42-46-3.1. Open meetings. (Effective July 1, 2023)**

12 Every meeting of all public bodies shall be open to the public unless closed pursuant to §§
13 42-46-4 and 42-46-5.1.

14 **42-46-5.1. Purposes for which meeting may be closed - Use of electronic**
15 **communications - Judicial proceedings - Disruptive conduct. (Effective July 1, 2023)**

16 (a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one
17 or more of the following purposes:

18 (1) Any discussions of the job performance, character, or physical or mental health of a
19 person or persons; provided, that such person or persons affected shall have been notified in
20 advance in writing and advised that they may require that the discussion be held at an open meeting.

21 Failure to provide such notification shall render any action taken against the person or
22 persons affected null and void. Before going into a closed meeting pursuant to this subsection, the
23 public body shall state for the record that any persons to be discussed have been so notified and
24 this statement shall be noted in the minutes of the meeting;

25 (2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to
26 collective bargaining or litigation;

27 (3) Discussion regarding the matter of security including, but not limited to, the deployment
28 of security personnel or devices;

29 (4) Any investigative proceedings regarding allegations of misconduct, either civil or
30 criminal;

31 (5) Any discussions or considerations related to the acquisition or lease of real property for
32 public purposes, or of the disposition of publicly held property wherein advanced public
33 information would be detrimental to the interest of the public;

34 (6) Any discussions related to or concerning a prospective business or industry locating in

1 the state of Rhode Island when an open meeting would have a detrimental effect on the interest of
2 the public;

3 (7) A matter related to the question of the investment of public funds where the premature
4 disclosure would adversely affect the public interest. Public funds shall include any investment
5 plan or matter related thereto, including, but not limited to, state lottery plans for new promotions;

6 (8) Any executive sessions of a local school committee exclusively for the purposes:

7 (i) Of conducting student disciplinary hearings; or

8 (ii) Of reviewing other matters which relate to the privacy of students and their records,
9 including all hearings of the various juvenile hearing boards of any municipality; provided,
10 however, that any affected student shall have been notified in advance in writing and advised that
11 he or she may require that the discussion be held in an open meeting.

12 Failure to provide such notification shall render any action taken against the student or
13 students affected null and void. Before going into a closed meeting pursuant to this subsection, the
14 public body shall state for the record that any students to be discussed have been so notified and
15 this statement shall be noted in the minutes of the meeting;

16 (9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining
17 agreement; or

18 (10) Any discussion of the personal finances of a prospective donor to a library.

19 (b) No meeting of members of a public body or use of electronic communication, including
20 telephonic communication and telephone conferencing, shall be used to circumvent the spirit or
21 requirements of this chapter; provided, however, these meetings and discussions are not prohibited,

22 (1) Provided, further however, that discussions of a public body via electronic
23 communication, including telephonic communication and telephone conferencing, shall be
24 permitted only to schedule a meeting.

25 (2) Provided, further however, that a member of a public body may participate by use of
26 electronic communication or telephone communication while on active duty in the armed services
27 of the United States.

28 (3) Provided, further however, that a member of that public body, who has a disability as
29 defined in chapter 87 of title 42 and:

30 (i) Cannot attend meetings of that public body solely by reason of his or her disability; and

31 (ii) Cannot otherwise participate in the meeting without the use of electronic
32 communication or telephone communication as reasonable accommodation, may participate by use
33 of electronic communication or telephone communication in accordance with the process stated in
34 § 42-46-5.1(b)(4).

1 (4) The governor's commission on disabilities is authorized and directed to:

2 (i) Establish rules and regulations for determining whether a member of a public body is
3 not otherwise able to participate in meetings of that public body without the use of electronic
4 communication or telephone communication as a reasonable accommodation due to that member's
5 disability;

6 (ii) Grant a waiver that allows a member to participate by electronic communication or
7 telephone communication only if the member's disability would prevent him or her from being
8 physically present at the meeting location, and the use of such communication is the only
9 reasonable accommodation; and

10 (iii) Any waiver decisions shall be a matter of public record.

11 (c) This chapter shall not apply to proceedings of the judicial branch of state government
12 or probate court or municipal court proceedings in any city or town.

