



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

10th Meeting

DATE: Tuesday, June 8, 2021

TIME: 9:00 a.m.

TO ATTEND: Pursuant to Governor Daniel J. McKee's Executive Order No. 21-59, 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/82705190412>
and using Webinar ID: 827 0519 0412
- Or using iPhone one-tap US:
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 - +13126266799,,82705190412#
- Or by Telephone, Dial (for higher quality, dial a number based on your current location) US:
 - +1 301 715 8592 or
 - +1 312 626 6799 or
 - +1 646 558 8656 or
 - +1 253 215 8782 or
 - +1 346 248 7799 or
 - +1 669 900 9128 or
 - 833 548 0276 (Toll Free) or
 - 833 548 0282 (Toll Free) or
 - 877 853 5247 (Toll Free) or
 - 888 788 0099 (Toll Free)
- International numbers available:
<https://us02web.zoom.us/j/kqwgxpnet>
Webinar ID: 827 0519 0412

1. Call to Order.
2. Discussion of Remote Meeting Format; Identifying and Troubleshooting any Remote Meeting Issues.
3. Motion to approve minutes of Open Session held on May 18, 2021.
4. Director's Report: Status report and updates regarding:
 - a.) Discussion of impact of COVID-19 crisis on Ethics Commission operations and staffing;
 - b.) Complaints and investigations pending;
 - c.) Advisory opinions pending;
 - d.) Access to Public Records Act requests since last meeting;
 - e.) Financial Disclosure: Update on 2020 filing period.
5. Advisory Opinions (petitioners may participate remotely):
 - a.) Gregory A. Mancini, a member of the North Kingstown Town Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself before the North Kingstown Historic District Commission, and/or potentially the North Kingstown Zoning Board of Review, entities over which the Town Council has appointing authority.
 - b.) Michael Crawley, the Director of the Cumberland Parks and Recreation Department, requests an advisory opinion regarding whether the Code of Ethics prohibits him from purchasing land in the Commonwealth of Massachusetts with two individuals in connection with a new business opportunity, given that those individuals annually organize and sponsor a Halloween event at a park owned by the Town of Cumberland, and what restrictions, if any, the Code of Ethics would place upon him in carrying out his public duties under these circumstances.
 - c.) John A. Beauregard, a member of the North Smithfield Town Council, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon him in the discharge of his public duties, given the pending appointment of his sister to the position of Deputy Town Clerk by the Town Administrator, subject to approval by the Town Council.
 - d.) Adam Schatz, who has applied to fill a current vacancy on the Burrillville Zoning Board of Review, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics will place upon him in carrying out his Zoning Board duties if appointed, given that his father-in-law currently serves as the Town's Building Official.

6. New Business proposed for future Commission agendas and general comments from the Commission.
7. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on May 18, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Steven Merolla, Complaint No. 2020-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) Annual discussion and review re: Legal Counsel's contract, pursuant to R.I. Gen. Laws § 42-46-5(a)(1).
 - d.) Motion to return to Open Session.

NOTE ON REPORTING OUT OF ACTIONS TAKEN IN EXECUTIVE SESSION: *After the Commission votes to go into Executive Session, the Open Session Zoom meeting will temporarily close and viewers will not be able to join the Executive Session which is being held in a separate Zoom meeting. At the conclusion of the Executive Session, which has no set duration, the Commission will reconvene in the Open Session meeting solely for the purpose of reporting out any actions taken in Executive Session and sealing the executive session minutes. You may rejoin the Open Session by following the same instructions on Page 1 of this agenda that you followed to join the original Open Session meeting. If you attempt to rejoin the Open Session Zoom meeting while the Executive Session portion is occurring, you will see a message that the meeting host is in another meeting. Eventually, once the Executive Session meeting concludes, the host will reconvene the Open Session meeting and you will be able to view the Commission Chair report out any actions taken in Executive Session. Alternatively, it may be more convenient for you to view a written report of any actions taken in Executive Session by visiting our website (<https://ethics.ri.gov/>) later in the day.*

8. Motion to seal minutes of Executive Session held on June 8, 2021.
9. Report on actions taken in Executive Session.
10. Annual discussion and potential vote re: Legal Counsel's contract.
11. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE

CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on June 3, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 8, 2021

Re: Gregory A. Mancini

QUESTION PRESENTED:

The Petitioner, a member of the North Kingstown Town Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself before the North Kingstown Historic District Commission, and/or potentially the North Kingstown Zoning Board of Review, entities over which the Town Council has appointing authority.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Kingstown Town Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing oneself before the North Kingstown Historic District Commission, and/or potentially the North Kingstown Zoning Board of Review, entities over which the Town Council has appointing authority.

