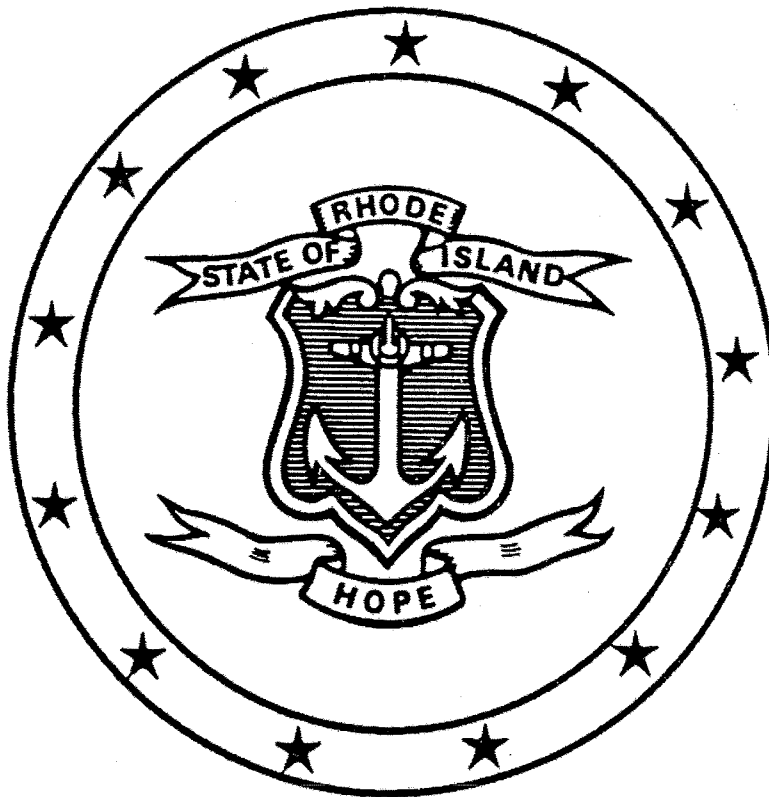


Rhode Island Ethics Commission

Meeting Materials



August 17, 2021

Rhode Island Ethics Commission

Open Session Meeting Materials



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

12th Meeting

DATE: Tuesday, August 17, 2021

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

1. Call to Order.
2. Motion to approve minutes of Open Session held on June 29, 2021.
3. 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.
4. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on June 29, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Steven Merolla, Complaint No. 2020-6, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Anthony Piloizzi, Complaint No. 2021-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- d.) Motion to return to Open Session.
- 5. Motion to seal minutes of Executive Session held on August 17, 2021.
- 6. Report on actions taken in Executive Session.
- 7. Advisory Opinions.
 - a.) The Honorable Steven A. Moretti, an Associate Judge of the Cranston Municipal Court, who in his private capacity is a practicing attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the Cranston City Council, and from representing clients charged with criminal offenses by the Cranston Police Department. [Staff Attorney Radiches]
 - b.) Robert R. Moreau, Executive Director for the Woonsocket Housing Authority, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon him in carrying out his official duties, given that his sister is employed by the Woonsocket Housing Authority as a Data Entry Clerk. [Staff Attorney Radiches]
 - c.) Thomas R. Doyle, a member of the New Shoreham Sewer Commission, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on appearing before an agency of which he is a member in order to appeal a sewer assessment against his personal residence. [Staff Attorney Papa]
 - d.) Robert Almeida, the Supervising Forensic Scientist for the Rhode Island Department of Health, requests an advisory opinion regarding whether the Code of Ethics prohibits him from working, on his own time, as a private consultant on matters outside of and with no relation to the State of Rhode Island. [Staff Attorney Papa]
 - e.) William J. Fazioli, the Chairperson of the East Providence Waterfront District Commission, who also serves as the Director of the Department of Planning and Economic Development for the City of East Providence, requests an advisory opinion regarding whether the Code of Ethics prohibits his simultaneous service in both positions. [Staff Attorney Papa]
 - f.) Stephen R. Ucci, a former legislator who served as a member of the Rhode Island House of Representatives, requests an advisory opinion regarding whether he may, prior to the expiration of one year after leaving legislative office, accept an appointment by the Speaker of the Rhode Island House of Representatives to the Special Commission on Reapportionment. [Staff Attorney Papa]

8. Education update.
9. New Business proposed for future Commission agendas and general comments from the Commission.
10. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on August 12, 2021