13 (d) This chapter shall not prohibit the removal of any person who willfully disrupts a
14 meeting to the extent that orderly conduct of the meeting is seriously compromised.

15 **42-46-6.1. Notice. (Effective July 1, 2023)**

16 (a) All public bodies shall give written notice of their regularly scheduled meetings at the
17 beginning of each calendar year. The notice shall include the dates, times, and places of the
18 meetings and shall be provided to members of the public upon request and to the secretary of state
19 at the beginning of each calendar year in accordance with subsection (f) of this section.

20 (b) Public bodies shall give supplemental written public notice of any meeting within a
21 minimum of forty-eight (48) hours, excluding weekends and state holidays in the count of hours,
22 before the date. This notice shall include the date the notice was posted; the date, time, and place
23 of the meeting; and a statement specifying the nature of the business to be discussed. Copies of the
24 notice shall be maintained by the public body for a minimum of one year. Nothing contained herein
25 shall prevent a public body, other than a school committee, from adding additional items to the
26 agenda by majority vote of the members. School committees may, however, add items for
27 informational purposes only, pursuant to a request, submitted in writing, by a member of the public
28 during the public comment session of the school committee's meetings. Said informational items
29 may not be voted upon unless they have been posted in accordance with the provisions of this
30 section. Such additional items shall be for informational purposes only and may not be voted on
31 except where necessary to address an unexpected occurrence that requires immediate action to
32 protect the public or to refer the matter to an appropriate committee or to another body or official.

33 (c) Written public notice shall include, but need not be limited to, posting a copy of the
34 notice at the principal office of the public body holding the meeting, or if no principal office exists,

1 at the building in which the meeting is to be held, and in at least one other prominent place within
2 the governmental unit, and electronic filing of the notice with the secretary of state pursuant to
3 subsection (f) of this section; however, nothing contained herein shall prevent a public body from
4 holding an emergency meeting, upon an affirmative vote of the majority of the members of the
5 body when the meeting is deemed necessary to address an unexpected occurrence that requires
6 immediate action to protect the public. If an emergency meeting is called, a meeting notice and
7 agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of
8 state pursuant to subsection (f) of this section and, upon meeting, the public body shall state for the
9 record and minutes why the matter must be addressed in less than forty-eight (48) hours in
10 accordance with subsection (b) of this section and only discuss the issue or issues that created the
11 need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the
12 spirit and requirements of this chapter.

13 (d) Nothing within this chapter shall prohibit any public body, or the members thereof,
14 from responding to comments initiated by a member of the public during a properly noticed open
15 forum even if the subject matter of a citizen's comments or discussions were not previously posted;
16 provided such matters shall be for informational purposes only and may not be voted on except
17 where necessary to address an unexpected occurrence that requires immediate action to protect the
18 public or to refer the matter to an appropriate committee or to another body or official. Nothing
19 contained in this chapter requires any public body to hold an open forum session to entertain or
20 respond to any topic nor does it prohibit any public body from limiting comment on any topic at
21 such an open forum session. No public body, or the members thereof, may use this section to
22 circumvent the spirit or requirements of this chapter.

23 (e) A school committee may add agenda items not appearing in the published notice
24 required by this section under the following conditions:

25 (1) The revised agenda is electronically filed with the secretary of state pursuant to
26 subsection (f) of this section, and is posted on the school district's website and the two (2) public
27 locations required by this section at least forty-eight (48) hours in advance of the meeting in
28 accordance with subsection (b) of this section;

29 (2) The new agenda items were unexpected and could not have been added in time for
30 newspaper publication;

31 (3) Upon meeting, the public body states for the record and minutes why the agenda items
32 could not have been added in time for newspaper publication and need to be addressed at the
33 meeting;

34 (4) A formal process is available to provide timely notice of the revised agenda to any

1 person who has requested that notice, and the school district has taken reasonable steps to make the
2 public aware of this process; and

3 (5) The published notice shall include a statement that any changes in the agenda will be
4 posted on the school district's website and the two (2) public locations required by this section and
5 will be electronically filed with the secretary of state at least forty-eight (48) hours in advance of
6 the meeting in accordance with subsection (b) of this section.