The Petitioner was elected to serve as a member of the North Kingstown Town Council ("Town Council") in 2018 and is currently its President. He represents that he would like to install a small portable shed in the backyard of his home where he wishes to store his and his spouse's two bicycles. The Petitioner states that he and his spouse purchased the home, which is their primary residence, in 2010 and have resided there continuously since. The Petitioner explains that, because the home is located within the Town of North Kingstown ("Town") Historic District, it is subject to the jurisdiction of the Historic District Commission ("HDC") and any changes to their home's exterior require approval by the HDC, over which the Town Council has appointing authority. The Petitioner states that denials by the HDC are appealable to the North Kingstown Zoning Board of Review ("Zoning Board"), over which the Town Council also has appointing authority. Cognizant of the Code of Ethics, the Petitioner requests a hardship exception to allow him to appear before the HDC to seek permission to build the shed and/or the Zoning Board, if necessary, to appeal any denial thereof.

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). Pursuant to Regulation 1.1.4(A)(1)(a), a person will represent himself before a state or municipal agency if he "participates in the

presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] favor.” 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 receiving a hardship exception, the public official must also “[f]ollow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter.” Section 36-14-5(e)(1)(iii). See, e.g., A.O. 2014-4 (granting a hardship exception to a member of the Portsmouth Town Council and permitting him to represent himself before the Portsmouth Zoning Board to seek a variance for his personal residence, provided that, in order to avoid any appearance of impropriety, he recused from the Town Council’s appointment or reappointment of any person to the Zoning Board until after the election cycle following the resolution of his applications for zoning relief).

The Petitioner’s proposed conduct falls within the Code of Ethics’ prohibition on representing himself before an agency for which he is the appointing authority. Having determined that section 5(e)’s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the unique circumstances represented by him herein justify a finding of hardship to permit him to appear before the HDC and, if necessary, the Zoning Board.

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

The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences. In Advisory Opinion 2020-34, for example, the Ethics Commission granted a hardship exception to the Vice Chairperson of the Bristol Town Council and permitted him to represent himself before the Bristol Historic District Commission, over which the Bristol Town Council had appointing authority, in order to seek approval of proposed renovations to his primary residence, purchased prior to his election to the Town Council. In order to avoid any appearance of impropriety, the Ethics Commission required the petitioner to recuse from the Town Council’s appointment or reappointment of any persons to the HDC until after the election cycle for his Town Council seat following the complete resolution of the HDC’s review and approval of his renovation plans, including any appeals. See also A.O. 2019-64 (granting a hardship exception to the President of the North Smithfield Town Council and permitting him to appear before the North Smithfield Zoning Board of Review to seek a dimensional variance for his personal residence, which he purchased prior to his election, provided that he recused from the Town Council’s appointment or reappointment of any person to the Zoning Board until after the election cycle for his Town Council seat and following the complete resolution of his application before the Zoning Board, including appeals, and that, prior to the Zoning Board’s consideration of his variance

application, he informed the Zoning Board members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

Here, the Petitioner would like to construct a small portable shed in the backyard of his home where he wishes to store his and his spouse's two bicycles. The Petitioner has owned his home since 2010, which predates his election to the Town Council by eight years. Considering the Petitioner's above representations, the applicable provisions of the Code of Ethics, and consistent with past advisory opinions issued, 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. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the HDC relative to seeking permission to construct the shed, and/or before the Zoning Board in the event that the HDC denies the request and the Petitioner chooses to appeal the HDC's decision. However, in order to avoid any appearance of impropriety, the Petitioner must recuse from the Town Council's appointment or reappointment of any persons to the HDC until after the election cycle for his Town Council seat following the complete resolution of the HDC review and approval of his request to construct the shed, including any appeals. Likewise, if the Petitioner appeals an unfavorable decision by the HDC to the Zoning Board, the Petitioner must recuse from the Town Council's appointment or reappointment of any persons to the Zoning Board until after the election cycle for his Town Council seat following the complete resolution of the appellate review by the Zoning Board. Notice of recusal must be filed consistent with section 36-14-6. Additionally, the Petitioner shall, prior to his appearance before the HDC and/or the Zoning Board relative to his request or appeal, inform the HDC and/or the Zoning Board members of his receipt of the instant advisory opinion and that, consistent herewith, he will recuse from their reappointments as set forth above.