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

June 29, 2021

The Rhode Island Ethics Commission remotely conducted its 11th meeting of 2021 in Zoom webinar format at 9:00 a.m. on Tuesday, June 29, 2021, pursuant to the notice published at the Commission offices, 40 Fountain Street, Providence, Rhode Island, and electronically with the Rhode Island Secretary of State.¹

The following Commissioners were present:

Arianne Corrente, Acting Chair
Kyle P. Palumbo, Secretary
Lauren E. Jones

Matthew D. Strauss
Holly J. Susi

The following Commissioners were not present: Marisa A. Quinn; M. Therese Antone; J. Douglas Bennett; and Timothy Murphy.

Also present were Herbert F. DeSimone, Jr., Commission Legal Counsel; Jason Gramitt, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Lynne Radiches, Staff Attorney/Education Coordinator; Staff Attorneys Teresa Giusti and Teodora Popova Papa; and Commission Investigators Steven T. Cross, Peter J. Mancini, and Gary V. Petrarca.

At 9:01 a.m., the Acting Chair opened the meeting.

The first order of business was:

**Discussion of Remote Meeting Format; Identifying and
Troubleshooting any Remote Meeting Issues.**

Executive Director Gramitt stated that the Commission has been operating pursuant to the Governor's executive orders allowing public bodies to conduct remote meetings during the COVID-19 pandemic. He explained that Governor McKee issued a new order, Executive Order 21-72, after the Commission posted the agenda for today's meeting. Executive Director Gramitt stated that the Commission will consider the draft advisory opinions noticed for today in Open Session after which it will convene in a separate Executive Session and then return to this Open Session to provide a live report on all actions taken in Executive Session. He informed that copies of today's agenda and draft advisory opinions are accessible on the Commission's website under

¹ On March 9, 2020, former Governor Gina Raimondo declared a state of emergency due to the dangers to health and life posed by COVID-19. In furtherance thereof, the former Governor issued Executive Order 20-46 on June 12, 2020, which, in part, relieved public bodies from the prohibitions regarding the use of telephonic or electronic communication to conduct meetings set forth under the Rhode Island Open Meetings Act. The issuance of Executive Order 21-72 by Governor Daniel McKee on June 24, 2021, supersedes Executive Order 20-46 and extends said relief through July 23, 2021.

the link for Meeting Materials, and a written report of all actions taken in Executive Session will be published and available on the website after the meeting ends or can be made available by calling the Commission's office.

The next order of business was:

Approval of minutes of the Open Session held on June 8, 2021.

Upon motion made by Commissioner Jones and duly seconded by Commissioner Susi, it was

VOTED: To approve the minutes of the Open Session held on June 8, 2021.

AYES: Lauren E. Jones; Kyle P. Palumbo; Matthew D. Strauss; and Holly Susi.

ABSTENTION: Arianne Corrente.

The next order of business was:

Director's Report: Status report and updates.

a.) Discussion of impact of COVID-19 crisis on Ethics Commission operations and staffing

Executive Director Gramitt explained that Executive Order 21-72 will expire on July 23, 2021. He stated that legislation to allow remote meetings to continue permanently subject to a sunset provision passed in the House of Representatives last Friday and is now before the Senate for its vote. He further stated that there is also a Senate version of the same bill that passed in the House, but the Senate version has not left the Senate committee yet. In response to Commissioner Jones, Executive Director Gramitt stated that the two bills originated with a working group comprised of several state agencies. He noted that, absent legislative action, it is likely that the next Commission meeting will be held in-person.

b.) Complaints and investigations pending

There are three active cases pending. Executive Director Gramitt informed that a probable cause hearing has been noticed in the Alba matter for today in Executive Session as well as a motion for an extension of time in Smiley.

c.) Advisory opinions pending

There are three advisory opinions noticed for today's meeting and seven or eight are pending.

d.) Access to Public Records Act requests since last meeting

There were four APRA requests received since the last meeting, three of which were granted within one business day while one required a few days but was still granted

within the 10-day statutory period. Executive Director Gramitt informed that one request related to a complaint, one to a recusal, one to an advisory opinion, and one to financial disclosure.

e.) Financial Disclosure: Update on upcoming 2020 filing period

Executive Director Gramitt informed that the 60-day extension period requested by some filers expires today. He stated that the compliance rate is currently at 97%, largely due to the staff's creation of and adherence to a formalized enforcement schedule. Executive Director Gramitt stated there are approximately 140 non-filers remaining and the staff is now determining the next enforcement step with respect to filing complaints.