7 (f) All notices required by this section to be filed with the secretary of state shall be
8 electronically transmitted to the secretary of state in accordance with rules and regulations that shall
9 be promulgated by the secretary of state. This requirement of the electronic transmission and filing
10 of notices with the secretary of state shall take effect one year after this subsection takes effect.

11 (g) If a public body fails to transmit notices in accordance with this section, then any
12 aggrieved person may file a complaint with the attorney general in accordance with § 42-46-8.

13 **42-46-7.1. Minutes. (Effective July 1, 2023)**

14 (a) All public bodies shall keep written minutes of all their meetings. The minutes shall
15 include, but need not be limited to:

16 (1) The date, time, and place of the meeting;

17 (2) The members of the public body recorded as either present or absent;

18 (3) A record by individual members of any vote taken; and

19 (4) Any other information relevant to the business of the public body that any member of
20 the public body requests be included or reflected in the minutes.

21 (b)(1) A record of all votes taken at all meetings of public bodies, listing how each member
22 voted on each issue, shall be a public record and shall be available to the public at the office of the
23 public body within two (2) weeks of the date of the vote. The minutes shall be public records and
24 unofficial minutes shall be available to the public at the office of the public body within thirty-five
25 (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except
26 where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5.1 or where the public body
27 by majority vote extends the time period for the filing of the minutes and publicly states the reason.

28 (2) In addition to the provisions of subsection (b)(1) of this section, all volunteer fire
29 companies, associations, fire district companies, or any other organization currently engaged in the
30 mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and
31 whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-
32 one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled
33 meeting, whichever is earlier, on the secretary of state's website.

34 (c) The minutes of a closed session shall be made available at the next regularly scheduled

1 meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4
2 and 42-46-5.1.

3 (d) All public bodies shall keep official and/or approved minutes of all meetings of the
4 body and shall file a copy of the minutes of all open meetings with the secretary of state for
5 inspection by the public within thirty-five (35) days of the meeting; provided, that this subsection
6 shall not apply to public bodies whose responsibilities are solely advisory in nature.

7 (e) All minutes and unofficial minutes required by this section to be filed with the secretary
8 of state shall be electronically transmitted to the secretary of state in accordance with rules and
9 regulations that shall be promulgated by the secretary of state. If a public body fails to transmit
10 minutes or unofficial minutes in accordance with this subsection, then any aggrieved person may
11 file a complaint with the attorney general in accordance with § 42-46-8.

12 SECTION 4. This act shall take effect upon passage.

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LC002033
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT -- OPEN MEETINGS

- 1 This act would amend the "open meetings act" to allow virtual meetings and participation
- 2 by electronic communication until July 1, 2023. The amendments would sunset on July 1, 2023.
- 3 The current substantive provisions of the "open meetings act" would be adopted and effective on
- 4 July 1, 2023
- 5 This act would take effect upon passage.

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LC002033
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2021 -- H 6009

LC001753

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO THE GENERAL ASSEMBLY REDISTRICTING ACT

Introduced By: Representatives Newberry, Place, Filippi, Knight, and Cortvriend

Date Introduced: February 26, 2021

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 22 of the General Laws entitled "GENERAL ASSEMBLY" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 1.1

4 REDISTRICTING COMMISSION

5 22-1.1-1. Short title.

6 This chapter shall be known and may be cited as the "Redistricting Act".

7 22-1.1-2. Definitions.

8 As used in this chapter:

9 (1) "Commission" means the state redistricting commission;

10 (2) "Community of interest" means a contiguous population that shares common economic,
11 social or cultural interests;

12 (3) "District plan" means an entire plan of single-member districts for electing members to
13 the United States house of representatives, the state house of representatives, or the state senate;

14 (4) "Length-width compactness" means the absolute value of the difference between the
15 length and the width of the district, as measured by the distance from the northernmost point or
16 portion of the boundary of a district to the southernmost point or portion of the boundary of the
17 same district and the distance from the westernmost point or portion of the boundary of the district
18 to the easternmost point or portion of the boundary of the same district;

19 (5) "Lobbyist" means a person who is required to register as a lobbyist pursuant to § 42-

1 139.1-4:

2 (6) "Perimeter compactness" means the distance needed to traverse the perimeter boundary
3 of a district;

4 (7) "Political party" means a political party as defined by § 17-1-2; and

5 (8) "Public official" means a person elected to an office of the executive or legislative
6 branch of the state.

