



STATE OF RHODE ISLAND

**RHODE ISLAND ETHICS COMMISSION**

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**NOTICE OF OPEN MEETING**

**AGENDA**

**7<sup>th</sup> Meeting**

**DATE:** Tuesday, April 6, 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/84990722104>  
and using Webinar ID: 849 9072 2104
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  - 833 548 0282 (Toll Free) or
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- International numbers available:  
<https://us02web.zoom.us/j/84990722104>  
**Webinar ID: 849 9072 2104**

1. Call to Order.
2. Discussion of Remote Meeting Format; Identifying and Troubleshooting any Remote Meeting Issues.
3. Motions to approve minutes of Open Session held on:
  - a.) March 2, 2021.
  - b.) March 12, 2021.
  - c.) March 16, 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 2020 filing period.
5. Motion to go into Executive Session, to wit:
  - a.) Motion to approve minutes of Executive Session held on March 16, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - b.) In re: Steven Merolla, Complaint No. 2020-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - c.) In re: Suzanna Alba, Complaint No. 2020-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
  - d.) Motion to return to Open Session.

**NOTE ON REPORTING OUT OF ACTIONS TAKEN IN EXECUTIVE SESSION:** *After the Commission votes to go into Executive Session, the Open Session Zoom meeting will temporarily close and viewers will not be able to join the Executive Session which is being held in a separate Zoom meeting. At the conclusion of the Executive Session, which has no set duration, the Commission will reconvene in the Open Session meeting solely for the purpose of reporting out any actions taken in Executive Session and sealing the executive session minutes. You may rejoin the Open Session by following the same instructions on Page 1 of this agenda that you followed to join the original Open Session meeting. If you attempt to rejoin the Open Session Zoom meeting while the Executive Session portion is occurring, you will see a message that the meeting host is in another meeting. Eventually, once the Executive Session meeting*

*concludes, the host will reconvene the Open Session meeting and you will be able to view the Commission Chair report out any actions taken in Executive Session. Alternatively, it may be more convenient for you to view a written report of any actions taken in Executive Session by visiting our website (<https://ethics.ri.gov/>) later in the day.*

6. Motion to seal minutes of Executive Session held on April 6, 2021.
7. Report on actions taken in Executive Session.
8. Advisory Opinions (petitioners may participate remotely):
  - a.) The Honorable Ryan Pearson, a legislator serving as a member of the Rhode Island Senate, requests an advisory opinion regarding whether he may participate in the General Assembly's discussions and voting relative to proposed legislation that would allow Twin River Casino Hotel to extend its debt leverage ratio limits during the extension of its lottery contract with the State of Rhode Island, given that the Petitioner is privately employed by a commercial lending institution which currently services Twin River Casino Hotel.
  - b.) Edward J. Quinlan, a member of the Health Services Council, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in discussions and voting on Health Service Council matters involving Prospect Medical, given that Prospect Medical owns Charter Care Medical Associates, for which the Petitioner formerly served as a member of the Board of Trustees.
  - c.) 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.
  - d.) Keith J. Stover, a member of the New Shoreham Town Council, whose spouse serves on the Board of Directors of Block Island Health Services, Inc. ("BIHS"), requests an advisory opinion regarding: 1) whether he must recuse himself when his spouse or another BIHS Board member appears before the Town Council; and 2) what restrictions the Code of Ethics places upon his ability to vote on the Town budget, given that it contains an annual appropriation to BIHS.
9. New Business proposed for future Commission agendas and general comments from the Commission.
10. 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 April 1, 2021*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 6, 2021

**Re: The Honorable Ryan Pearson**

### **QUESTION PRESENTED:**

The Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether he may participate in the General Assembly's discussions and voting relative to proposed legislation that would allow Twin River Casino Hotel to extend its debt leverage ratio limits during the extension of its lottery contract with the State of Rhode Island, given that the Petitioner is privately employed by a commercial lending institution which currently services Twin River Casino Hotel.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, may participate in Senate discussions and voting relative to proposed legislation that would allow Twin River Casino Hotel to extend its debt leverage ratio limits during the extension of its lottery contract with the State of Rhode Island because, notwithstanding that the Petitioner is privately employed by a commercial lending institution which currently services Twin River Casino Hotel, the financial impact of the legislation upon the Petitioner's employer is both hypothetical and indirect.

