



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street

Providence, RI 02903

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

ethics.email@ethics.ri.gov

<https://ethics.ri.gov>

NOTICE OF OPEN MEETING

AGENDA

8th Meeting

DATE: Tuesday, April 27, 2021

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Daniel J. McKee's Executive Order No. 21-30, 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/89144097599>
and using Webinar ID: 891 4409 7599
- Or using iPhone one-tap US:
 - +13126266799,,89144097599# or
 - +16465588656,,89144097599#
- Or by Telephone, Dial (for higher quality, dial a number based on your current location) US:
 - +1 312 626 6799 or
 - +1 646 558 8656 or
 - +1 301 715 8592 or
 - +1 346 248 7799 or
 - +1 669 900 9128 or
 - +1 253 215 8782
 - 833 548 0276 (Toll Free) or
 - 833 548 0282 (Toll Free) or
 - 877 853 5247 (Toll Free) or
 - 888 788 0099 (Toll Free)
- International numbers available:
<https://us02web.zoom.us/j/89144097599>
Webinar ID: 891 4409 7599

1. Call to Order.
2. Discussion of Remote Meeting Format; Identifying and Troubleshooting any Remote Meeting Issues.
3. Administration of Oath of Office to:
 - a.) Matthew D. Strauss
 - b.) Holly J. Susi
 - c.) Lauren E. Jones
4. Motion to approve minutes of Open Session held on April 6, 2021.
5. 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.
6. Advisory Opinions (petitioners may participate remotely):
 - a.) Kate McMahon Macinanti, a member of the South Kingstown School Committee, who in her private capacity is employed by SK Wellness as its outreach coordinator, requests an advisory opinion regarding whether, following her recusal from any School Committee matter involving an application by SK Wellness for grant funding and/or a service contract with the South Kingstown School District, she is prohibited by the Code of Ethics from serving as a moderator and/or facilitator on a project funded by a grant or service contract awarded to SK Wellness by the School Committee.
 - b.) Thomas N. Warren, the Chairman of the Narragansett Recreation Advisory Board, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Recreation Advisory Board discussions and recommendations to the Narragansett Town Council concerning the existing rental policy for cabanas located directly on the Narragansett Town Beach, given that the Petitioner's spouse currently rents one of the cabanas.
 - c.) The Honorable Marcia Ranglin-Vassell, a legislator serving as a member of the Rhode Island House of Representatives, who is also a teacher at the E-Cubed Academy, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from performing work in her private capacity as an independent contractor for Ranglin & Associates Consulting, a business owned by the Petitioner's sister.

- d.) 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.
 - e.) 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 the Code of Ethics permits her to accept appointment to the Permanent Legislative Commission on Child Care in Rhode Island, in her capacity as a State Representative, given that the Petitioner owns and/or manages a number of child care centers in Rhode Island.
 - f.) The Honorable Charles A. Lombardi, the Mayor of the Town of North Providence, requests an advisory opinion regarding whether the Code of Ethics prohibits him from renting a building that he personally owns to Tri-County Community Action Agency, a private non-profit entity which seeks to provide social services to North Providence residents who are in need.
 - g.) Philip Gould, the Administrative Captain for the Town of Lincoln Police Department, requests an advisory opinion regarding whether the Code of Ethics allows him to continue serving in that position while seeking election to the position of Town Administrator for the Town of Lincoln and what limitations, if any, the Code of Ethics places upon his ability to campaign for Town Administrator while serving as Administrative Captain.
 - h.) Matthew McGeorge, AIA, LEED AP, a member of the East Greenwich Historic District Commission, who in his private capacity is an architect, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board.
 - i.) Kenneth D. Jones, the Chairperson of the West Greenwich Zoning Board of Review, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on appearing before his own board to oppose a special use permit application for the construction of a solar energy generation and battery storage facility for which he received notice as an abutter.
- 7. New Business proposed for future Commission agendas and general comments from the Commission.
 - 8. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on April 6, 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.*

- 9. Report on actions taken in Executive Session.
- 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 22, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: Kate McMahon Macinanti

QUESTION PRESENTED:

The Petitioner, a member of the South Kingstown School Committee, a municipal elected position, who in her private capacity is employed by SK Wellness as its outreach coordinator, requests an advisory opinion regarding whether, following her recusal from any School Committee matter involving an application by SK Wellness for grant funding and/or a service contract with the South Kingstown School District, she is prohibited by the Code of Ethics from serving as a moderator and/or facilitator on a project funded by a grant or service contract awarded to SK Wellness by the School Committee.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, a member of the South Kingstown School Committee, a municipal elected position, who in her private capacity is employed by SK Wellness as its outreach coordinator is not, following her recusal from any School Committee matter involving an application by SK Wellness for grant funding and/or a service contract with the South Kingstown School District, prohibited by the Code of Ethics from serving as a moderator and/or facilitator on a project funded by a grant or service contract awarded to SK Wellness by the School Committee.

The Petitioner is a member of the School Committee in the Town of South Kingstown ("Town" or "South Kingstown"). She was first appointed to the School Committee by the South Kingstown Town Council ("Town Council") in 2017 due to a vacancy but was then elected to a four-year term in November of 2018. The Petitioner represents that the School Committee oversees the entire care, control, and management of the public schools in South Kingstown ("School District"). The Petitioner states that, in her private capacity, she has been employed by SK Wellness as its outreach coordinator for approximately one year. She describes SK Wellness as a private non-profit agency dedicated to reducing the stigma associated with mental health treatment and to teaching children and adults the skills needed to successfully manage their own mental health and that of their loved ones. She adds that SK Wellness offers resources and support to help people reduce stress, feel more engaged, and be happier. The Petitioner identifies among her duties as outreach coordinator: reaching out to the community to make people aware of the services offered by SK Wellness; explaining the programs offered by SK Wellness; and connecting with other non-profit agencies and public schools statewide to exchange information and ideas and to collaborate on projects.

The Petitioner states that, while she distributes information about SK Wellness, it is her colleagues that go out into the community to provide services.

The Petitioner represents that SK Wellness is currently partnered with the School District on a number of projects for which SK Wellness provides services with no financial compensation from the School District or the Town. She explains that said projects are currently supported by federal grant funding which will end in June of 2021. The Petitioner anticipates that, given the impending loss of federal grant funding, SK Wellness will likely seek funding from state and local municipal resources to fund projects and, potentially, the salaries of SK Wellness employees, including the Petitioner. The Petitioner represents that said state and local municipal resources could include the Rhode Island Foundation, the Town Council, and the School Committee. She further represents that the Executive Director and/or Director of Program Development for SK Wellness would appear before the School Committee to seek grant funding and/or service contracts with the School District. The Petitioner states that she is prepared to recuse from participating in School Committee matters that would financially impact SK Wellness including, but not limited to, those in which the Executive Director and/or Director of Program Development appear to seek grant funding and/or service contracts with the School District.

The Petitioner explains that, in the past, she has occasionally served as a moderator and/or facilitator for SK Wellness projects involving the School District. She cites as an example her having hosted a recent meeting in Zoom format for youth groups, teachers, and staff from South Kingstown High School who met to discuss the stress that accompanied the COVID-19 pandemic. She states that she would like to continue to moderate and/or facilitate SK Wellness projects funded by grants and/or service contracts from the School Committee in light of her pledge to recuse from participation in the consideration of the application by SK Wellness for said grants and/or service contracts, provided that she would not be prohibited by the Code of Ethics from doing so. The Petitioner states that approximately 50 percent of the work performed by SK Wellness is for the School District, but that her own workload would remain at 90 percent capacity were she to refrain from moderating and/or facilitating projects funded by the School Committee. The Petitioner states that she would have no personal interaction with the School Committee in her role as outreach coordinator, moderator, or facilitator. It is in the context of these facts that the Petitioner seeks guidance from the Ethics Commission regarding whether, following her recusal from any School Committee matter involving the application by SK Wellness for grant funding and/or a service contract with the School District, she may serve as a moderator and/or facilitator on a project funded by a grant or service contract awarded by the School Committee.