7 **22-1.1-3. State redistricting commission created -- membership -- terms.**

8 (a) The "state redistricting commission" is created.

9 (b) The commission is comprised of seven (7) members, appointed as follows:

10 (1) One commissioner appointed by the speaker of the house of representatives;

11 (2) One commissioner appointed by the minority leader of the house of representatives;

12 (3) One commissioner appointed by the president of the senate;

13 (4) One commissioner appointed by the minority leader of the senate;

14 (5) Two (2) commissioners appointed by the state ethics commission, who shall not be
15 members of the largest or second largest political parties in the state; and

16 (6) One commissioner appointed by the state ethics commission, who shall be a retired
17 justice of the Rhode Island supreme court, or a retired judge of the Rhode Island superior court,
18 and who shall chair the commission.

19 (c) Commissioners shall be appointed not later than April 1, 2031 and August 1 of each
20 year ending in the number zero thereafter and shall serve until a district plan for each of Rhode
21 Island's congressional districts, the house of representatives, and the senate is passed by the
22 legislature and approved by the governor and any legal challenges to the district plans, including
23 appeals, if any, have been resolved.

24 (d) When any member of the commission dies, resigns or no longer has the qualifications
25 required for the commissioner's original appointment, the commissioner's position on the
26 commission becomes vacant and the chair shall notify the original appointing authority of the
27 vacant position. The vacancy shall be filled by appointment by the original appointing authority no
28 later than fifteen (15) days following notification of the vacancy.

29 (e) The commission shall meet as necessary to carry out its duties pursuant to this chapter.

30 (f) Commissioners are entitled to receive per diem and mileage reimbursement and shall
31 receive no other compensation, perquisite or allowance.

32 **22-1.1-4. Commissioners -- qualifications -- limitations.**

33 (a) To qualify for appointment to the commission, a person shall:

34 (1) Be a qualified elector of Rhode Island; and

1 (2) Not be, or in the two (2) years prior to appointment have been, in Rhode Island, any of
2 the following:

3 (i) A public official;

4 (ii) A candidate for public office;

5 (iii) A lobbyist;

6 (iv) An office holder in a political party at the state or federal level;

7 (v) A relative in the first degree of consanguinity of a member of congress, the house of
8 representatives or the senate; or

9 (vi) An employee of congress or the state legislature.

10 (b) Before entering upon the duties of the office of commissioner, a commissioner shall
11 review this chapter and take the oath of office, as provided in the constitution of Rhode Island.

12 **22-1.1-5. Commission – powers and duties.**

13 (a) Beginning April 1, 2031, and every August 1 of each year ending in the number zero
14 thereafter, the commission shall:

15 (1) No later than October 15, 2031, and every September 1 of each year ending in the
16 number one thereafter, adopt three (3) to five (5) district plans for each of:

17 (i) Rhode Island's congressional districts;

18 (ii) The house of representatives; and

19 (iii) The senate.

20 (2) Adopt rules to govern the operation of the commission;

21 (3) Hold no fewer than six (6) public meetings either virtually or in various counties of the
22 state before issuing the district plans as proposed rules for public comment;

23 (4) Hold no fewer than six (6) public rule hearings, either virtually or in various counties
24 of the state, for the purpose of adopting district plans;

25 (5) Conduct all meetings pursuant to the requirements of chapter 46 of title 42 ("open
26 meetings");

27 (6) Contract for legal and technical assistance in the creation of alternative district plans;
28 and

29 (7) Compile, index, maintain and provide public access to the commission's record for each
30 district plan it adopts.

31 (b) Beginning April 1, 2031, and every August 1 of each year ending in the number zero
32 thereafter, the commission may:

33 (1) Develop, adopt and promulgate the rules for public hearings; and

34 (2) Hire staff and enter into contracts and any interagency agreements as necessary to

1 accomplish the duties set forth in this section.