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:

A.O. 2020-34

A.O. 2019-64

A.O. 2014-4

Keywords:

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 8, 2021

Re: Michael Crawley

QUESTION PRESENTED:

The Petitioner, the Director of the Cumberland Parks and Recreation Department, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from purchasing land in the Commonwealth of Massachusetts with two individuals in connection with a new business opportunity, given that those individuals annually organize and sponsor a Halloween event at a park owned by the Town of Cumberland and what restrictions, if any, the Code of Ethics would place upon him in carrying out his public duties under these circumstances.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Director of the Cumberland Parks and Recreation Department, a municipal appointed position, is not prohibited by the Code of Ethics from purchasing land in the Commonwealth of Massachusetts with two individuals in connection with a new business opportunity, notwithstanding that those individuals annually organize and sponsor a Halloween event at a park owned by the Town of Cumberland, provided that the Petitioner follows the guidance of the Ethics Commission provided herein.

The Petitioner is the Director of the Parks and Recreation Department ("Department") in the Town of Cumberland ("Town" or "Cumberland") and has served in that position for the past 13 years. The Petitioner represents that, in his capacity as Department Director, he is responsible for overseeing all events held in Town parks, including approval of applications to rent any of the Town parks. He informs that approval of an application to rent a Town park is conditioned upon a park's availability on the date requested and that the event planned is permitted under the Town Charter and/or the Town Ordinances.

The Petitioner states that he would like to purchase a large piece of property in Palmer, Massachusetts ("land") in partnership with two other individuals for the purpose of organizing various entertainment events. He further states that, for the past six years, the two individuals have organized and sponsored a Halloween event at Diamond Hill Park, which is owned by the Town. The Petitioner explains that, each year, the individuals apply to the Department to reserve four successive weekends during which to rent the park to hold the Halloween event.¹ The Petitioner

¹ The Petitioner represents that to the extent that he is required to recuse from review of the two individuals' park rental application, he could either refer such application for review by the Parks and Recreation Commission, over

states that his partnership with the two individuals relative to the purchase of the land will be organized in an entity that is separate and apart from the entity formed by the two individuals for purposes of organizing and sponsoring the Halloween event in Cumberland. The Petitioner represents that he will not be involved with or share in the proceeds from the Halloween event in Cumberland. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may purchase the land and what restrictions, if any, the Code of Ethics would place upon him in carrying out his public duties as a Director.

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 his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if an official has reason to believe or expect that he, any person within his family, his business associate or any business by which he is employed or represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Additionally, the Code of Ethics prohibits a public official or employee 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). The Code of Ethics further provides that a public official or employee shall not accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. Section 36-14-5(b).

A public official or employee must also recuse from participation when his business associate or employer appears or presents evidence or arguments before his state or municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002) ("Regulation 1.2.1"); section 36-14-5(f). Lastly, section 36-14-5(e) ("section 5(e)") prohibits a public official or employee from representing himself, representing another person, or acting as an expert witness before a state or municipal agency of which he is a member or by which he is employed. Section 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 past, the Ethics Commission has opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or position. The Ethics Commission has consistently allowed public officials and employees to engage in secondary employment that is outside of their official public jurisdiction 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. 2018-9 (opining that a Probation and Parole Supervisor for the Rhode Island Department of Corrections ("DOC") was not prohibited by the Code of Ethics from working as a part-time counselor with a private psychiatric hospital in Massachusetts, given

which he has no appointing authority, or the two individuals could go directly to the Town Clerk Office and seek an entertainment license, the issuance of which will be considered directly by the Town Council, bypassing the Petitioner.

that there was no evidence that such private employment would either impair his independence of judgement or create an interest in substantial conflict with his public duties at the DOC, and provided that all the work was performed on his own time and without the use of public resources or confidential information obtained as part of his state employment at the DOC), A.O. 2001-46 (opining that a Bristol Police Officer assigned to the Detective Division could assist a private investigator in reviewing a criminal matter under the jurisdiction of the Massachusetts District Attorney's Office, provided that he had no involvement with matters subject to the Bristol Police Department's official jurisdiction).