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 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 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). The Code of Ethics further prohibits a public official 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). Additionally, under the Code of Ethics, a public official must recuse herself from participation in a matter when

her business associate or employer, or a person authorized by her business associate or employer, appears or presents evidence or arguments before her municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2)&(3) Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1"). Finally, pursuant to Commission Regulation 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014) ("Regulation 1.5.4"), no municipal elected official or municipal school committee member, whether elected or appointed, while holding office and for a period of one (1) year after leaving municipal office, shall seek or accept employment with any municipal agency in the municipality in which the official serves. The term "employment" includes service as an independent contractor or consultant to any municipality or municipal agency, whether as an individual or a principal of an entity performing such service. Regulation 1.5.4(A)(1).

Here, the Petitioner properly anticipates the Code of Ethics' requirement that she recuse from participating in any School Committee matters that will financially impact her private employer and/or when her private employer, or a person authorized by her private employer, appears or presents evidence or arguments before the School Committee. See, e.g., A.O. 2019-63 (opining that the Vice Chairman of the Rhode Island Real Estate Commission, who in his private capacity was employed by Residential Properties Ltd. was required to, among other things, recuse from participation in matters in which his private employer or his private employer's representative appeared to present evidence or arguments on behalf of his employer, or was a party or participant in a matter before the Real Estate Commission); A.O. 2019-28 (opining that a member of the Providence City Council, who in her private capacity was an attorney with Handy Law, LLC, was prohibited by the Code of Ethics from participating in City Council matters in which her employer, her business associate, and/or any representative of her business associate appeared, and was further prohibited from participating in City Council matters which financially impacted her employer and/or her business associate); A.O. 2009-1 (opining that a member of the Scituate Town Council was required to recuse from participation in matters coming before the Town Council that concerned S & C Collins Bus Company, Inc., by which he was employed part-time as a bus driver, or in which it was reasonably foreseeable that there would be a financial impact upon that entity).

Regarding the Petitioner's inquiry into whether she may serve as a moderator and/or facilitator for a project that is funded by a grant or service contract awarded by the School Committee to SK Wellness without the Petitioner's participation, prior advisory opinions are instructive. For example, in Advisory Opinion 2014-17, a member of the Charlestown Town Council was not prohibited from accepting employment as a hot dog cart operator from an individual with whom the Town of Charlestown had entered into a food concession contract at the Town Beach. One year prior, when the individual seeking the contract had appeared before the Town Council pursuant to the recommendation by Director of Parks and Recreation that the Town Council award the contract to that individual, the petitioner recused from participating in the Town Council's discussions and vote on the matter because of her friendship with the individual and the desire to avoid any appearance of impropriety. In opining that the petitioner was not prohibited from accepting her desired employment, the Ethics Commission reasoned that, although municipal elected officials are barred from seeking or accepting employment or independent contract work from their municipalities, the Code of Ethics does not prohibit a municipal elected official from accepting private employment from a person or business that is a municipal vendor, at least under circumstances where the public official did not participate in the awarding of the contract. See

also A.O. 2011-25 (opining that a State Representative was not prohibited from accepting work as a subcontractor to a general contractor who had been awarded a state contract).

Here, the Petitioner would be barred as an individual or as a principal of SK Wellness from seeking or accepting employment, independent contract work, and even grant funding from the Town Council, the School Committee, or any municipal agency in South Kingstown, given the Petitioner's membership on the School Committee. However, based on the Petitioner's representations, it is her employer that would be the municipal vendor should the Town Council, School Committee, or any other municipal agency in South Kingstown award grant funding and/or a service contract to SK Wellness. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from serving as a moderator and/or facilitator for School District projects funded by grants and/or service contracts that were awarded to SK Wellness by the Town Council, the School Committee, or any municipal agency in South Kingstown without the Petitioner's participation. All notices of recusal shall be filed 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:

A.O. 2019-63
A.O. 2019-28
A.O. 2014-17
A.O. 2011-25
A.O. 2009-1

Related Advisory Opinions:

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

Keywords:

Conflict of Interest
Employer

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: Thomas N. Warren

QUESTION PRESENTED:

The Petitioner, the Chairman of the Narragansett Recreation Advisory Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Recreation Advisory Board discussions and recommendations to the Narragansett Town Council concerning the existing rental policy for cabanas located directly on the Narragansett Town Beach, given that the Petitioner's spouse currently rents one of the cabanas.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chairman of the Narragansett Recreation Advisory Board, a municipal appointed position, is prohibited by the Code of Ethics from participating in Recreation Advisory Board discussions and recommendations to the Narragansett Town Council concerning the existing rental policy for cabanas located directly on the Narragansett Town Beach, given that the Petitioner's spouse currently rents one of the cabanas.

The Petitioner is the Chairman of the Recreation Advisory Board in the Town of Narragansett ("Town" or "Narragansett"), having been appointed to the Recreation Advisory Board by the Narragansett Town Council ("Town Council"). The Petitioner states that he is currently serving his second consecutive three-year term which will expire on November 1, 2023, and that Recreation Advisory Board members are prohibited from serving more than two consecutive terms. He cites among the responsibilities of the Recreation Advisory Board the following: the development of a recreational activities plan; the review of the Town's recreation program; the review of the annual recreational activities calendar as presented by the Director of the Parks and Recreation Department and the recommendation of any changes, additions, or deletions, as appropriate; the holding of public hearings on matters related to recreation and the submission of findings and recommendations to the Town Council; and the cooperation with various municipal agencies and officials in planning future recreational facilities and programs.

The Petitioner represents that the Recreation Advisory Board is responsible for developing policies for the Narragansett Town Beach ("Town Beach") and presenting them to the Town Council for consideration. He describes the 84 cabanas located directly on the sand of the Town Beach as one of the Town Beach's most prominent features. The Petitioner states that the cabanas are highly

sought after and that the wait to rent a seasonal cabana is ten to fifteen years. The Petitioner further states that the annual rental fee for a cabana is \$2,500 and that there are presently more than 300 people on the waiting list to rent a cabana. The Petitioner represents that roughly six years ago, after being on the waiting list for approximately ten years, his spouse became eligible to rent one of the cabanas at the Town Beach. He further represents that his spouse has been renting a cabana since that time, that he and his spouse continue to enjoy the cabana, and that they have already paid the rental fee for the 2021 summer season that was due on or before March 1, 2021.

The Petitioner anticipates that the Recreation Advisory Board will soon be undertaking a review of the present life term rental policy for the cabanas and quite possibly recommending changes to that policy for consideration by the Town Council. The Petitioner is unsure of what those changes might be and whether and to what extent those changes might impact those who currently rent the cabanas; those currently on the waiting list; and others who might not yet be on the waiting list but who might be interested in renting a cabana if given the opportunity to do so. Cognizant of the Code of Ethics, and committed to acting in conformance therewith, the Petitioner seeks guidance from the Ethics Commission regarding whether, given the facts as represented, he should recuse from participation in discussions and recommendations to the Town Council on matters concerning the rental policy for the Town Beach cabanas.

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 a public official has reason to believe or expect that he, any person with 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). The Code of Ethics also prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

However, section 36-14-7(b) of the Code of Ethics, often referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, any person within his family, any business associate, or any business by which he is employed or which he represents “as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group.” When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers 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.

The Ethics Commission has previously applied the class exception in a variety of circumstances involving public officials. See, e.g., A.O. 2005-22 (applying the class exception and opining that an Exeter Town Council member could participate in a proposed tax freeze ordinance for all

property owners aged 65 and over, notwithstanding that his spouse was over 65 and could benefit from the tax freeze, because 250 to 300 other property owners would be similarly impacted by the ordinance).