2 **22-1.1-6. Commission meetings before proposing district plans.**

3 (a) Before the commission issues proposed district plans for public comment, the
4 commission shall hold no fewer than six (6) public meetings at which the commission shall receive
5 testimony, documents and information regarding the identification of communities of interest and
6 other testimony, documents and information regarding the creation of district plans. The
7 commission shall provide the public with notice not later than thirty (30) days before these
8 meetings, and the notice shall include information about how the public may participate and submit
9 testimony, documents and information. The commission shall hold meetings either virtually or in
10 various regions across the state, and in each of the five (5) counties of the state.

11 (b) The commission shall compile, index, maintain and provide public access to all
12 testimony, documents and information received in the meetings conducted before issuing proposed
13 district plans, for public comment.

14 (c) The proposed district plans, that the commission issues for public comment, shall be
15 based, in part, on the testimony, documents and information received.

16 **22-1.1-7. District plans –requirements and prohibitions.**

17 (a) When proposing or adopting district plans, the commission shall:

18 (1) Create district plans composed of single-member districts;

19 (2) Create district plans composed of contiguous territory; provided that, districts that meet
20 only at the points of adjoining corners are not contiguous; and

21 (3) Comply with all applicable federal laws.

22 (b) When proposing or adopting district plans, the commission may use, rely upon or
23 reference the most recent federal decennial census data provided by the United States census bureau
24 as well as other reliable sources of demographic data, as determined by a majority of the
25 commission.

26 (c) When proposing or adopting district plans, the commission shall not:

27 (1) Propose or adopt district plans to favor a political party or incumbent;

28 (2) Use, rely upon or reference partisan data, such as voting history or party registration
29 data; provided that, voting history in elections may be considered to ensure that the district plan
30 complies with applicable federal law;

31 (3) Create district plans to intentionally dilute the representation of communities of interest;
32 or

33 (4) Create district plans to intentionally preserve the cores of existing districts; provided,
34 however, that district plans may intentionally preserve the cores of existing districts so long as the

1 district plan meets all other requirements provided by this section.,

2 (d) When proposing or adopting district plans for congressional districts, the commission
3 shall ensure that congressional districts are as equal in population as practicable.

4 (e) When proposing or adopting district plans for the house of representatives, and the
5 senate, the commission shall create districts that are as close to equal in population as possible;
6 provided that, any deviation from equal population across districts shall not exceed plus or minus
7 five percent (5%) and shall be based on:

8 (1) Compliance with applicable federal law;

9 (2) Consideration of tribal government;

10 (3) The avoidance of diluting the representation of communities of interest;

11 (4) The avoidance of fragmenting governmental subdivisions; or

12 (5) The preservation of the core of existing districts; provided that, the district plan meets
13 all other requirements provided by this section.

14 (f) When a district plan satisfies all of the requirements provided by this section, the
15 commission shall adopt those district plans, that are most compact, as determined by a measure of
16 length-width compactness or perimeter compactness. The absolute compactness values computed
17 for individual districts may be cumulated for all districts in a plan to compare the overall
18 compactness of two (2) or more alternative redistricting plans for the state or for a portion of the
19 state. The total perimeter distance computed for individual districts may be cumulated for all
20 districts in a plan to compare the overall compactness of two (2) or more alternative redistricting
21 plans for the state or for a portion of the state.

22 (g) Based on length-width compactness, a district shall be most compact when the length
23 of the district and the width of the district are equal.

24 **22-1.1-8. Commission adoption of district plans.**

25 The commission shall adopt three (3) to five (5) district plans for each of Rhode Island's
26 congressional districts, the house of representatives, or the senate at an open meeting. After the
27 commission adopts the district plans, the commission shall:

28 (1) Provide written evaluations of each district plan that address the satisfaction of the
29 requirements set forth in this chapter, the ability of racial and language minorities to elect
30 candidates of their choice, a measure of partisan fairness and the preservation of communities of
31 interest; and

32 (2) Indicate which district plan for each of Rhode Island's congressional districts, the house
33 of representatives and the senate, best satisfies the requirements of § 22-1.1-7. The commission
34 shall explain its indication for each indicated district plan in the written evaluation accompanying

1 the indicated district plan.