The next order of business was:

Advisory Opinions.

The advisory opinions were based on draft advisory opinions prepared by Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of:

James B. King Jr., a member of the Jamestown 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 the municipal agency of which he is a member to seek a setback variance in order to construct a garage on his personal residence.

Staff Attorney Popova Papa presented the Commission Staff recommendation. The Petitioner was not present nor was his attorney. Staff Attorney Popova Papa informed that Attorney Infantolino had represented to her that he would attend but had also consented to the Commission proceeding in their absence. Upon motion made by Commissioner Jones and duly seconded by Commissioner Palumbo, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to **James B. King Jr.**, a member of the Jamestown Zoning Board of Review.

The next advisory opinion was that of:

Matthew McGeorge, AIA, LEED AP, the chairperson 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 another person before the municipal agency of which the Petitioner is a member.

Staff Attorney Popova Papa presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney Popova Papa stated that she was unable to reach him

about his attendance today but that the Commission has proceeded in his absence in the past. Upon motion made by Commissioner Susi and duly seconded by Commissioner Jones, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to **Matthew McGeorge, AIA, LEED AP**, the chairperson of the East Greenwich Historic District Commission, who in his private capacity is an architect.

The final advisory opinion was that of:

David DeCost, Jr., a principal engineer for the Rhode Island Department of Environmental Management's Division of Planning and Development, who in his private capacity owns and operates an apple cider orchard, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from applying for a Local Agriculture and Seafood Act Grant advertised by the Rhode Island Department of Environmental Management's Division of Agriculture and, if so, whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the state agency by which he is currently employed for purposes of seeking the grant.

Staff Attorney Radiches presented the Commission Staff recommendations for two versions of the advisory opinion drafted for the Petitioner. She informed the Commission that both versions contained the same facts and citations to the Code but had different legal analyses and recommendations for the Commission's consideration. The Petitioner was present via video link. Staff Attorney Radiches explained that she learned a few days earlier that the Petitioner did not disclose his full-time position with the Rhode Island Department of Environmental Management's ("DEM") Division of Planning and Development on his grant application. The Petitioner experienced technical issues during Staff Attorney Radiches' presentation but was able to rejoin the meeting.

The Petitioner addressed the Commission and provided some background on his farm and thanked the Commission for its consideration of this matter. In response to Commissioner Jones, the Petitioner confirmed that the loan and monitoring process falls under the DEM's Division of Agriculture and that the Division of Planning and Development, within which he works, is not involved with grants, funding, or monitoring the application process. In response to Commissioner Palumbo, the Petitioner affirmed that the monitoring of grant funds relates to whether the applicant uses the funds for which he has applied in conformance with the manner stated in the grant application. Commissioner Palumbo proposed a modification to the advisory opinion to state that the Petitioner was not required to disclose his position with DEM on his grant application. Staff Attorney Radiches stated that while that information is contained in the facts, she proposed adding language on page two of the draft to reflect that the Petitioner did not disclose his position on the application.

In response to Commissioner Strauss, the Petitioner explained that included within the DEM are the Environmental Protection Bureau and the Bureau of Natural Resources. He also explained the relationship between the DEM's Division of Planning and Development and the Division of Agriculture. He represented that he is not aware of any overlap between the divisions

during his five years of employment at DEM. Commissioner Susi expressed concern over the fact that the Petitioner's name is on the grant application and inquired whether there is anyone on the advisory committee with whom he might be acquainted. The Petitioner stated that he does not know any of the advisory committee members personally. Commissioner Susi suggested the addition of a sentence at the end of the draft relating to the Petitioner's non-disclosure of his employment at DEM on his application.

In response to Legal Counsel DeSimone, Staff Attorney Radiches stated her understanding that the following language will be added at the end of version two: (1) before the last sentence in the first full paragraph on page two, "The Petitioner represents that he did not disclose his full-time employment as a principal civil engineer in the DEM's Division of Planning & Development on his LASA Grant application;" (2) before the Conclusion on page seven, language supporting that the determination by a DEM employee of whether the Petitioner's grant award is being used in conformance with the methods stated in his application is, arguably, ministerial, given the Petitioner's having specifically identified his intended use of the grant award as the purchase of apple processing equipment; and (3) to the very last sentence of the advisory opinion, "provided that he does not use or attempt to use his official position to influence the monitoring by a DEM employee of the use of any grant award the Petitioner might receive."