However, in prior advisory opinions issued by the Ethics Commission involving situations where it was unclear from the onset whether and how a petitioner or his family member might be impacted by certain matters in which the petitioner sought to participate, the class exception was not applied. For example, in Advisory Opinion 2021-14, the Ethics Commission opined that the Solicitor for the Town of Middletown was prohibited by the Code of Ethics from participating in Middletown Town Council discussions regarding the proposed revision of an ordinance relating to short-term residential leases, given that the petitioner and his spouse owned property regulated by said ordinance. Although the petitioner was not a member of the Middletown Town Council, he was a Solicitor and a public official and, as such, his advice on various matters to the Middletown Town Council constituted "official activity" as that term is used in the Code of Ethics. Because it was unclear at the onset whether and how the actions of the Middletown Town Council, in response to the advice of the petitioner in his capacity as Middletown Solicitor, might financially impact the petitioner and his spouse as owners of a short-term rental property, the class exception was deemed inapplicable and the petitioner was required to recuse from participating in discussing or advising the Middletown Town Council relative to the proposed revision of the subject ordinance. See also A.O. 2018-23 (opining that a member of the Portsmouth Town Council could not participate in the Town Council's discussions and voting relative to mitigating the negative effects caused by the operation of a Town-supported wind turbine on neighboring homes, given that the petitioner was one of the affected residents and it was unclear at the onset of the Town Council's discussions how any resolution to the noise and shadow flicker problem would impact the petitioner); A.O. 2003-58 (opining that the Director of Public Works in the Town of Warren could not participate in contract negotiations with the Steelworkers Union since it was unclear from the onset of negotiations how the contract would affect his daughter, who was a member of the Steelworkers Union).

Here, although the Petitioner is not a member of the Town Council, he chairs the Recreation Advisory Board as an appointee of the Town Council and, as such, is tasked with advising the Town Council on the rental policy for the Town Beach cabanas. Because it is unclear whether and how the Recreation Advisory Board's discussions and ultimate recommendations to the Town Council might financially impact the Petitioner's spouse as a current cabana renter, it is the opinion of the Ethics Commission that the class exception is inapplicable here and the Petitioner must recuse from participating in the Recreation Advisory Board's discussions and recommendations to the Town Council relative to this matter. Recusal shall be 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)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2021-14

A.O. 2018-23

A.O. 2005-22

A.O. 2003-58

Keywords:

Class Exception

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: The Honorable Marcia Ranglin-Vassell

QUESTION PRESENTED:

The Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state elected position, who is also a teacher at the E-Cubed Academy, a municipal employment position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from performing work in her private capacity as an independent contractor for Ranglin & Associates Consulting, a business owned by the Petitioner's sister.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, a state elected position, who is also a teacher at the E-Cubed Academy, a municipal employment position, is not prohibited by the Code of Ethics from performing work in her private capacity as an independent contractor for Ranglin & Associates Consulting, a business owned by the Petitioner's sister. However, the Petitioner must perform such work on her own time and without the use of public resources; may not use confidential information obtained as part of her official public duties in furtherance of her consulting work; and may not use either of her official positions to solicit business or clients.

The Petitioner was elected to the Rhode Island House of Representatives in November of 2016 as a representative of District 5 and has served continuously in that capacity since. She is a member of the Small Business Committee, the Education Committee, and the Environmental Committee. The Petitioner is also employed by the City of Providence as a teacher at the E-Cubed Academy. The Petitioner states that in 2012 her sister established Ranglin & Associates, LLC, d/b/a Ranglin & Associates Consulting ("R&A Consulting" or "the company"), a multi-disciplinary consulting firm owned by her sister which offers programs related to work force development, including business continuity and resilience management, career counseling, and diversity equity and inclusion training and support. The Petitioner further states that she acted as a sounding board for her sister during the establishment of R&A Consulting, offering feedback on her sister's ideas and plans for the company. The Petitioner emphasizes that she does not have, nor has she ever had, an ownership interest in R&A Consulting.

The Petitioner states that she would like to perform work as an independent contractor for R&A Consulting and provide coaching services for clients of the company. She further states that she would perform this work on her own time and without the use of public resources. The Petitioner

informs that the company, through its owner, intends to pursue contract work with the State of Rhode Island ("State") by responding to requests for proposals which seek services of the nature provided by R&A Consulting. The Petitioner represents that she would not perform independent contract work for R&A Consulting on any project awarded by the State without prior approval from the Ethics Commission. Cognizant of the Code of Ethics, and committed to acting in conformance therewith, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from accepting independent contract work from R&A Consulting on municipal and other non-state projects.

No person subject to the Code of Ethics shall engage in any business, employment, transaction or professional activity which 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 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). The Code of Ethics further prohibits a public official 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). The Code of Ethics also prohibits a public official from accepting 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).

Section 36-14-5(n) ("section 5(n)") of the Code of Ethics and Commission Regulation 520-RICR-00-00-1.5.2 Prohibitions on State Employment (36-14-5007) ("Regulation 1.5.2") prohibit any state elected official from seeking or accepting work from the state as an employee, independent contractor or consultant, while serving in the General Assembly and for a period of one (1) year after leaving legislative office, unless such position was held at the time of the member's election. For purposes of section 5(n) and Regulation 1.5.2, "employment" shall 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 1.5.6 Revolving Door, "Employment" Defined (36-14-5017).

Secondary Employment

In the past, the Ethics Commission has consistently opined that public officials and employees are not inherently prohibited by the Code of Ethics 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. See, e.g., A.O. 2017-40 (opining that a Probation and Parole Supervisor for the Rhode Island Department of Corrections was not prohibited by the Code of Ethics from working in his private capacity as an adjunct professor at Rhode Island College, provided that all work and preparation for his classes was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment).

The Ethics Commission examines several factors when considering potential conflicts 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 her normal working hours and without the use of public resources; that the employee not appear before her own agency; that such work be conducted outside of the areas over which the public official has decision-making jurisdiction; and that the employee does not use her position to solicit business or customers. See General Commission Advisory No. 2009-4.

Here, based upon the Petitioner's representations, there appears to be no evidence that her independent contract work for R&A Consulting would either impair the Petitioner's independence of judgment as a State Representative or municipal employee or create an interest that is in substantial conflict with the proper discharge of her public duties. Additionally, there appears to be no relationship between her public duties and her potential work as an independent contractor for R&A Consulting, nor would she represent R&A Consulting's interests before the General Assembly or the City of Providence. Accordingly, the Petitioner is not prohibited by the Code of Ethics from working as an independent contractor for R&A Consulting on municipal and other non-state projects, provided that she performs such work on her own time and without the use of public resources. Further, the Petitioner is prohibited from using confidential information obtained as part of her official public duties in furtherance of her consulting work for R&A Consulting. The Petitioner is advised that she may not use either of her official positions to solicit business or clients for R&A Consulting.

Prohibition on State Employment

The Code of Ethics contains several "revolving door" provisions that regulate the ability of public officials to be employed by, or contract with, government entities. For example, section 5(n) and Regulation 1.5.2 prohibit any state elected official from seeking or accepting work from the state as an employee, independent contractor or consultant, while serving in the General Assembly and for a period of one (1) year after leaving legislative office, unless such position was held at the time of the member's election.

The Ethics Commission has applied the Code's revolving door provisions to legislators in the past. For example, in Advisory Opinion 2006-25, the Ethics Commission opined that a State Representative was prohibited by the Code of Ethics from providing insurance brokerage services to a quasi-public state agency. The circumstances were such that the petitioner had been privately self-employed for a number of years as an insurance broker specializing in employee benefits. He had recently been referred to a quasi-public state agency in Rhode Island that required insurance brokerage services. If permitted to accept this client, the petitioner would have provided advice on a wide range of issues and acted as an intermediary between the client and various insurance companies to negotiate rates. The petitioner represented that he would not be paid by the quasi-public agency, but instead by earning a commission from whatever insurance company was placed with the quasi-public agency. In opining that the petitioner was prohibited from performing work as an insurance broker with the quasi-public state agency, the Ethics Commission stated that the petitioner's fee, paid from whatever source, would still have been the result of his relationship with a quasi-public state agency.

Here, the Petitioner represents that she would not perform independent contract work for R&A Consulting on a project awarded by the State without prior approval from the Ethics Commission, adding that no such project exists at this time. In the event that R&A Consulting is eventually awarded a contract by the State, depending upon the anticipated nature of the work and level of her involvement, the Petitioner may or may not be prohibited by the Code of Ethics from becoming involved. Accordingly, the Petitioner is advised to seek further guidance from the Ethics Commission should the circumstances warrant.

Conclusion

In conclusion, 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 is not prohibited by the Code of Ethics from working as an independent contractor for R&A Consulting on municipal and other non-state projects, provided that she performs such work on her own time and without the use of public resources; does not use confidential information obtained as part of her official public duties in furtherance of her consulting work; and does not use either of her official positions to solicit business or clients. The Petitioner is advised to seek further guidance from the Ethics Commission in the event that R&A Consulting is awarded a state contract for which the Petitioner is desirous of performing work as a consultant.