2 **22-1.1-9. Legislative selection of district plans.**

3 (a) The commission shall deliver its adopted district plans for Rhode Island's congressional
4 districts, the house of representatives and the senate, all accompanying written evaluations and all
5 accompanying concise explanatory statements to the secretary of the senate and the clerk of the
6 house by October 15, 2031, and every September 1 of each year ending in the number one
7 thereafter.

8 (b) The legislature may select one district plan from each set of district plans and pass the
9 selected district plans without amendment and present the plans to the governor for approval.

10 (c) If the legislature does not select one district plan, from any one set of district plans,
11 pursuant to subsection (b) of this section, then the legislature shall select, pass without amendment
12 and present to the governor for approval, the district plan for that set that the commission indicated
13 best satisfies the requirements of § 22-1.1-7.

14 **22-1.1-10. Judicial review.**

15 (a) A person who submitted data, views, or arguments, orally or in writing, at a public
16 hearing conducted by the commission may file a notice of appeal in the supreme court asking for a
17 review of any district plan adopted by the commission. A notice of appeal shall be filed within
18 thirty (30) days after the commission adopts the district plan being appealed. The notice of appeal
19 shall name the commission as appellee and shall identify the district plan from which the appeal is
20 taken. A person who submitted data, views, or arguments, orally or in writing, at a public rule
21 hearing conducted by the commission and whose rights may be directly affected by the appeal may
22 appear and become a party, or the supreme court may, upon proper notice, order any person to be
23 joined as a party.

24 (b) Upon the filing of a notice of appeal, the appellant shall cause a copy of the notice of
25 appeal to be served upon the commission in the manner prescribed by the supreme court rules of
26 appellate procedure. Within thirty (30) days after service of the notice of appeal or such further
27 time as the supreme court may specify, the commission shall certify to the supreme court the
28 complete commission rulemaking record; provided that, the parties and the commission may
29 stipulate that only a specified portion of the commission rulemaking record shall be certified to the
30 supreme court for review on appeal.

31 (c) The appeal shall be heard on the commission rulemaking record, and the supreme court
32 shall not permit the introduction of new evidence addressed to any of the issues presented at the
33 hearing before the commission.

34 (d) The burden shall be on the appellant to show that the district plan appealed from,

1 violates applicable law, is arbitrary or capricious or is not supported by substantial evidence.

2 (e) The supreme court shall have no power to modify the district plan appealed from, but
3 shall either affirm or annul and vacate the same. If the supreme court either affirms or annuls a
4 district plan, the supreme court may remand the matter to the commission for any further necessary
5 administrative proceedings. Proceedings in the supreme court shall be governed by the provisions
6 of this chapter and by the supreme court rules of appellate procedure.

7 (f) During the pendency of an appeal, the supreme court in its discretion may stay or
8 suspend adoption by the legislature of any district plan subject to appeal.

9 (g) The supreme court shall not award fees to the prevailing party unless required by federal
10 law.

11 SECTION 2. This act shall take effect upon passage or June 30, 2021, whichever date is
12 later.

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LC001753
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO THE GENERAL ASSEMBLY REDISTRICTING ACT

- 1 This act would create a redistricting commission to act every ten (10) years to adopt a
- 2 redistricting plan for all general assembly and congressional districts. It also provides for a possible
- 3 right of appeal of the plan, to the state supreme court.
- 4 This act would take effect upon passage or June 30, 2021, which ever date is later.

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2021 -- H 6086

LC001894

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- CODE OF ETHICS

Introduced By: Representatives Morgan, and Nardone

Date Introduced: March 03, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 36-14-5 of the General Laws in Chapter 36-14 entitled "Code of
2 Ethics" is hereby amended to read as follows:

3 **36-14-5. Prohibited activities.**

4 (a) No person subject to this code of ethics shall have any interest, financial or otherwise,
5 direct or indirect, or engage in any business, employment, transaction, or professional activity, or
6 incur any obligation of any nature, which is in substantial conflict with the proper discharge of his
7 or her duties or employment in the public interest and of his or her responsibilities as prescribed in
8 the laws of this state, as defined in § 36-14-7.