In response to Acting Chair Corrente, Legal Counsel DeSimone advised that the Commission should move to accept advisory opinion version two as amended. Upon motion made by Commissioner Jones and duly seconded by Commissioner Susi, it was unanimously

VOTED: To issue an advisory opinion version two, as amended and attached hereto, to **David DeCost, Jr.**, a principal engineer for the Rhode Island Department of Environmental Management's Division of Planning and Development, who in his private capacity owns and operates an apple cider orchard.

The next order of business was:

**New Business proposed for future Commission agendas and
general comments from the Commission.**

There was none.

At 9:52 a.m., upon motion made by Commissioner Jones and duly seconded by Commissioner Susi, it was unanimously

VOTED: To go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on June 8, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Suzanna Alba, Complaint No. 2020-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

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

d.) Motion to return to Open Session.

At 10:55 a.m., the Commission reconvened in Open Session.

The next order of business was:

Motion to seal minutes of Executive Session held on June 29, 2021.

Upon motion made by Commissioner Jones and duly seconded by Commissioner Susi, it was unanimously

VOTED: To seal the minutes of the Executive Session held on June 29, 2021.

The next order of business was:

Report on actions taken in Executive Session.

Acting Chair Corrente reported that the Commission took the following actions in Executive Session, which information will also be available on the Commission's website:

1. Voted (4-0) to approve the minutes of the Executive Session held on June 8, 2021.

[Reporter's Note: The vote was as follows:

AYES: Lauren E. Jones; Kyle P. Palumbo; Matthew D. Strauss; and Holly Susi.

ABSTENTION: Arianne Corrente.]

2. Voted (4-1) in the matter of **In re: Suzanna Alba**, Complaint No. 2020-5, to find that probable cause does not exist to believe that the Respondent committed a knowing and willful violation of the Code of Ethics and to dismiss the Complaint.

[Reporter's Note: The vote was as follows:

AYES: Arianne Corrente; Lauren E. Jones; Matthew D. Strauss; and Holly Susi.

NOES: Kyle P. Palumbo.]

3. Unanimously voted (5-0) in the matter of **In re: Brett Smiley**, Complaint No. 2021-1, to enlarge time for investigation for 60 days.
4. Unanimously voted (5-0) to return to Open Session.

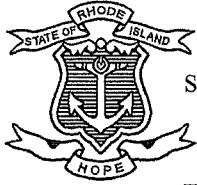
At 11:00 a.m., upon motion made by Commissioner Palumbo and duly seconded by Commissioner Jones, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

Kyle P. Palumbo
Secretary

A



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Fax Number: 222-3382
ethics.email@ethics.ri.gov
<https://ethics.ri.gov>

August 5, 2021

The Honorable Steven A. Moretti
1140 Reservoir Avenue
Cranston, RI 02920

Dear Judge Moretti:

In response to your request for an Advisory Opinion, enclosed is a Draft Opinion that has been prepared by Commission staff. This Draft Opinion will be considered by the Commission on August 17, 2021, at 9:00 a.m., in Open Session. If approved, the Commission will issue a formal Advisory Opinion, a copy of which will be mailed to you.

The meeting will be held at the Rhode Island Ethics Commission, Hearing Room – 8th Floor, 40 Fountain Street, Providence, RI 02903. You are strongly encouraged to attend this meeting.

If you have any questions, please contact this office.

Very truly yours,

Jason Gramitt, Esq.
Executive Director

JG:cma

Enclosure

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 17, 2021

Re: The Honorable Steven A. Moretti

QUESTION PRESENTED:

The Petitioner, an Associate Judge of the Cranston Municipal Court, a municipal appointed position, who in his private capacity is a practicing attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the Cranston City Council, and from representing clients charged with criminal offenses by the Cranston Police Department.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an Associate Judge of the Cranston Municipal Court, a municipal appointed position, who in his private capacity is a practicing attorney, is not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the Cranston City Council, and from representing clients charged with criminal offenses by the Cranston Police Department, provided that the representation is not related to a matter in which he is involved as an Associate Judge of the Cranston Municipal Court or over which the Cranston Municipal Court has jurisdiction.