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 his or her normal working hours and without the use of public resources; whether the employee is to appear before, or his or her work product is to be presented to, his or her own agency; whether such work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his or her position to solicit business or customers. See General Commission Advisory No. 2009-4.

In the present matter, based on all of the representations above, it is the opinion of the Ethics Commission that there is no evidence that the Petitioner's new private venture in Massachusetts would either impair his independence of judgement or create an interest in substantial conflict with his public duties at the Department. Accordingly, the Petitioner is not prohibited from purchasing the land in Massachusetts in partnership with the two individuals, provided that such endeavor is performed on his own time and without the use of public resources or confidential information obtained as part of his municipal employment at the Department. Nor may the Petitioner use his public position to promote his private business or list his public position as part of the advertisement of his private business. The Petitioner is reminded that he may not solicit clients for his business in Massachusetts during the hours of his public employment or from any of his subordinates in his public position.

Furthermore, the Petitioner will become a "business associate" of the two individuals if he goes into business partnership with them to purchase the land. Therefore, upon entering into a business association or partnership with the two individuals, which includes the period during which negotiations for the purchase of the land are taking place, the Petitioner is required by the Code of Ethics to recuse from taking official action, including discussions and/or decision-making, on any matter, including the approval of the park rental application for the Halloween event in Cumberland, that is likely to result in a direct financial benefit or detriment to the two individuals, or their joint business venture with the Petitioner, or in which the two individuals appear or present 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 between the Petitioner in his capacity as Department Director and the two individuals, 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)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-5(f)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2018-9

A.O. 2001-46

GCA 2009-4

Keywords:

Business Associates

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 8, 2021

Re: John A. Beauregard

QUESTION PRESENTED:

The Petitioner, a member of the North Smithfield Town Council, a municipal elected position, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon him in the discharge of his public duties, given the pending appointment of his sister to the position of Deputy Town Clerk by the Town Administrator, subject to approval by the Town Council.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Smithfield Town Council, a municipal elected position, is prohibited by the Code of Ethics from participating in discussion and voting relative to any Town Council matter in which his sister will be financially impacted, is a party or participant, will receive an employment advantage, or appears or presents evidence or arguments. However, the Petitioner is not required to recuse when his sister is before the Town Council in her official capacity as the Deputy Town Clerk, provided that all of the other requirements of Regulation 1.2.1(B)(1) are satisfied. The Petitioner is also prohibited from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of his sister. Further, the Petitioner is prohibited from participating in discussion and voting relative to any budgetary line item that addresses or affects the employment, compensation or benefits of his sister, but may vote to approve or reject a budget as a whole. The Petitioner is likewise prohibited from participating in contract negotiations concerning his sister's employment but may vote to approve or reject a collective bargaining agreement or employment contract for Town employees as a whole.

The Petitioner was elected to the North Smithfield Town Council ("Town Council") in November of 2020, and currently serves as its President. Prior to that, he served as a member of the Town Council between 2016 and 2018. He is a retired member of the Rhode Island State Police, having served in that capacity for twenty-five years. The Petitioner states that his sister has been employed by the Town of North Smithfield ("Town" or "North Smithfield") since May of 2017. He further states that his sister was originally hired as the Assistant to the Town Administrator and was later promoted to the position of Recording Clerk. The Petitioner's sister has been recommended for appointment to the position of Deputy Town Clerk by the Town Administrator, which requires the approval of the Town Council.

The Petitioner informs that the Town Council's meeting agenda for May 3, 2021, included formal notice of the appointment by the Town Administrator of the Petitioner's sister to the position of Deputy Town Clerk, subject to the approval of the Town Council. The Petitioner further informs that, prior to the Town Council's consideration of such appointment on May 3, 2021, he recused from voting or otherwise participating because of his familial relationship with the candidate. The Petitioner represents that, at the time of his recusal, a fellow member of the Town Council moved to table any Town Council action on the appointment, asserting that the Petitioner was required by the Code of Ethics to take additional action beyond his recusal. The Petitioner adds that the appointment of his sister to the position of Deputy Town Clerk remains pending.