9 (b) No person subject to this code of ethics shall accept other employment which will either
10 impair his or her independence of judgment as to his or her official duties or employment or require
11 him or her, or induce him or her, to disclose confidential information acquired by him or her in the
12 course of and by reason of his or her official duties.

13 (c) No person subject to this code of ethics shall willfully and knowingly disclose, for
14 pecuniary gain, to any other person, confidential information acquired by him or her in the course
15 of and by reason of his or her official duties or employment or use any information for the purpose
16 of pecuniary gain.

17 (d) No person subject to this code of ethics shall use in any way his or her public office or
18 confidential information received through his or her holding any public office to obtain financial
19 gain, other than that provided by law, for him or herself or any person within his or her family, any

1 business associate, or any business by which the person is employed or which the person represents.

2 (e) No person subject to this code of ethics shall:

3 (1) Represent him or herself before any state or municipal agency of which he or she is a
4 member or by which he or she is employed. In cases of hardship, the ethics commission may permit
5 such representation upon application by the official provided that he or she shall first:

6 (i) Advise the state or municipal agency in writing of the existence and the nature of his or
7 her interest in the matter at issue;

8 (ii) Recuse him or herself from voting on or otherwise participating in the agency's
9 consideration and disposition of the matter at issue; and

10 (iii) Follow any other recommendations the ethics commission may make to avoid any
11 appearance of impropriety in the matter.

12 (2) Represent any other person before any state or municipal agency of which he or she is
13 a member or by which he or she is employed.

14 (3) Act as an expert witness before any state or municipal agency of which he or she is a
15 member or by which he or she is employed with respect to any matter the agency's disposition of
16 which will or can reasonably be expected to directly result in an economic benefit or detriment to
17 him or herself, or any person within his or her family, or any business associate of the person, or
18 any business by which that person is employed or which the person represents.

19 (4) Shall engage in any of the activities prohibited by subsection (e)(1), (e)(2), or (e)(3) of
20 this section for a period of one year after he or she has officially severed his or her position with
21 said state or municipal agency; provided, however, that this prohibition shall not pertain to a matter
22 of public record in a court of law.

23 (f) No business associate of any person subject to this code of ethics shall represent him or
24 herself or any other person, or act as an expert witness before the state or municipal agency of
25 which the person is a member or by which the person is employed unless:

26 (1) He or she shall first advise the state or municipal agency of the nature of his or her
27 business relationship with the person subject to this code of ethics; and

28 (2) The person subject to this code of ethics shall recuse him or herself from voting on or
29 otherwise participating in the agency's consideration and disposition of the matter at issue.

30 (g) No person subject to this code of ethics, or spouse (if not estranged), dependent child,
31 or business associate of the person, or any business by which the person is employed or which the
32 person represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of
33 future employment based on any understanding that the vote, official action, or judgment of the
34 person would be influenced thereby.

1 (h) No person subject to this code of ethics, or any person within his or her family or
2 business associate of the person, or any business entity in which the person or any person within
3 his or her family or business associate of the person has a ten percent (10%) or greater equity
4 interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract
5 with any state or municipal agency unless the contract has been awarded through an open and public
6 process, including prior public notice and subsequent public disclosure of all proposals considered
7 and contracts awarded; provided, however, that contracts for professional services which have been
8 customarily awarded without competitive bidding shall not be subject to competitive bidding if
9 awarded through a process of public notice and disclosure of financial details.

10 (i) No person shall give or offer to any person covered by this code of ethics, or to any
11 candidate for public office, or to any person within his or her family or business associate of any
12 person, or to any business by which the person is employed or which the person represents, any
13 gift, loan, political contribution, reward, or promise of future employment based on any
14 understanding or expectation that the vote, official action, or judgment of the person would be
15 influenced thereby.

16 (j) No person shall use for any commercial purpose information copied from any statements
17 required by this chapter or from lists compiled from the statements.

18 (k) No person shall knowingly and willfully make a false or frivolous complaint under this
19 chapter.

20 (l) No candidate for public office, or any person within his or her family, business associate
21 of the candidate, or any business by which the candidate is employed or which the candidate
22 represents, shall solicit or accept any gift, loan, political contribution, reward, or promise of future
23 employment based on any understanding that the vote, official action, or judgment of the candidate
24 would be influenced thereby.