The Petitioner was first elected to the Rhode Island Senate in 2013 and has served in that capacity continuously since. He also serves as a member of the Senate Finance Committee ("Finance Committee"). In his private capacity, the Petitioner is employed by Citizens Bank ("Citizens") as a Vice President of Consumer Lending. He identifies among his responsibilities the origination and management of consumer lending products such as mortgage, student, and auto loans.

The Petitioner states that on January 19, 2021, Bill Number S-0040 ("legislation") was introduced relative to a joint venture between International Game Technology PLC ("IGT") and Twin River Casino Hotel ("Twin River") which proposes an extension of both entities' lottery contracts with the State of Rhode Island, and also contains a provision that would allow Twin River to extend its debt leverage ratio limits.<sup>1</sup> He further states that an increase to Twin River's debt leverage ratio

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<sup>1</sup> The Petitioner states that during the 2020 legislative session, similar legislation was proposed and scheduled for hearing before the Finance Committee, of which the Petitioner was a member. The Petitioner further states that, because he learned in March of 2020 that Twin River was a commercial banking client of Citizens and had requested that bank personnel provide independent expert testimony before the Finance Committee relative to the industry standard on leverage ratios, he did not attend that hearing or participate in discussions or voting in subsequent hearings

limits would allow Twin River to borrow more money. The Petitioner represents that the legislation does not guarantee that Citizens will be hired by Twin River to service any of its additional lending needs. The Petitioner further represents that, upon inquiry to internal colleagues at Citizens who oversee the bank's relationship with Twin River, he was advised that there is no agreement in place that guarantees that Citizens would be the lender from which Twin River would borrow more money, and also learned that lending to Twin River is not exclusive to Citizens, as Citizens is aware of several other lenders currently servicing Twin River's commercial lending needs. He states that there are 420 nationally chartered commercial lending institutions registered with the Federal Reserve, and at least 18 smaller banks operating in the State which could provide commercial lending services to Twin River, adding that the commercial lending industry serves borrowers consistently seeking the most competitive rates and best terms. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission relative to his ability to participate in discussions and voting on the legislation during Finance Committee hearings and during proceedings before the entire Senate.<sup>2</sup>

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 exists if a public official has reason to believe or expect that he, or any person within his family, or 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). Additionally, a person subject to the Code of Ethics may not use his public office or confidential information received through his public office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether, in this particular case, the Petitioner's employer will be directly 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. 2021-17 (opining that a member of the Rhode Island House of Representatives could 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 owned and/or managed a number of child care centers in Rhode Island and voluntarily reimbursed the applicants she hired 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 would be upon the applicants rather than the child care centers at which they sought employment); 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

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on the proposed legislation. The Petitioner represents that Citizens has not been asked to testify before the Finance Committee or the full Senate concerning S-0040 and that there is no expectation that Citizens will do so.

<sup>2</sup> The Petitioner states that it is currently unknown whether the legislation would be presented to the entire Senate as a stand-alone bill or incorporated into the FY2022 State Budget.

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. Here, the direct financial impact of the Petitioner's proposed participation in the discussions and voting on the proposed legislation would be upon Twin River, allowing it to extend its debt leverage ratio limits. There is the potential for an indirect financial impact upon not only Citizens, but every other commercial lending institution from which Twin River might seek to borrow.

Even if the impact upon the commercial lending institutions from which Twin River might seek to borrow were direct, based upon the foregoing representations, such impact would likely be substantially the same for the more than 438 commercial lending institutions which would then have the opportunity to compete for potential business from Twin River, thereby justifying the application of the class exception found in section 36-14-7(b) of the Code of Ethics.<sup>3</sup> 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, given that the legislation would apply equally to all alleged victims of abuse and their attorneys).

Accordingly, based upon the Petitioner's representations, a review of 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 Petitioner may participate in Senate discussions and voting relative to the proposed 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)

§ 36-14-7(b)

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<sup>3</sup> 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 Ethics 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.

Related Advisory Opinions:

A.O. 2021-17

A.O. 2019-25

A.O. 2018-31

Keywords:

Class Exception

Financial Interest

DRAFT



# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 6, 2021

Re: Edward J. Quinlan

### QUESTION PRESENTED:

The Petitioner, a member of the Health Services Council, a state appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in discussions and voting on Health Service Council matters involving Prospect Medical, given that Prospect Medical owns Charter Care Medical Associates, for which the Petitioner formerly served as a member of the Board of Trustees.

### RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, a member of the Health Services Council, a state appointed position, is not prohibited by the Code of Ethics from participating in discussions and voting on Health Service Council matters involving Prospect Medical, notwithstanding that Prospect Medical owns Charter Care Medical, for which the Petitioner formerly served as a member of the Board of Trustees.

The Petitioner is a member of the Health Services Council, having been appointed to that position by the President of the Rhode Island Senate in November of 2019. The mission of the Health Services Council is to consult and advise the Department of Health regarding healthcare facility licensing reviews, matters of policy, and in the development of rules, regulations, and standards for healthcare facilities. In his private capacity, the Petitioner spent more than nineteen years as the President of the Hospital Association of Rhode Island ("HARI"). The Petitioner states that, prior to his retirement in 2014, he represented hospitals in matters before various state and federal government organizations including, but not limited to, the Rhode Island Department of Health, the Office of Attorney General, and various departments within the Executive Office of Health and Human Services. The Petitioner further states that, in his capacity as the President of the HARI, he would often attend, and occasionally testify during, Health Service Council meetings. The Petitioner represents that, approximately one month after his retirement from the HARI, he was appointed to the Board of Trustees of Charter Care Medical Associates ("Charter Board"), a two-hospital system ("the system") owned by Prospect Medical and consisting of Roger Williams Medical Center and Fatima Hospital, by the Charter Board's Chairman and the President of the system. He further represents that, as a member of the Charter Board, his responsibilities included advising the system's administration and Prospect Medical on matters concerning operations, new

programs, and capital expenditures requiring government approval. The Petitioner further states that the Charter Board was disbanded in July of 2020, thereby concluding his association with it.<sup>1</sup>

The Petitioner represents that, sometime after the purchase of the system by Prospect in 2012, litigation was filed in the Rhode Island Superior Court by United Nurses and Allied Professionals against Prospect and others relative to pension issues. The Petitioner further represents that, in January of 2021, he was deposed during the course of that litigation in his capacity as a former member of the Charter Board. The Petitioner states that he will not be financially impacted by the outcome of the litigation, from which Prospect has since been released, nor would he have been financially impacted by the outcome of the litigation had Prospect not been released.

The Petitioner anticipates that the Health Services Council will likely soon consider an application from Prospect relative to a change in its effective control, and that such application could be the first of several applications and/or appearances by Prospect before the Health Services Council. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether, given his prior membership on the Charter Board, he is prohibited from participating in Health Services Council discussions and voting on matters relating to Prospect.

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. Section 36-14-5(a). A substantial conflict of interest exists if an official has reason to believe or expect that he, any person within his family, his business associate or his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which she 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). 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).

In prior advisory opinions, the Ethics Commission has concluded that public officials are "business associates" of entities for which they serve either as officers or members of the Board of Directors or in some other leadership position that permits them to affect the financial objectives of the organization. See, e.g., A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club ("TYC"), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board's consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC); A.O. 2000-74 (opining that a majority of members of the Westerly

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<sup>1</sup> The Petitioner informs that when the Charter Board was disbanded in July of 2020, the only hospitals among the 20-22 hospitals owned by Prospect Medical throughout the country to have a Board of Trustees were those which comprised the system in Rhode Island. He adds that the establishment of the Charter Board was a condition imposed by Rhode Island's Attorney General when the system was sold to Prospect in 2012.

Housing Authority Commissioners, who were also members of the Westerly Housing Association Board of Directors, were prohibited from participating in the Housing Authority's consideration of the Housing Association's funding request because, as members of the Board of Directors of the Housing Association, those Commissioners had a business association with it).

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, provided that the business relationship between the Petitioner and the other party has ended and there is no specific future business relationship anticipated between the parties. See, e.g., A.O. 2016-29 (opining that the Chairman of the West Warwick Arctic Village Redevelopment Agency was required to recuse from any matters before his agency that involved or financially impacted his current business associates, but was not required to recuse from matters that involved or impacted his prior business associates, provided that there was no specific future business relationship anticipated); 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).

Here, the Petitioner's personal association with Prospect, vis-à-vis his former membership on the Charter Board until its disbandment in July of 2020, has terminated. As such, his past business association with Prospect and the Charter Board has ended. Accordingly, it is the opinion of the Ethics Commission that, based on the facts as represented, an analysis of the relevant provisions of the Code of Ethics, and previous advisory opinions issued, and barring any other relationship with Prospect not otherwise described herein, the Petitioner is not prohibited from participating in discussions and voting on Health Service Council matters involving Prospect Medical.