The Petitioner states that the duties of the Deputy Town Clerk are set forth in the Town Charter and state statutes and include such other duties as the Town Administrator or the Town Council may require. The Petitioner explains that the duties required by the Town Council of the Deputy Town Clerk would include the determination of agenda items and the maintaining of minutes during a Town Council meeting, but only in the event of the Town Clerk's unavailability. The Petitioner informs that the Deputy Town Clerk reports directly to the Town Clerk, who reports directly to the Town Administrator. The Petitioner states that the Town Council might be called upon to participate in discussion or decision-making relative to a budgetary line item that would address or affect the Deputy Town Clerk's compensation, adding that he would recuse from all participation in such activity. He further informs that a collective bargaining agreement or employee contract for a North Smithfield employee, which might include the position of Deputy Town Clerk, requires final approval by the Town Council, but that the Town Council is not involved in the negotiation of such a collective bargaining agreement or employment contract.

The Petitioner represents that, were his sister to appear before the Town Council, it would likely be solely in her public capacity as the Deputy Town Clerk and, were that not the case, the Petitioner would recuse from participation in the matter or seek further guidance from the Ethics Commission. It is in the context of these representations that the Petitioner seeks general guidance from the Ethics Commission regarding what limitations, if any, the Code of Ethics places upon him in the discharge of his public duties, given the pending appointment of his sister to the position of Deputy Town Clerk.

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

Participation in Matters That Involve or Financially Impact the Petitioner's Sister

In addition to the above-cited provisions, the Code of Ethics contains specific regulations aimed at curbing nepotism. Under the general nepotism provisions of Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”), a public official shall not participate in any matter as part of his public duties if he has reason to believe or expect that any person within his family or any household member is a party to or a participant in such matter, or will derive a direct monetary gain, suffer a direct monetary loss, or obtain an employment advantage. Regulation 1.3.1(B)(1). See, e.g., A.O. 2013-8 (opining that a Bristol Town Council member was prohibited by the Code of Ethics from participating in the Town Council’s appointment of a new harbor master and review of any amendments to the harbor master’s job description, given that his brother was then serving as interim harbor master and was also one of nineteen applicants for the permanent harbor master position). The definition of “any person within his [] family” specifically includes sister. Regulation 1.3.1(A)(2). Notably, Regulation 1.3.1(B)(1) not only prohibits actions by a public official that would financially impact his family member, but also applies when such actions involve a family member as a party or participant, regardless of the potential for financial impact. Further, under Regulation 1.3.1(B)(1), a public official is prohibited from participating in matters that may bestow an employment advantage upon a family member. Such an advantage, which might not appear to be a direct financial gain, could be some type of opportunity (such as an educational or travel experience) or resource (such as access to enhanced technology) that the family member would not otherwise have had.

Buttressing the nepotism prohibitions within the Code of Ethics, Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”) states that a public official must also recuse from participation in his official capacity when any person within his family or household appears or presents evidence or arguments before his municipal agency. The exception found at Regulation 1.2.1(B)(1) states that a public official is not required to recuse pursuant to this or any other provision of the Code of Ethics when his family or household member is before his municipal agency solely in an official capacity as a duly authorized member or employee of another municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the family member is not otherwise a party or participant, and has no personal financial interest in the matter under discussion. See, e.g., A.O. 2018-59 (opining that a member of the Westerly Town Council was not prohibited from participating in the Town Council’s discussions and decision-making relative to matters involving the Westerly School Committee and/or the Elementary School Redesign Committee, notwithstanding that his wife was then serving on both committees, provided that neither the petitioner nor his wife had a personal financial interest in any matter under discussion and that all other requirements of what is now Regulation 1.2.1(B)(1) were satisfied).

In summary, in the event that the Petitioner’s sister is a party to or participant in a matter before the Town Council, or will be directly financially impacted or obtain an employment advantage by the Town Council’s decision-making, or appears or presents evidence or arguments before the Town Council, the Petitioner is required to recuse consistent with section 36-14-6. However, were the Petitioner’s sister to appear before the Town Council solely in her public capacity as the Deputy

Town Clerk, a duly appointed employee of the Town, the Petitioner would not be required by the Code of Ethics to recuse, provided that all of the other requirements of Regulation 1.2.1(B)(1) were also satisfied.