25 (m) No person subject to this code of ethics shall, either directly or indirectly, through any
26 government agency, or through a business associate, or through any other person, threaten or
27 intimidate any complainant or witness or any family member of any complainant or witness in any
28 proceeding before the state ethics commission.

29 (1) In addition to any rights a complainant or witness may have under the Rhode Island
30 Whistleblowers' Protection Act, chapter 50 of title 28 or under any other statute, a complainant or
31 witness may bring a civil action in superior court for appropriate injunctive relief, or actual
32 damages, or both and attorney's fees within three (3) years after the occurrence of the alleged
33 violation of subsection (m) above.

34 (2) The initiation of litigation by a complainant or witness pursuant to subsection (m)(1)

1 shall not constitute a violation of any confidentiality provisions of this chapter.

2 (n)(1) No state elected official, while holding state office and for a period of one year after
3 leaving state office, shall seek or accept employment with any other state agency, as defined in §
4 36-14-2(8)(i), other than employment which was held at the time of the official's election or at the
5 time of enactment of this subsection, except as provided herein.

6 (2) Nothing contained herein shall prohibit any general officer or the general assembly
7 from appointing any state elected official to a senior policy-making, discretionary, or confidential
8 position on the general officer's or the general assembly's staff, and in the case of the governor, to
9 a position as a department director; nor shall the provisions herein prohibit any state elected official
10 from seeking or accepting a senior policy-making, discretionary, or confidential position on any
11 general officer's or the general assembly's staff, or from seeking or accepting appointment as a
12 department director by the governor.

13 (3) Nothing contained herein shall prohibit a state elected official from seeking or being
14 elected for any other constitutional office.

15 (4) Nothing contained herein shall prohibit the Rhode Island ethics commission from
16 authorizing exceptions to this subsection where such exemption would not create an appearance of
17 impropriety.

18 (o)(1) No person holding a senior policy-making, discretionary, or confidential position on
19 the staff of any state elected official or the general assembly shall seek or accept any other
20 employment by any state agency as defined in § 36-14-2(8)(i), while serving as such policy-
21 making, discretionary, or confidential staffmember and for a period of one year after leaving that
22 state employment as a member of the state elected official's or the general assembly's senior policy-
23 making, discretionary, or confidential staff.

24 (2) Notwithstanding the foregoing, a person holding a senior policy-making, discretionary,
25 or confidential staff position who has a minimum of five (5) years of uninterrupted state service
26 shall be exempt from the provisions of this section. "State service" as used herein means service in
27 the classified, unclassified and nonclassified services of the state, but shall not include service in
28 any state elective office.

29 (3) Nothing contained herein shall prohibit any general officer or the general assembly
30 from appointing any such senior policy-making, discretionary, or confidential member of the staff
31 of any state elected official or the general assembly to any other senior policymaking, discretionary,
32 or confidential position on any general officer's or the general assembly's staff, and in the case of
33 the governor, to a position as a department director; nor shall the provisions hereof prohibit any
34 senior policy-making, discretionary, or confidential member of the staff of any state elected official

1 or the general assembly from seeking or accepting any other senior policy-making, discretionary,
2 or confidential position on any general officer's or the general assembly's staff, or from seeking or
3 accepting appointment as a department director by the governor.

4 (4) Nothing contained herein shall prohibit a person holding a senior policy-making,
5 discretionary, or confidential staff position from seeking or being elected for any constitutional
6 office.

7 (5) Nothing contained herein shall prohibit the Rhode Island ethics commission from
8 authorizing exceptions to this subsection where such exemption would not create an appearance of
9 impropriety.

10 (p) A member of the general assembly who receives any financial payments from any entity,
11 or employer seeking legislative action or approval shall file a written recusal with the clerk of the
12 house or senate whenever a bill affecting that entity or employer is before the general assembly,
13 either in committee or on the floor of the house or senate.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC OFFICERS AND EMPLOYEES -- CODE OF ETHICS

- 1 This act requires a member of the general assembly who receives any financial payments
- 2 from any entity or employer seeking legislative approval to file a written recusal.
- 3 This act would take effect upon passage.

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LC001894
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