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

Code Citations:

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(n)

§ 36-14-7(a)

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

520-RICR-00-00-1.5.6 Revolving Door, "Employment" Defined (36-14-5017)

Related Advisory Opinions:

A.O. 2017-40

A.O. 2006-25

General Commission Advisory No. 2009-4

Keywords:

Secondary Employment

Revolving Door

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 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: April 27, 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 the Code of Ethics permits her to accept appointment to the Permanent Legislative Commission on Child Care in Rhode Island, in her capacity as a State Representative, given that the Petitioner owns and/or manages a number of child care centers in Rhode Island.

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, is not prohibited by the Code of Ethics from accepting appointment to the Permanent Legislative Commission on Child Care in Rhode Island, in her capacity as a State Representative, notwithstanding that the Petitioner owns and/or manages a number of childcare centers in Rhode Island.

The Petitioner was elected to the Rhode Island House of Representatives in November of 2020 and represents the 46th District in Lincoln and Pawtucket. In her private capacity, the Petitioner has owned and operated a number of child care centers since 1972. She states that she currently owns ten, for-profit, licensed child care centers and manages another six, nonprofit, licensed child care centers, all of which are located in Rhode Island. The Petitioner informs that she is interested in serving on the Permanent Legislative Commission on Child Care in Rhode Island ("Child Care Commission") in her capacity as a State Legislator.

According to information received from the House Policy Analyst, the Child Care Commission was established by a Joint Resolution of the General Assembly in July of 1989. Its purpose is to ensure that Rhode Island has a network of child day care services that provide for quality, affordable and accessible child care in Rhode Island and to act as an advisory body to the child day care division of the Department of Human Services ("DHS") and to the day care licensing department of the Department of Children, Youth & Families ("DCYF"), in order to adequately plan for the state's current and future need for quality, affordable and accessible child day care. The Child Care Commission initially consisted of twenty-five (25) members. The Joint Resolution was eventually amended to require the chairperson of the Child Care Commission to maintain a list of a maximum of thirty-five (35) voting members, three of which are to be members of the House of Representatives appointed by the Speaker of the House; two of which are to be Senators

appointed by the Senate President; and the remainder of which represent state government agencies, provider associations or networks, resource organizations, family/youth, advocates and researcher organizations, business and economic policy, and private philanthropy. Child Care Commission members do not receive any compensation for their services. The Petitioner represents that the chairperson of the Child Care Commission is selected from among the legislators serving on the Child Care Commission. The Petitioner further represents that the Child Care Commission does not have a budget, is only advisory in nature and, among other things, collects and presents information to the DHS and DCYF, drafts legislation, reviews proposed legislation, and its members sometimes testify before the General Assembly on various child care matters. The Petitioner states that any legislation drafted by the Child Care Commission has to then be sponsored and introduced by a state legislator, often by its chairperson, and voted on by the General Assembly.

The Petitioner represents that for the last five years she has served on the Child Care Commission on behalf of child care centers as a member of the Business Owners in Childcare Association (“BOCA”).¹ The Petitioner informs that, on April 1, 2021, she resigned from both her position as a member of BOCA’s Board of Directors and as BOCA’s legislative liaison. The Petitioner’s recent disassociation from BOCA also marked the end of her membership on the Child Care Commission.² Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics allows her, in the event of vacancy, to accept appointment by the Speaker of the House of Representatives to the Child Care Commission in her capacity as a State Representative.

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 that is in substantial conflict with the proper discharge of her public 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, any person within her family, her business associate, her employer, or any business that she represents. Section 36-14-7(a). Additionally, section 36-14-5(d) of the Code of Ethics 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, any person within her family, her business associate or her employer.

A public official must also recuse from participation when her business associate or employer appears or presents evidence or arguments before her 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 herself, representing another person, or acting as an expert witness before a state or municipal agency of which she is a member or by

¹ BOCA is a nonprofit professional association of business owners and operators of center-based child care and early childhood education programs in Rhode Island who advocate for early childhood teachers and programs in Rhode Island. See <https://bocari.org/#about> (last accessed on April 9, 2021).

² The Petitioner states that she has not represented BOCA as a member of the Child Care Commission since December 31, 2020, and, instead, other BOCA board members have been attending the Child Care Commission meetings.

which she is employed. Section 5(e)(1) - (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 year thereafter. Section 5(e)(4). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7).

In the instant matter, nothing in the Code of Ethics prohibits the Petitioner from being appointed by the Speaker of the House of Representatives to serve as a member of the Child Care Commission in her capacity as a State Representative. However, the Petitioner should be aware and consider that, although the Code of Ethics does not prohibit her service on the Child Care Commission, it does regulate the manner and extent of the performance of her duties. Although the Child Care Commission is only advisory in nature, the Petitioner's service on it would be an extension of her duties as a duly elected member of the House of Representatives. Therefore, any restrictions that the Code of Ethics may place upon her ability to carry out her duties as a State Representative would extend to the performance of her duties as a member of the Child Care Commission.

For example, in Advisory Opinion 2004-6, a State Representative sought the advice of the Ethics Commission regarding whether her spouse's employment by Memorial Hospital of Pawtucket prohibited or limited her service as a member of the General Assembly's Permanent Joint Committee on Health Care Oversight ("Committee"), the duties of which were to monitor, study, report and make recommendations on all areas of health care provision, insurance, liability, licensing, cost and delivery of services, and the adequacy, efficacy and efficiency of statutes, rules, regulations, guidelines, practices, and programs related to health care, long term care, or health insurance coverage in Rhode Island. In that advisory opinion, the Ethics Commission opined that there was no indication that the petitioner or her spouse stood to be financially impacted solely by reason of her membership on the Committee and, therefore, the petitioner's membership on the Committee was not prohibited by the Code of Ethics. However, the petitioner was required to recuse from participation in matters in which it was reasonably foreseeable that her spouse would derive a direct financial gain or suffer a direct financial loss by reason of her official activity. The petitioner was further cautioned to be diligent in identifying such matters and to either recuse from participation or seek further guidance from the Ethics Commission. See also A.O. 2019-20 (opining that a State Senator was not prohibited by the Code of Ethics from serving as the Chairperson of the Senate Committee on Labor, notwithstanding that he worked as a consultant for the Rhode Island Judicial, Professional and Technical Employees' Local Union 808, and had previously been employed as a Field Representative for the Rhode Island Laborers' District Council and as Business Manager for Local Union 808, provided that he recused from any matter that came before him either in his capacity as Chairperson of the Labor Committee or as a member of the Senate and which directly impacted his business associate).

Similarly, here the Petitioner is cautioned that, if appointed, she will be generally required to recuse from taking any official action, including discussions and voting on any matter that is likely to result in direct a financial benefit or detriment to her, any person within her family, her business associate, or her employer, unless the specific circumstances justify the application of the class

exception as set forth in section 36-14-7(b).³ The Petitioner would also be required to recuse herself from participation in discussions and voting on matters for which her business associate or employer, or her business associate or employer's authorized representative, appears or presents evidence or arguments before the General Assembly or the Childcare Commission unless one of the exceptions to Regulation 1.2.1(B) applies.⁴ The Petitioner is also prohibited from representing herself or any other person before the General Assembly or the Child Care Commission. See Section 5(e). Recusal shall be consistent with section 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest arise.

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

³ Section 36-14-7(b) states that a public official will not have an interest which is in substantial conflict with her official duties if any benefit or detriment accrues to her, any person within her family, her business associate, or any business by which she is employed or which she represents "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group." When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers 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.

⁴ Regulation 1.2.2(B) states that:

A person subject to this Code of Ethics is not required to recuse himself or herself pursuant to this or any other provision of the Code when:

1. The person's business associate, employer, household member or any person within his or her family is before the person's state or municipal agency, solely in an official capacity as a duly authorized member or employee of another state or municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the business associate, employer, household member or person within his or her family is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion.