**This Draft Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.**

Code Citations:

§ 36-14-2(3)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2016-29

A.O. 2013-21

A.O. 2012-28

A.O. 2000-74

Keywords:  
Business Associate

DRAFT

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: April 6, 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

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## Draft Advisory Opinion

Hearing Date: April 6, 2021

Re: Keith J. Stover

### QUESTION PRESENTED:

The Petitioner, a member of the New Shoreham Town Council, a municipal elected position, whose spouse serves on the Board of Directors of Block Island Health Services, Inc. ("BIHS"), requests an advisory opinion regarding: 1) whether he must recuse himself when his spouse or another BIHS Board member appears before the Town Council; and 2) what restrictions the Code of Ethics places upon his ability to participate in the Town Council's vote on the Town budget, given that it contains an annual appropriation to BIHS.

The Petitioner is a newly elected member of the New Shoreham Town Council ("Town Council"). His spouse, Susan Stover, is a member of the Board of Directors of Block Island Health Services, Inc. ("BIHS") and serves as its Secretary. BIHS is a private, non-profit corporation which oversees operation of the Block Island Medical Center ("Medical Center"), the sole medical facility located in the Town of New Shoreham ("Town" or "Block Island"). The Petitioner informs that the Medical Center provides primary care, 24/7 urgent care, physical therapy, and visiting specialist services, among other things, to the Block Island community. The Petitioner states that the Town provides annual financial support to BIHS in recognition of its crucial role in providing on-Island medical services to year-round residents, as well as seasonal residents and visitors. During FY 2021, the Town provided \$310,000 in such funding to BIHS, and the proposed FY 2022 Town budget recommends an allocation of \$337,500. Additionally, as part of its efforts to ensure that medical care is available on Block Island, the Town leases the property from which the Medical Center operates to BIHS for the nominal amount of one dollar (\$1.00).

The Petitioner advises that his spouse may occasionally appear before the Town Council to provide an update on BIHS activities<sup>1</sup> or to advocate for its annual appropriation. The Petitioner states that his spouse is not compensated for her BIHS service, and he represents that neither he nor his spouse has any financial interest in the outcome of any Town Council decisions regarding BIHS. Based upon these facts, the Petitioner seeks guidance from the Ethics Commission regarding: 1) whether he must recuse himself when his spouse or another BIHS Board member appears before the Town Council; and 2) what restrictions the Code of Ethics places upon his ability to participate in the Town Council's vote on the Town budget, given that it contains an annual appropriation to BIHS.

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<sup>1</sup> The Petitioner states that updates may relate to informational matters such as the progress of renovations to the Medical Center or BIHS's fundraising efforts, which do not involve requests to the Town Council for funding or approval.

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 public official has an interest which is in substantial conflict with the proper discharge of his duties in the public interest if he has reason to believe or expect that he or any person within his family, his business associate, or any business by which he is employed or represents 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 also may not use his public office or confidential information received through his public office to obtain financial gain, other than that provided by law, for himself or any person within his family, his business associate or any business by which he is employed or represents. Section 36-14-5(d). A "business associate" is defined as any individual or entity joined with a public official "to achieve a common financial objective." Section 36-14-2(3).

The Code of Ethics further provides that a public official must also recuse himself from participation when any person within his family "appears or presents evidence or arguments before his . . . municipal agency." Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1"). A public official also may not participate in any matter as part of his public duties if he has reason to believe or expect that any person within his family is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004) ("Regulation 1.3.1"). Finally, a public official may not participate in discussion or decision-making relative to a budgetary line item that would affect the employment, compensation or benefits of his family member. Commission Regulation 1.3.1(B)(3)(A).

The Ethics Commission has repeatedly concluded that public officials are "business associates" of the entities for which they serve either as members of the Board of Directors or in other leadership positions that permit them to affect the financial objectives of the organization. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management ("DEM"), who was also a Director of the Rhode Island Boy Scouts ("Boy Scouts"), was a business associate of the Boy Scouts and was, thus, required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization's interests); A.O. 2009-10 (opining that a member of the Middletown Town Council was required to recuse from matters concerning the Middletown Historical Society, given that she was the Treasurer of the Historical Society, and thus its business associate). If a public official holds such a leadership position, the Ethics Commission has required the official to recuse if the interests of the organization would be affected by any action to be taken by his public agency.