The Petitioner was recently appointed by the Cranston City Council ("City Council") to serve as an Associate Judge of the Cranston Municipal Court ("Municipal Court"). According to the City of Cranston's website, in addition to the Chief Judge and the Senior Associate Judge, there are five Associate Judges who serve on the Municipal Court, which is authorized to adjudicate certain state moving traffic violations, all local Cranston ordinance offenses (such as parking and zoning), and minimum housing code violations.¹ The Petitioner states that no bail hearings are conducted in the Municipal Court. The Petitioner further states that police officers in the City of Cranston ("City" or "Cranston") have the discretion to summon individuals who are issued traffic tickets to either the Municipal Court or to the Rhode Island Traffic Tribunal ("Traffic Tribunal"), but not both, explaining that the Municipal Court and the Traffic Tribunal have concurrent jurisdiction over traffic offenses.

The Petitioner represents that, in his private capacity, he is an attorney with a busy general practice, and that many of his clients are Cranston residents and/or have matters which would involve an

¹ <http://www.cranstonri.gov/municipal-court-directory/> (last accessed August 3, 2021).

appearance before or contact with various Cranston agencies and City personnel. The Petitioner anticipates that he would be asked by clients to appear before the Cranston Probate Court, the Cranston Zoning Board of Review and, perhaps less frequently, before the City Council. The Petitioner explains that, due in large part to his present focus on corporate real estate work, when asked to represent clients charged with criminal offenses by the Cranston Police Department, he refers such matters to attorneys outside of his law firm ("referral counsel"). The Petitioner states that matters involving individuals charged with criminal offenses by the Cranston Police Department are primarily addressed in the District and Superior Courts, the Traffic Tribunal, and the Municipal Court. The Petitioner further states that the only circumstances under which the Petitioner would seek to represent an individual in such a matter (in all but the Municipal Court) would be if the attorney to whom he had referred the matter was unable to attend a hearing.

Cognizant of the fact that he would be prohibited from representing clients before the Municipal Court, the Petitioner represents that, in the event that referral counsel is unavailable to attend a hearing in Municipal Court on behalf of a client that had been referred by the Petitioner, the Petitioner would not represent said client in referral counsel's absence. He adds that, in the event that he is presiding in Municipal Court on a matter in which a litigant is represented by referral counsel, the Petitioner would recuse from participation in said matter. It is in the context of each of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether he may represent clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the City Council, and represent clients charged with criminal offenses by the Cranston Police Department in the District and Superior Courts and before the Traffic Tribunal.

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) ("Section 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 any business by which he is employed or which he 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 from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d) ("section 5(d)"). Further, the Code of Ethics provides that a public official 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) ("section 5(b)").

The Code of Ethics also prohibits a public official from representing himself or any other person before a municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. Section 36-14-5(e)(1) & (2) ("section 5(e)"). A person represents himself or another person before an agency when he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in his favor or in favor of another person. Section 36-14-2(12) & (13); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) & (2) Representing Oneself or Others, Defined (36-14-5016). Under the Code of Ethics, a public official must also recuse himself from participation in a matter when his

business associate or employer, or a person authorized by his business associate or employer, appears or presents evidence or arguments before his 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"); Section 36-14-5(f). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). Notices of recusal shall be filed consistent with the provisions of section 36-14-6.

The Ethics Commission has consistently opined that the Code of Ethics does not prohibit municipal judges from representing clients in matters before other municipal bodies where said municipal judges do not have jurisdiction over such matters in their judicial roles. For example, in Advisory Opinion 2003-71, the Ethic Commission opined that a Tiverton Municipal Court Judge could represent private clients before the Tiverton Town Council, the Tiverton Zoning Board of Review, and other municipal bodies, including individuals charged with criminal offenses by the Tiverton Police Department, provided that the representation was not related to a matter in which the petitioner was involved in his capacity of Municipal Court Judge or over which the Tiverton Municipal Court had jurisdiction. See also A.O. 2007-12 (opining that a judicial candidate for the Providence Housing Court could continue his private practice of law before various agencies within the City of Providence if appointed to the Providence Housing Court, provided that he did not represent clients before the Providence Housing Court); A.O. 2005-29 (opining that a Gloucester Probate Court Judge could represent private clients before the Gloucester Zoning Board, provided that the cases were not related to matters in which the petitioner was involved as Probate Court Judge or over which the Probate Court had jurisdiction); A.O. 2003-34 (opining that a Newport Municipal Court Judge could represent clients before the Newport Zoning Board of Review, provided that the cases were not related to matters in which the petitioner was involved as Newport Municipal Court Judge or over which the Newport Municipal Court had jurisdiction).