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

are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-5(f)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

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

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

Related Advisory Opinions:

A.O. 2019-20

A.O. 2004-6

Keywords:

Business Associate

Class Exception

Recusal

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: The Honorable Charles A. Lombardi

QUESTION PRESENTED:

The Petitioner, the Mayor of the Town of North Providence, a municipal elected official, requests an advisory opinion regarding whether the Code of Ethics prohibits him from renting a building that he personally owns to Tri-County Community Action Agency, a private non-profit entity which seeks to provide social services to North Providence residents who are in need.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Mayor of the Town of North Providence, a municipal elected official, is not prohibited by the Code of Ethics from renting a building that he personally owns to Tri-County Community Action Agency, a private non-profit entity which seeks to provide social services to North Providence residents who are in need.

The Petitioner is the Mayor of the Town of North Providence ("Town" or "North Providence"). He represents that he has been asked by the President and CEO of Tri-County Community Action Agency ("Tri-County") whether he would rent to Tri-County a building that he privately owns. Tri-County is a private non-profit entity which "provides a highly diverse and comprehensive range of services to ameliorate poverty and assist individuals and families to achieve personal, social and economic self-sufficiency."¹ The Petitioner represents that Tri-County operates with an annual budget of over 25 million dollars and does not receive any funds from the Town's municipal budget for the services it provides to the community. He adds that Tri-County currently has no contracts with the Town and that he does not expect Tri-County to enter into any contracts with the Town. The Petitioner states that Tri-County has been intensively searching for a suitable building for food distribution in the Marienville area in the Town which, according to the President and CEO of Tri-County, is an area that has been long underserved and has a demonstrated need due to lack of social services to address the increasingly high number of children and families who experience food insecurities due to COVID-19. The Petitioner represents that, after an exhaustive search, Tri-County found a suitable building which is owned by the Petitioner. As a result, the Petitioner states that the President and CEO of Tri-County approached him and asked whether Tri-County could rent the building. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he can rent the building to Tri-County.

¹ <https://tricityri.org/wp-content/uploads/2017/04/TriCounty-One-Page-Info-Sheet.pdf> (last accessed April 19, 2021).

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 whom he is employed or whom he represents. Section 36-14-5(d). Further, a public official must recuse from participation when his business associate 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); section 36-14-5(f). The Code of Ethics defines business associates as individuals or entities joined together to “achieve a common financial objective.” Section 36-14-2(3).

Here, under the specific circumstances as represented by the Petitioner, there is nothing in the Code of Ethics that prohibits the Petitioner from entering into a rental agreement with Tri-County in his private capacity. However, the Ethics Commission has previously determined that a landlord and tenant are considered business associates under the Code of Ethics. See A.O. 2002-70 (opining that a member of North Kingstown Town Council was business associate of the person from whom she rented retail space and, therefore, could not participate in Town Council matters that would financially impact her landlord). Therefore, the Petitioner should remain aware that, because of the business associate relationship that will attach to him and Tri-County by virtue of their respective roles as landlord and tenant, the manner and extent to which the Petitioner, in his public capacity as Mayor, may interact with Tri-County will be regulated by the Code of Ethics. Upon entering into a landlord/tenant relationship, the Petitioner will be generally required to recuse from taking official action, including discussions and/or decision-making, on any matter that is likely to result in a direct financial benefit or detriment to Tri-County, or in which Tri-County appears or presents evidence or arguments before him. Recusal shall be consistent with section 36-14-6. Given that the Ethics Commission cannot anticipate any and all, if any, future interactions of the Petitioner in his capacity as Mayor and Tri-County, the Petitioner is strongly encouraged to seek further advice from the Ethics Commission whether recusal is required in specific instances.

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)
§ 36-14-5(f)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2002-70

Keywords:

Business Associate

Recusal

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: Philip Gould

QUESTION PRESENTED:

The Petitioner, the Administrative Captain for the Town of Lincoln Police Department, a municipal employee position, requests an advisory opinion regarding whether the Code of Ethics allows him to continue serving in that position while seeking election to the position of Town Administrator for the Town of Lincoln and what limitations, if any, the Code of Ethics places upon his ability to campaign for Town Administrator while serving as Administrative Captain.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Administrative Captain for the Town of Lincoln Police Department, a municipal employee position, is not prohibited by the Code of Ethics from continuing to serve in that position while seeking election to the position of Town Administrator for the Town of Lincoln provided that: no public time or resources will be utilized by the Petitioner in furtherance of his campaign; the Petitioner does not solicit, directly or through a surrogate, campaign contributions from his subordinates as defined under the Code of Ethics; and there is no understanding that the campaign contributions would affect any official action by the Petitioner.

The Petitioner is the Administrative Captain for the Police Department in the Town of Lincoln ("Town" or "Lincoln"). He explains that he has served in that position for the past eight years but has worked for the Town in various positions for 28 years. The Petitioner cites among his duties as Administrative Captain: serving as the Police Department's Public Information Officer and media liaison; conducting recruiting drives and the hiring process for police officers; and overseeing of some of the mandated training at the Police Department and at the Municipal Police Academy. He states that the day-to-day supervision of Police Department's officers is conducted by the Operations Captain and that the Petitioner only gets involved with personnel decisions in the absence of the Chief. The Petitioner represents that he does not have supervisory authority over Police Department contractors or vendors. He also represents that his normal working hours are Monday through Friday, from 8 a.m. to 4 p.m.

The Petitioner states that the Lincoln Town Administrator ("Town Administrator") has announced his intention to leave his current office to take a position in the Governor's cabinet. The Petitioner further states that the Town Administrator's departure will create a vacancy that will require a special election in Lincoln. The Petitioner represents that he intends to seek the position of Town Administrator. He explains that, while the Town Charter clearly prohibits a Town employee from *holding* an elected position in the Town, it does not prohibit a Town employee from *seeking* such

a position. The Petitioner notes that he is aware of the Code of Ethics' prohibition against engaging in campaign-related activities during his normal working hours and states that he would only campaign outside of such hours or during his time off, including during his vacation and compensatory time. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics allows him to continue serving as Administrative Captain while seeking election to the position of Town Administrator and what limitations, if any, the Code of Ethics places upon his ability to campaign.

Under the Code of Ethics, a public official or employee 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 or employee 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 or employee from using his public office or confidential information received through holding 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). Further, a public official or employee may not solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding or expectation that his vote, official action, or judgment will be influenced thereby. Section 36-14-5(g).

Pursuant to Commission Regulation 520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011) ("Regulation 1.4.4") a public official or employee shall not solicit or request, directly or through a surrogate, any political contributions from a subordinate for whom, in his official duties and responsibilities, he exercises supervisory responsibilities. Regulation 1.4.4(B). This regulation, however, does not prohibit or limit the First Amendment rights of a subordinate to make unsolicited political contributions. Regulation 1.4.4(B). For purposes of the prohibition on solicitations, the term "subordinate" includes other employees, contractors, consultants, or appointed officials of the official's or employee's agency. Regulation 1.4.4(C).

While the above provisions of the Code of Ethics serve to regulate the potential interaction between the Petitioner's public duties as Administrative Captain and his private campaign for public office, they do not bar such simultaneous endeavors, provided that requirements of the Code of Ethics cited above are followed. On several occasions, the Ethics Commission has guided the conduct of public officials and employees who were either seeking election to public office or who wished to participate in campaigning and fundraising activities on behalf of political candidates. In Advisory Opinion 2008-3, for example, the Ethics Commission opined that the Solicitor for the City of Providence was not prohibited by the Code of Ethics from campaigning for election to the position of Attorney General of the State of Rhode Island, provided that he did not use public time or resources to assist his campaign, and did not solicit his subordinates to make political contributions, purchase tickets to events, or otherwise assist in campaign-related events. See also A.O. 2020-45 (opining that the Director of the Rhode Island Department of Administration, who was interested in exploring the possibility of running for Mayor of the City of Providence and wished to solicit and accept campaign contributions from persons who were not state employees

or vendors was allowed to do so, provided that the persons solicited were not otherwise the petitioner's subordinates as defined under the Code of Ethics; that there was no expectation or understanding that the campaign contributions would affect any official action by the petitioner; and that no public time or resources were utilized by the petitioner in furtherance of his campaign); A.O. 2006-41 (opining that the Director of Municipal and External Affairs in the Office of the Governor was not prohibited from serving as the Honorary Chair of the Carcieri for Governor Committee ("the Committee"), provided that she did so on her personal time or after business hours; without the involvement of state employees, equipment, or resources; and without the solicitation of her subordinates for the purchase of fundraising tickets and/or other political contributions on behalf of the Committee); A.O. 99-44 (opining that individual members of the Rhode Island Housing and Mortgage Finance Corporation's Board of Commissioners and staff ("RIHMFC") were prohibited from soliciting contributions from entities that did business with that agency except in situations where the RIHMFC members or staff who solicited contributions did not exercise supervisory responsibility or control over the entity(ies) being solicited and were not acting on behalf of someone who exercised such responsibility).