The Ethics Commission has also concluded that a public official is not required to recuse from matters that cause a financial impact solely upon his family member's business associate without a corresponding financial impact upon his family member. See A.O. 2013-33 (opining that a member of the Cumberland Town Council was not prohibited by the Code of Ethics from participating when an attorney who was his spouse's business associate represented another person before the Town Council); A.O. 2002-41 (opining that a Westerly Town Council member could participate in the consideration of matters involving an individual with whom his father had

business dealings in a real estate broker/client relationship, as the Petitioner's relationship with the individual was too remote to trigger the prohibitions set forth in the Code of Ethics).

In Advisory Opinion 2012-25, the Ethics Commission previously concluded that the Code of Ethics required a New Shoreham Town Council member, who served as the interim administrator of BIHS, to recuse from any Town Council decision-making regarding BIHS and the Medical Center based upon his own business association with BIHS. Therein, the Ethics Commission noted that the petitioner's spouse also served on BIHS's Board of Directors and, therefore, was its business associate. However, it concluded that the spouse's business association with BIHS, on its own, would not trigger the recusal provisions of the Code of Ethics because it was unlikely that any official action by the Town Council regarding BIHS would have a financial impact upon the petitioner's spouse as an unpaid Board member. See also A.O. 2019-55 (opining that the Mayor of the City of Pawtucket was not prohibited from taking official actions regarding the approval or disapproval of the Pawtucket Soup Kitchen's application for Community Development Block Grant funds, notwithstanding his spouse's service on its Board of Directors, where his spouse was not compensated for her service, had not signed the application, and would not appear before him regarding said application); A.O. 2019-46 (opining that a Jamestown Zoning Board of Review member was not prohibited from participating in the Board's discussions and decision-making relative to a matter involving the Jamestown Historical Society, on which Board of Trustees his wife served, where there was no indication that the petitioner's official actions would have any direct financial impact upon his wife).

Similarly, the instant Petitioner's spouse serves on BIHS's Board of Directors and, therefore, is its business associate under the Code of Ethics. As she is not compensated for her service, the Petitioner has no reason to believe or expect that she will be financially impacted, directly or otherwise, by reason of any official action that he may take as a Town Council member with respect to the Town's annual appropriation to BIHS. Accordingly, the prohibitions set forth in sections 5(a), 5(d), and Regulation 1.3.1 would not require the Petitioner's recusal from participation in Town Council discussions and votes regarding the Town budget, including as to any specific line item relating to its annual appropriation to BIHS.

Although the aforesaid provisions of the Code of Ethics do not prohibit the Petitioner from participating in Town Council decision-making relative to the annual budget, Regulation 1.2.1(A)(1) requires the Petitioner's recusal when his spouse appears or presents evidence or arguments before the Town Council. In the event that the Petitioner's spouse appears before the Town Council, whether to advocate on behalf of BIHS's annual appropriation or to provide updates as to BIHS activities, the Petitioner must recuse in accordance with section 36-14-6. In the absence of a personal appearance before the Town Council, said requirement endures where the Petitioner's spouse submits a written request to the Town Council on behalf of BIHS. While the Petitioner must recuse himself during the Town Council's consideration of his spouse's testimony or request on behalf of BIHS, no such requirement attaches to matters presented or requested by other BIHS Board members.

Based on the Petitioner's representations, the application of the Code of Ethics, and a review of prior advisory opinions, it is the opinion of the Ethics Commission that the Petitioner is not generally prohibited from participating in Town Council decision-making relative to the Town's

annual appropriation to BIHS, including as an individual line item within the Town budget. Yet, in the event that the Petitioner's spouse appears before the Town Council on behalf of BIHS, either personally or through submission of a written request, the Petitioner must recuse himself. Notice of recusal shall be filed with both the Town Council and the Ethics Commission in accordance 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)

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

Related Advisory Opinions:

A.O. 2019-55

A.O. 2019-46

A.O. 2019-40

A.O. 2014-14

A.O. 2013-33

A.O. 2012-25

A.O. 2009-10

A.O. 2008-69

A.O. 2007-16

A.O. 2003-2

A.O. 2002-41

Keywords:

Budgets

Business Associate

Family Member

Nepotism

Recusal