Participation in Supervision and Evaluation of the Petitioner's Sister

Regulation 1.3.1 prohibits a public official from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of any person within his family, or from delegating such tasks to a subordinate, except in accordance with advice received in a formal advisory opinion from the Ethics Commission. Regulation 1.3.1(B)(2)(a)&(b). See, e.g., A.O. 2016-26 (opining that a lieutenant in the East Greenwich Fire Department was not prohibited from serving in that position upon the hiring of his brother as a probationary firefighter in the same department, provided that certain procedures were followed so that the lieutenant was removed from personnel decisions or other matters that particularly affected his brother). Here, the Petitioner represents that he recused from participation in the consideration by the Town Council of the Town Administrator's appointment of his sister to the position of Deputy Town Clerk, and that he will continue to do so when the matter next goes before the Town Council for consideration. He adds that he will play no role in his sister's supervision should the other members of the Town Council approve her appointment. The Petitioner is, nonetheless, reminded that he is prohibited from participating in matters that involve the supervision, evaluation, appointment, classification, promotion, transfer or discipline of his sister.

Participation in Budgets

Regulation 1.3.1 also addresses a public official's participation in budget matters that could financially impact or involve the public official's family member. Specifically, a public official is prohibited from participating "in discussion or decision-making relative to a budgetary line item that would address or affect the employment, compensation or benefits of any person within his [] family." Regulation 1.3.1(B)(3)(a). However, Regulation 1.3.1(B)(3)(c) provides that a public official is not prohibited from participating "in discussion or decision-making relative to approving or rejecting the entire budget as a whole, provided that the person within his [] family . . . is impacted by the entire budget as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class." See, e.g., A.O. 2020-44 (opining, among other things, that a member of the Town of New Shoreham Town Council was prohibited from participating in discussion and voting relative to any budgetary line item that would address or affect the employment, compensation or benefits of his brother; however, that petitioner could participate in the Town Council's discussion and vote relative to approving or rejecting the entire budget as a whole). The basis for allowing participation relative to the budget as a whole is an assumption that a vote on the entire budget is sufficiently remote from most particular line items so as to not constitute a substantial conflict of interest in violation of the Code of Ethics. Therefore, as appropriately anticipated by the Petitioner, while he is prohibited from participating in the Town Council's discussion and voting relating to budgetary line items that would address or affect the employment, compensation or benefits of his sister, the Petitioner may participate in the Town Council's discussion and vote to approve or reject the entire budget as a whole.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also addresses a public official's participation in collective bargaining/employee contracts. It specifically prohibits a public official from participating in negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of any person within his family or a household member. 1.3.1(B)(4)(a). However, a public official may participate in a decision to accept or reject an entire employee contract or collective bargaining agreement as a whole, provided that the person within his family or his household member is impacted by the contract or agreement as a member of a significant and definable class of persons, and not individually or to any greater extent than any other similarly situated member of the class. 1.3.1(B)(4)(b). The basis for allowing such participation is an assumption that a vote on an entire contract, once negotiated by others, is sufficiently remote from individual contract issues impacting a family member so as to not constitute a substantial conflict of interest in violation of the Code of Ethics.

Here, the Petitioner states the Town Council is not involved in negotiating a collective bargaining agreement or employee contract for North Smithfield employees, which might include the position of Deputy Town Clerk, but is tasked with voting to approve or reject a final collective bargaining agreement or employee contract as a whole. Although the Petitioner is permitted to participate in the overall vote to approve or reject a collective bargaining agreement or employee contract as a whole, the Ethics Commission is aware that a general discussion can quickly devolve into a more specific review of contractual provisions. As such, the Petitioner must be vigilant about identifying such instances where a general conversation begins to focus on individual aspects of the contract that are likely to financially impact his sister. Should those circumstances arise, the Petitioner must recuse from further participation consistent with section 36-14-6 or seek further guidance from the Ethics Commission.