The Ethics Commission has also enforced the provisions of Regulation 1.4.4(B) in a complaint context. For example, in In re: Donald L. Carcieri, Complaint No. 2006-9, the Ethics Commission found that the Respondent, the Governor of the State of Rhode Island, violated what is now Regulation 1.4.4(B) by mailing at least five separate mailings soliciting campaign contributions from Rhode Island residents, some of whom were state employees appointed by the Respondent and under his direct supervision and control. Likewise, the Ethics Commission found that the Respondent in In re: A. Ralph Mollis, Complaint No. 2006-6, who was the Mayor of the Town of North Providence and a candidate for Secretary of State, violated Regulation 1.4.4(B) by mailing correspondence soliciting campaign contributions from individuals, some of whom were employees of the Town of North Providence.

Accordingly, based on the Petitioner's representations, and consistent with the applicable provisions of the Code of Ethics, past advisory opinions issued, and the complaint matters cited above, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from continuing to serve as Administrative Captain for the Lincoln Police Department while seeking election to the position of Lincoln Town Administrator provided that: no public time or resources are utilized by the Petitioner in furtherance of his campaign; the Petitioner does not solicit or request, directly or through a surrogate, any political contributions from a subordinate as defined under the Code of Ethics, for whom, in his official duties and responsibilities, he exercises supervisory responsibilities, including employees, contractors, consultants, or officials whom the Petitioner has appointed; and there is no understanding that the campaign contributions would affect any official action by the Petitioner. Additionally, all campaign work by the Petitioner must be performed on his own time, and with his own personnel, supplies, and equipment. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future if more specific questions regarding his candidacy arise.

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(g)

§ 36-14-7(a)

520-RICR-00-00-1.4.4 Transactions with Subordinates (36-14-5011)

Related Advisory Opinions:

A.O. 2020-45

A.O. 2008-3

A.O. 2006-41

A.O. 99-44

Other Related Authorities:

In re: Donald L. Carcieri, Complaint No. 2006-9

In re: A. Ralph Mollis, Complaint No. 2006-6

Keywords:

Campaign Contributions

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: Matthew McGeorge, AIA, LEED AP

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board.

The Petitioner is the chairperson of the East Greenwich Historic District Commission ("HDC"), having served continuously since his appointment in 2011 by the East Greenwich Town Council. He represents that this is an unpaid, volunteer position. The Petitioner states that in his private capacity he has been a registered architect in Rhode Island since 2007 and is presently also registered in Massachusetts, Connecticut, Pennsylvania, Maine, and New Hampshire. He represents that he earned a Bachelor of Environmental Design from the University of Tasmania, Tasmania, Australia, and a Master of Architecture from the Illinois Institute of Technology. The Petitioner states that he specializes in historic preservation, adaptive reuse, and the design of new structures with historic character allusions and, in the past five years, his firm and he have completed more than fifteen historic adaptive reuse projects, including a 25-million-dollar adaptive reuse of the Elizabeth Mill in Warwick, and several historic renovation projects, including the Edward Bannister House for Brown University, the Caleb Greene House in Warwick for AAA New England, and the Saw Tooth Mill in Warwick. He further states that over thirty percent (30%) of his work involves historic structures.

The Petitioner represents that he has been advising a client regarding a possible addition and renovation of the client's 19th century home located in the Historic District of the Town of East Greenwich. The Petitioner states that, because the home is located within the Historic District, it is subject to the jurisdiction of the HDC. Thus, the client must receive a Certificate of Appropriateness from the HDC prior to any alterations to the exterior of the home. The Petitioner represents that he has, thus far, consulted the client on the local design and permitting procedures, including possible zoning relief, and the HDC conceptual and final approval process, and expects

to later prepare the design plans and present the project before the HDC at the hearing for the Certificate of Appropriateness. The Petitioner adds that he has informed the client of his service as the chair of the HDC and the requirement to receive permission from the Ethics Commission to represent the client before the HDC. The Petitioner also expects to represent the client before the East Greenwich Zoning Board ("Zoning Board") over which he does not have appointing authority. The Petitioner hopes to have a conceptual design ready to submit to the Zoning Board and the HDC in May for a June hearing. He states that he will recuse from HDC discussions and voting relative to these renovations and/or addition to the home. At this time, the Petitioner requests a hardship exception to represent the home owner before the HDC, pursuant to General Commission Advisory ("GCA") 2010-1.

Section 36-14-5(e) ("Section 5(e)") of the Code of Ethics prohibits public officials and employees from representing themselves, representing another person, or acting as an expert witness before a state or municipal agency of which they are a member or by which they are employed. Section 5(e)(1)-(3); see also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). Section 5(e)'s prohibitions continue while the official remains in office and for a period of one (1) year thereafter. Section 5(e)(4). In contrast to most other Code of Ethics provisions, declining to participate in related discussions and votes is insufficient to avoid section 5(e) conflicts, absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists. 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). 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 within section 5(e)'s prohibition on representing his client before a board of which the Petitioner is a member. However, the Ethics Commission has carved out a specific hardship exception outlined in GCA 2010-1 for "Historic Architects Who Are Members of Historic District Commissions."¹ This exception is based upon the Ethics Commission's finding that "municipal historic district commissions within the state of Rhode Island are best served if they are able to have a sitting member who specializes in historic architecture and preservation." GCA 2010-1. The Ethics Commission has concluded that, given the limited number of historic architects in the state, recruiting qualified persons to serve on historic district commissions would be difficult and would reduce the ability of historic district commissions to effectively function if those architects were thereafter prohibited from representing private clients before the commissions on which they serve.

¹ On November 30, 1989, the Ethics Commission issued GCA No. 8, "Architect Members of State and Local Historic Preservation Commissions Appearing Before Their Respective Agencies," allowing architects who specialize in historic preservation and who serve on historic district commissions to represent clients before their respective commissions without violating the Code of Ethics. In 2010, after considering public comment, and in response to overwhelming support for continuing the use of the exception, the Ethics Commission replaced GCA No. 8 with GCA 2010-1 entitled "Historic Architects Who Are Members of Historic District Commissions."

However, pursuant to GCA 2010-1, members of historic district commissions may not presume that the exception is applicable to their specific set of circumstances, but are required to seek an advisory opinion each time they consider accepting a client whose project would require them to appear before their own board. Additionally, GCA 2010-1's narrow exception only applies to historic architects and does not apply to other architectural specialties. See A.O. 99-120 (declining to grant a hardship exception to a member of the New Shoreham Historic District Commission, who was a landscape architect and the owner of a landscape architecture business on the island, because his qualifications did not fall within the guidelines of a historic architect).

For GCA 2010-1 to apply to his particular situation, the Petitioner must make representations to establish that he is a qualified historic architect. For example, the Commission granted six GCA 2010-1 hardship exceptions to an architect on Block Island, one for each client, after concluding that it was satisfied that his representations regarding his extensive education and work experience in historic preservation established that he was a qualified historic architect. See A.O. 2017-38; A.O. 2015-44; A.O. 2014-15; A.O. 2013-42; A.O. 2013-29; and A.O. 2010-7.

In the present matter, the Petitioner is an architect who specializes in historic preservation. He represents that his work experience and education exceed the United States Secretary of the Interior's minimum professional qualifications for a historic architect.²

It is significant to note that the Ethics Commission has previously issued two similar advisory opinions to this Petitioner in which hardship exceptions were granted based upon the Petitioner's status as a historic architect. Most recently, in Advisory Opinion 2019-43, the Ethics Commission concluded that this Petitioner qualified for a hardship exception, based upon GCA 2010-1, and permitted him to represent a client before the HDC in order to obtain a Certificate of Appropriateness to make modifications to the rear porch of the client's single-family home located in the Historic District. Similarly, in Advisory Opinion 2017-27, the Ethics Commission granted a hardship exception to this Petitioner and permitted him to represent a client before the HDC to obtain a Certificate of Appropriateness in connection to a mixed-use redevelopment project at 461 Main Street in the Town of East Greenwich.

² In order to ascertain whether someone is a historic architect, GCA 2010-1 incorporated the minimum professional qualifications for historic architecture set forth by the U.S. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The minimum professional qualifications are:

A professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

Accordingly, it is the opinion of the Ethics Commission that the Petitioner qualifies for a hardship exception to the Code of Ethics' prohibition on representing his client before his own board, in accordance with GCA 2010-1, provided that he recuses from participating in all HDC matters involving his client. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the HDC and its 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(e)

§ 36-14-6

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

Related Advisory Opinions:

G.C.A. 2010-1

A.O. 2019-43

A.O. 2017-38

A.O. 2017-27

A.O. 2015-44

A.O. 2014-26

A.O. 2014-15

A.O. 2013-42

A.O. 2013-29

A.O. 2010-7

A.O. 99-120

Keywords:

Hardship Exception

Historic Architect

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: April 27, 2021

Re: Kenneth D. Jones

QUESTION PRESENTED:

The Petitioner, the Chairperson of the West Greenwich 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 appearing before his own board to oppose a special use permit application for the construction of a solar energy generation and battery storage facility for which he received notice as an abutter.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chairperson of the West Greenwich Zoning Board of Review, a municipal appointed position, may appear before the West Greenwich Zoning Board of Review to oppose a special use permit application for the construction of a solar energy generation and battery storage facility for which he received notice as an abutter, based upon a finding that the unique facts as represented justify the application of the hardship exception as provided in R.I. Gen. Laws § 36-14-5(e)(1) and the public forum exception as provided in Commission Regulation 520-RICR-00-00-1.2.3.

The Petitioner has continuously served as a member of the West Greenwich Zoning Board of Review ("Zoning Board of Review") since his appointment in 1984 and as its Chair since 1989. He states that he personally owns and resides on property located on Harry L. Andrews Road in West Greenwich, RI, designated as Assessors Plat 8, Lots 15-01 through 15-05, and zoned as RFR-2.¹ The Petitioner represents that in 1998, he purchased a parcel of undeveloped land located at 50 Harry Andrews Road which consisted of approximately 25 acres. He further represents that the land was not subdivided into individual lots at the time of the original purchase. The Petitioner explains that in 2002, he constructed his current residence on a parcel of the land which remained one lot (Lot 15).² He states that in 2009, a portion of his Lot 15 was subdivided into a separate lot (Lot 18) that he transferred to his son who has since constructed a house for his family thereon.³ The Petitioner further states that in 2018, the remaining parcel of land was subdivided into five lots, one of which was transferred to another son who is still awaiting the transfer of the title (Lot

¹The Petitioner states that Zone RFR-2 is defined as Rural Farming Residential with a two-acre and 200-foot frontage minimum.

² The Petitioner represents that his Lot 15 later became 15-04.

³ The Petitioner states that Lot 18 later became 18-01.

15-02). The Petitioner represents that he is currently the record owner of five of the six total lots. He further represents that those five lots constitute a Town of West Greenwich-approved residential compound plan which was recorded in 2018 in the Land Evidence Records as *The Ken Jones Residential Compound*. He explains that the residential compound was created to provide for his existing home and homes for his children and grandchildren.⁴

The Petitioner states that Lots 15-01 through 15-03 abut a large tract of land that is the subject of a proposal by Revity Energy, LLC ("Revity") to construct an industrial-scale solar energy generation and battery storage facility.⁵ He explains that the tract of land consists of approximately 400 acres with as much as 195 acres allocated for Revity's proposal. The Petitioner further explains that Revity must obtain regulatory approval, including a special use permit, from the Town of West Greenwich ("Town") before it may proceed with the proposed solar facility project.⁶ The Petitioner represents that the construction of the solar and battery storage facility would have a negative impact on his and his family's use and enjoyment of their property due to the high level of noise involved in its construction, and that the solar and battery storage facility would adversely impact his family's future plans for the residential compound as well as its market value.

The Petitioner states that the Zoning Board of Review commenced a public hearing on March 9, 2021, to consider Revity's application for the development, installation, and operation of a solar energy system and battery storage facility on the site. He further states that the public hearing did not conclude but has been continued to the Zoning Board of Review's April 28, 2021 meeting with a period of public comment.⁷ Cognizant of the Code of Ethics, the Petitioner represents that he has recused from prior proceedings regarding this application. However, given the scope and potential negative impact that the solar project will have on the Petitioner and his family's property, he seeks guidance from the Ethics Commission regarding whether he and/or his attorney may appear and address the Zoning Board of Review to voice his concerns and express his opposition to Revity's application for a special use permit.

⁴ The Petitioner represents that not all municipalities allow residential compounds and the benefit of recording his property this way is that the lots are serviced by a private road or driveway without the requirement of constructing a public road and are reserved for his children and grandchildren's use.

⁵ The Petitioner states that he is the record owner of Lots 15-01 and 15-03, which are currently vacant, and Lot 15-02 which is occupied by his son.

⁶ The Petitioner represents that Revity's original application for Master Plan approval for the solar project, named Robin Hollow Solar, did not include Assessors Plat 10, Lot 9-3, a 10-acre parcel of land that directly abuts the Petitioner's property. He explains that Revity later filed an application for Amended Master Plan approval, in part, to include Lot 9-3. He explains that between the time that Revity filed its original application and the time that it filed its application for Amended Master Plan approval, the Town's Zoning Ordinance was changed to prohibit Lot 9-3 from inclusion in the solar project without a use variance as well as a special use permit. In his February 25, 2021 letter to the Ethics Commission requesting an advisory opinion, the Petitioner represents that the West Greenwich Planning Board ("Planning Board") is currently considering two advisory opinion requests from the Zoning Board of Review with respect to Revity's applications for a special use permit and a use variance with respect to Lot 9-3. Since the date of Petitioner's letter, he learned that Revity has withdrawn its application for a use variance, and, on March 1, 2021, the Planning Board issued an advisory opinion to the Zoning Board of Review as to the special use permit only.

⁷ The Petitioner represents that if the public hearing is not concluded on April 28, 2021, it may be continued again to another date.

Hardship Exception under R.I. Gen. Laws § 36-14-5(e)(1)

In general, 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 the official is a member or by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1); Commission Regulation 520-RICR-00-00-1.1.4(A)(1)(a), (b) & (c) Representing Oneself or Others, Defined (36-14-5016). 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)(ii). 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 of Review. 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; whether the matter involved a significant economic impact; and whether the official's interests were brought before an agency by a third party. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions in circumstances in which the petitioners were not appearing before their board to seek their own relief, but rather wished to object to a matter brought by a third party. See A.O. 2019-51 (opining that a member of the Barrington Town Council could appear before the Zoning Board and, potentially, the Planning Board and the Town Council, to oppose the proposed subdivision and/or development of a vacant lot directly abutting property jointly owned by him and his spouse, based on both the hardship and public forum exceptions); A.O. 2012-4 (granting a hardship exception to a Westerly Town Council member and permitting him to appear before the Westerly Planning Board, the Westerly Zoning Board and the Westerly Town Council to oppose the proposed development of property directly abutting his personal residence); A.O. 2003-33 (granting a hardship exception to a Smithfield Zoning Board member and his spouse and permitting them to appear before the Zoning Board to testify regarding a petition to locate a church, with a capacity of 2,300 seats and parking for 975

cars, directly across the street from their residential property); and A.O. 2000-45 (granting a hardship exception to a former Jamestown solicitor to appear before the Zoning Board to oppose a zoning application for property abutting his personal residence, based upon the fact that the matter was brought to the Zoning Board through no action of his own and it involved his personal residence).