Conclusion

In conclusion, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from participating in discussion and voting relative to any Town Council matter in which his sister will be financially impacted, is a party or participant, will receive an employment advantage, or appears or presents evidence or arguments. However, the Petitioner is not required to recuse when his sister is before the Town Council in her official capacity as the Deputy Town Clerk, provided that all of the other requirements of Regulation 1.2.1(B)(1) are satisfied. The Petitioner is also prohibited from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of his sister. Further, the Petitioner is prohibited from participating in discussion and voting relative to any budgetary line item that addresses or affects the employment, compensation or benefits of his sister, but may vote to approve or reject a budget as a whole. The Petitioner is likewise prohibited from participating in contract negotiations concerning his sister's employment but may vote to approve or reject a collective bargaining agreement or employee contract for Town employees as a whole. Notice of recusal in any instance shall be filed with the Ethics Commission 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 are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

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

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

Related Advisory Opinions:

A.O. 2020-44

A.O. 2018-59

A.O. 2016-26

A.O. 2013-8

Keywords:

Budget

Collective Bargaining

Nepotism

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: June 8, 2021

Re: Adam Schatz

QUESTION PRESENTED:

The Petitioner, who has applied to fill a current vacancy on the Burrillville Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics will place upon him in carrying out his Zoning Board duties if appointed, given that his father-in-law currently serves as the Town's Building Official.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, if appointed to fill a current vacancy on the Burrillville Zoning Board of Review, a municipal appointed position, will be prohibited by the Code of Ethics from participating in discussion and voting relative to any Zoning Board matter in which his father-in-law will be financially impacted, is a party or participant, will receive an employment advantage, or appears or presents evidence or arguments. Specifically, the Petitioner will be required to recuse from participation in appeals to the Zoning Board by parties aggrieved by a decision of the Building Official and from appeals to the Zoning Board by parties seeking a determination of compliance with the zoning chapter of the Town's Code of Ordinances. However, the Petitioner will not be required to recuse when his father-in-law is before the Zoning Board in his official capacity as the Town Building Official to participate in non-adversarial information sharing or coordination of activities between the Building Official and the Zoning Board, and provided that all of the other requirements of Regulation 1.2.1(B)(1) are satisfied.

The Petitioner has applied to fill a current vacancy on the Town of Burrillville Zoning Board of Review ("Zoning Board"). The Petitioner, who is privately employed by a medical software company, has not previously served in an elected or appointed public position. The responsibility for appointing members to the Zoning Board lies with the Burrillville Town Council ("Town Council"). The Petitioner states that he was approached by a member of the Screening Committee for the vacant position who, after speaking with the Town's Solicitor, recommended that the Petitioner seek an advisory opinion from the Ethics Commission concerning his application, given that the Petitioner's father-in-law is currently employed by the Town of Burrillville ("Town") as its Building Official. The Petitioner states that his father-in-law has served in that capacity for more than twenty years.

The Petitioner cites among the responsibilities of the Zoning Board the following: hearing and deciding zoning appeals; authorizing variances and special use permits; and referring matters to the Planning Board or to other municipal boards and agencies, as appropriate, for findings and recommendations. The Petitioner cites among the duties of the Building Official the following: keeping public records of Town construction; promoting standards for existing dwellings; enforcing adequate and uniform building regulations; and issuing building, plumbing, mechanical, and electrical permits. The Petitioner states that, with specific regard to zoning, the Building Official serves to promote the public health, safety and general welfare of Town citizens; provide for orderly growth and development in the Town; provide procedures for the administration of the Town's Code of Ordinances; and provide procedures for the administration of the Zoning Board.

The Petitioner states that the Building Official, in his capacity as the Town's zoning enforcement officer, may not issue a certificate for any use not specifically permitted in the Town's Code of Ordinances, except when the Zoning Board issues a written statement granting a resident's appeal or request for a special use permit or variance.¹ The Petitioner further states that an appeal to the Zoning Board from a decision of any other zoning enforcement agency or officer may be taken by an aggrieved party, and that the zoning enforcement agency or officer from whom the appeal is taken shall then forthwith transmit to the Zoning Board all of the papers constituting the record upon which the action appealed from was taken. The Petitioner adds that, per the Building Official, such appeals do not occur with any frequency, as it is much more common for an individual to simply submit a request for a variance or a special use permit.

The Petitioner represents that the Building Official, in his capacity as the Town's zoning enforcement officer, is tasked with responding in writing within (15) days to a party who has submitted a written request seeking guidance or clarification regarding the determination of compliance with the zoning chapter of the Town's Code of Ordinances. The Petitioner explains that, in the event that no written response is provided by the Building Official within (15) days, the requesting party shall have the right to appeal to the Zoning Board for the determination. The Petitioner informs that, in response to his inquiry of the Building Official, he was told that the Building Official strives to provide guidance within the parameters of the outlined time frame and, in the Building Official's experience, appeals of this nature are not submitted with any frequency.

The Petitioner represents that the Building Official is hired by, and reports directly to, the Town Manager, over whom the Zoning Board has neither appointing nor supervisory authority. He further represents that the Building Official attends Zoning Board meetings for the purpose of answering questions posed by Zoning Board members based upon his professional knowledge and experience in matters concerning the Town Zoning Ordinance. The Petitioner states that, in the event that he is appointed to serve as a member of the Zoning Board, he will not be tasked in that capacity with the supervision, evaluation, appointment, classification, promotion, transfer, or discipline of the Building Official. He further states that he will not be involved with any budgeting or employee contract matters that affect the Building Official, adding that the responsibility for those matters lies with the Town Council. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission concerning what

¹ The Petitioner states that the Building Official may also issue a certificate when the Town Council issues a written statement specifying an amendment to the Town's Code of Ordinances.

restrictions, if any, the Code of Ethics will place upon him in carrying out his public duties if he is selected to fill the vacancy on the Zoning Board.

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

In addition to the above-cited provisions, the Code of Ethics contains specific regulations aimed at curbing nepotism. Under the general nepotism provisions of Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”), a public official shall not participate in any matter as part of his public duties if he has reason to believe or expect that any person within his family or any household member is a party to or a participant in such matter, or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage. Regulation 1.3.1(B)(1). See, e.g., A.O. 2013-8 (opining that a Bristol Town Council member was prohibited by the Code of Ethics from participating in the Town Council’s appointment of a new harbormaster and the Town Council’s review of any amendments to the harbormaster’s job description, given that his brother was then serving as the interim harbormaster and was also one of nineteen applicants for the permanent harbormaster position). The definition of “any person within his [] family” specifically includes father-in-law. Regulation 1.3.1(A)(2). Notably, Regulation 1.3.1(B)(1) not only prohibits actions by a public official that would financially impact his family member, but also applies when such actions involve a family member as a party or participant, regardless of the potential for financial impact. Further, under Regulation 1.3.1(B)(1), a public official is prohibited from participating in matters that may bestow an employment advantage upon a family member. Such an advantage, which might not appear to be a direct financial gain, could be some type of opportunity (such as an educational or travel experience) or resource (such as access to enhanced technology) that the family member would not otherwise have had.

Buttressing the nepotism prohibitions within the Code of Ethics, Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”) states that a public official must also recuse from participation in his official capacity when any person within his family appears or presents evidence or arguments before his municipal agency. The exception found at Regulation 1.2.1(B)(1) states that a public official is not required to recuse pursuant to this or any other provision of the Code when his family member is before his municipal agency solely in an official capacity as a duly authorized member or employee of another municipal agency, to participate in non-adversarial information sharing or coordination of activities between the two agencies, provided that the family member is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion. See, e.g., A.O. 2018-59 (opining that a member of the Westerly Town Council was

not prohibited from participating in the Town Council's discussions and decision-making relative to matters involving the Westerly School Committee and/or the Elementary School Redesign Committee, notwithstanding that his wife was then serving on both committees, provided that neither the petitioner nor his wife had a personal financial interest in any matter under discussion and that all other requirements of what is now Regulation 1.2.1(B)(1) were satisfied).

In conclusion, it is the opinion of the Ethics Commission that, if selected to fill the vacancy on the Zoning Board, the Petitioner will be prohibited by the Code of Ethics from participating in discussion and voting relative to any Zoning Board matter in which his father-in-law will be financially impacted, is a party or participant, will obtain an employment advantage, or appears or presents evidence or arguments. Specifically, the Petitioner will be required to recuse from participation in appeals to the Zoning Board by parties aggrieved by a decision of the Building Official and from appeals to the Zoning Board by parties seeking a determination of compliance with the zoning chapter of the Town's Code of Ordinances. However, the Petitioner will not be required to recuse when his father-in-law is before the Zoning Board in his official capacity as the Building Official to participate in non-adversarial information sharing or coordination of activities between the Building Official and the Zoning Board, and, provided that all of the other requirements of Regulation 1.2.1(B)(1) are satisfied. All recusals shall be made consistent with the provisions set forth in 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 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.

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Related Advisory Opinions:

A.O. 2018-59

A.O. 2013-8

Keywords:

Nepotism