In the present matter, the Petitioner would like to appear before the Zoning Board of the Review, of which he is a member, to object to the issuance of a special use permit to Revity on the bases that the construction and operation of the proposed solar facility would have a negative effect on the use and enjoyment of his and his family's property as well as its value. The subject application is before the Zoning Board of Review through no action by the Petitioner, but rather by a third party. Accordingly, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to section 5(e)'s prohibitions to allow the Petitioner to appear and represent himself, either personally or through legal counsel, before the Zoning Board of Review in order to address his concerns relative to Revity's application for a special use permit. However, the Petitioner is required to recuse from all participation and/or voting by the Zoning Board of Review on all matters involving or impacting Revity's application. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the other Zoning Board of Review 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.

Commission Regulation 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003)

The "Public Forum Exception" provides that there shall be no violation of the Code of Ethics "by virtue of any person publicly expressing his [] own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or his [] spouse or dependent child." Commission Regulation 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003) ("Regulation 1.2.3"). In past advisory opinions, the Ethics Commission has advised public officials about their rights under the Public Forum Exception. See 2020-33 (opining that a member of the West Warwick Town Council could address the Planning Board, the Zoning Board, and/or the Town Council, upon recusal, during public hearings regarding a proposed development of property located across the street from his personal residence, provided that he did not receive access or priority not available to any other member of the public); and A.O. 2019-41 (opining that a member of the Middletown Town Council could attend and speak at public hearings before the Middletown Planning Board and/or, potentially, the Zoning Board regarding a proposed development of property located across the street from her personal residence, provided the petitioner did not receive access or priority not available to any other member of the public).

The Ethics Commission has applied both the hardship and public forum exceptions in certain circumstances. See, e.g., A.O. 2020-33 and A.O. 2019-51, *supra*; and A.O. 2018-58 (opining that a member of the Exeter Town Council, who was also a former member of the Exeter Planning Board, could appear before the Planning Board, Zoning Board, and potentially the Town Council to oppose the development of property directly abutting his personal residential property, based on both the hardship and public forum exceptions).

Consistent with these prior opinions, and pursuant to the public forum exception found at Regulation 1.2.3, it is the opinion of the Ethics Commission that the Petitioner may address the Zoning Board of Review, upon recusal, during the public hearing regarding Revity's application for a special use permit involving the solar and battery storage facility project, provided that the Petitioner does not receive access or priority not available to any other member of the public. The Petitioner is further cautioned that he may not use his position in any way to influence members of the Zoning Board of Review regarding this matter. See section 36-14-5(d). Finally, the Petitioner must recuse from any discussions and/or decision-making relative to Revity's special use permit application in his official capacity as a Zoning Board of Review member. Notice of recusal must be filed 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(d)

§ 36-14-5(e)

§ 36-14-6

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

520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003)

Related Advisory Opinions:

A.O. 2020-33

A.O. 2019-51

A.O. 2019-41

A.O. 2018-58

A.O. 2014-26

A.O. 2012-4

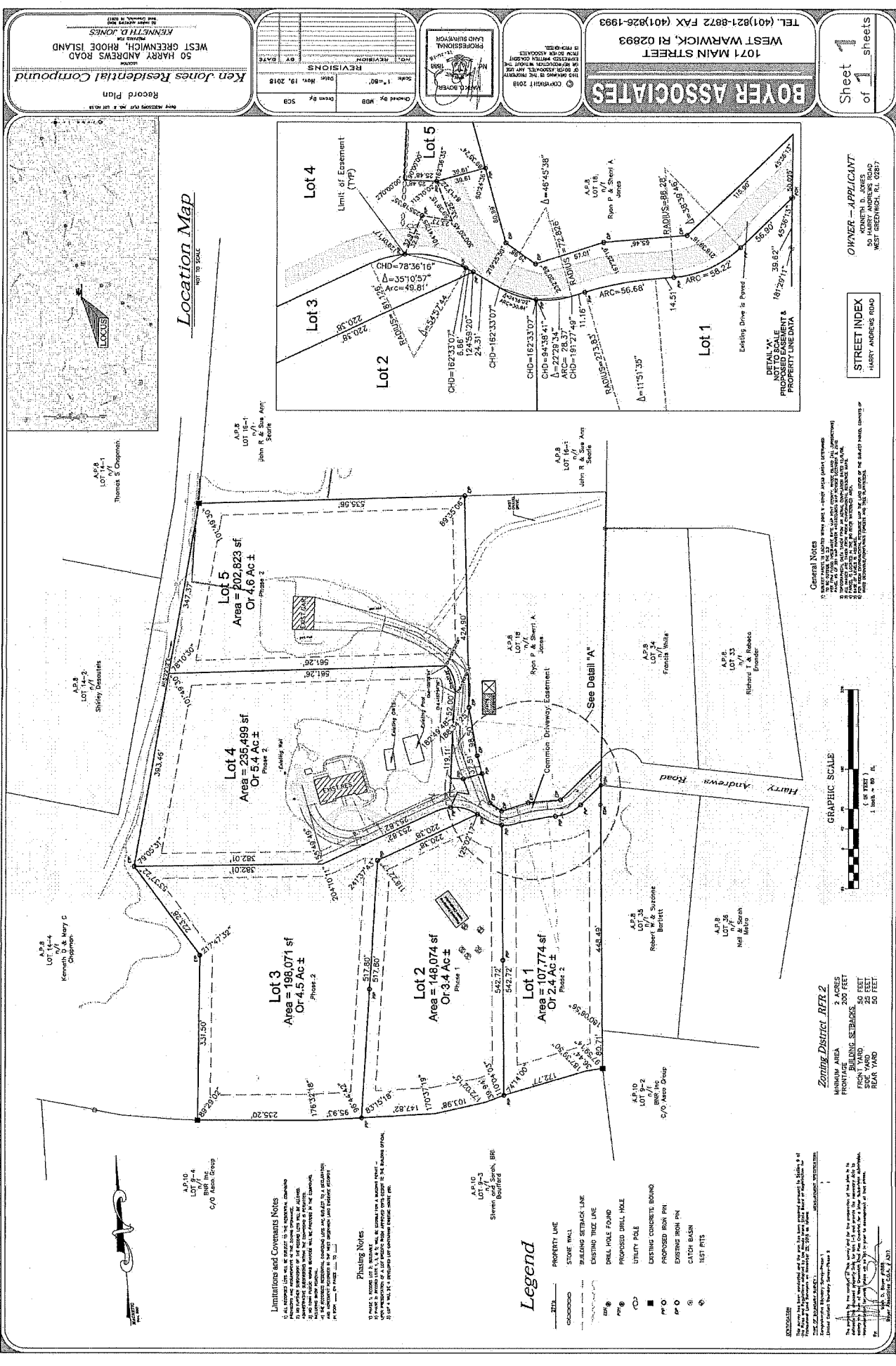
A.O. 2003-33

A.O. 2000-45

Keywords:

Hardship Exception

Public Forum Exception



Ken Jones Residential Compound
Record Plan
50 HARRY ANDREWS ROAD
WEST GREENWICH, RHODE ISLAND
KENNETH D. JONES
DATE: 10/19/2018
BY: [Signature]

NO.	REVISIONS	DATE
1	Initial	10/19/2018

Scale: 1" = 50'

Drawn By: MJB
Checked By: MJB
Date: 10/19/2018

BOYER ASSOCIATES
1071 MAIN STREET
WEST WARWICK, RI 02893
TEL: (401) 821-8872 FAX: (401) 826-1993
© COPYRIGHT 2018
PROFESSIONAL LAND SURVEYOR
STATE OF RHODE ISLAND
No. 1071 Main Street
West Warwick, RI 02893
Tel: (401) 821-8872
Fax: (401) 826-1993

Sheet 1 of 1 sheets

OWNER - APPLICANT
KENNETH D. JONES
50 HARRY ANDREWS ROAD
WEST GREENWICH, RI 02893

STREET INDEX
HARRY ANDREWS ROAD

General Notes
1. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
2. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
3. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
4. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
5. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.



Zoning District RFR 2	
MINIMUM AREA	2 ACRES
FRONT YARD SETBACK	200 FEET
REAR YARD SETBACK	50 FEET
SIDE YARD SETBACK	25 FEET
MIN. YARD	50 FEET

Platting Notes
1. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
2. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
3. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
4. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.
5. The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief.

Legend