The Ethics Commission further determined in Advisory Opinion 2003-71 that the fact that the petitioner had received his appointment from the Tiverton Town Council did not *per se* prohibit him from appearing before other Tiverton agencies, absent some indication of the potential for improper influence. The Ethics Commission further opined that the prohibitions contained in sections 5(a), 5(b), and 5(d) of the Code of Ethics were not applicable simply because of the petitioner's position as a municipal court judge and that the existence of prohibited conflicts of interest required a matter-by-matter analysis. Finally, because the petitioner was not a member or employee of the various municipal bodies before which he wished to appear, the prohibitions set forth in section 5(e) did not apply.

Accordingly, based on the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may represent clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the Cranston City Council, and may represent clients charged with criminal offenses by the Cranston Police Department in the District and Superior Courts and before the Traffic Tribunal, provided that the representation is not related to a matter in which the Petitioner is involved as an Associate Justice of the Cranston Municipal Court or over which the Cranston Municipal Court has jurisdiction. Additionally, the fact the Petitioner received his appointment from the City Council does not *per se* prohibit him from appearing before the City Council other Cranston

agencies, absent some indication of the potential for improper influence. Also, the prohibitions contained in sections 5(a), 5(b), and 5(d) of the Code of Ethics are not applicable simply because of the Petitioner's position as an Associate Justice of the Municipal Court. Rather, the existence of a prohibited conflict of interest requires a matter-by-matter analysis. Finally, since the Petitioner is not a member or employee of any of the municipal bodies before which he wishes to appear, the prohibitions set forth in section 5(e) do not apply.

The Ethics Commission notes that a "business associate" relationship potentially could exist between the Petitioner and referral counsel, dependent upon the particulars of their financial relationship. The existence of such a relationship would additionally trigger the prohibitions contained in Regulation 1.2.1 and section 5(f) of the Code of Ethics, requiring the Petitioner to recuse from presiding over matters where his business associate represents himself/herself or others before the Municipal Court. The Ethics Commission recognizes and supports the Petitioner's preparedness to so recuse in such a situation.

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 herein. 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 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(12)

§ 36-13-2(13)

§ 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-00-00-1.1.4 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. 2007-12

A.O. 2005-29

A.O. 2003-71

A.O. 2003-34

Keywords:

Business Associate

Private Employment

DRAFT

B



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Fax Number: 222-3382
ethics.email@ethics.ri.gov
<https://ethics.ri.gov>

August 5, 2021

Robert R. Moreau
Woonsocket Housing Authority
679 Social Street
Woonsocket, RI 02895

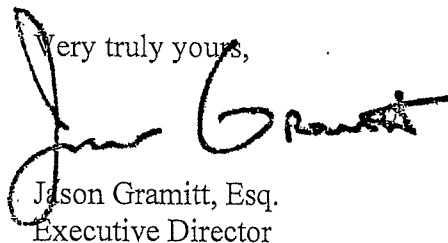
Dear Mr. Moreau:

In response to your request for an Advisory Opinion, enclosed is a Draft Opinion that has been prepared by Commission staff. This Draft Opinion will be considered by the Commission on August 17, 2021, at 9:00 a.m., in Open Session. If approved, the Commission will issue a formal Advisory Opinion, a copy of which will be mailed to you.

The meeting will be held at the Rhode Island Ethics Commission, Hearing Room – 8th Floor, 40 Fountain Street, Providence, RI 02903. You are strongly encouraged to attend this meeting.

If you have any questions, please contact this office.

Very truly yours,



Jason Gramitt, Esq.
Executive Director

JG:tat

Enclosure

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 17, 2021

Re: Robert R. Moreau

QUESTION PRESENTED:

The Petitioner, Executive Director for the Woonsocket Housing Authority, a quasi-public municipal employee position, requests an advisory opinion regarding what restrictions, if any, the Code of Ethics places upon him in carrying out his official duties, given that his sister is employed by the Woonsocket Housing Authority as a Data Entry Clerk.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, Executive Director for the Woonsocket Housing Authority, a quasi-public municipal employee position, is prohibited by the Code of Ethics from participating in any Woonsocket Housing Authority matter in which his sister will be financially impacted or receive an employment advantage. The Petitioner is also prohibited from participating in the supervision, evaluation, appointment, classification, promotion, transfer or discipline of his sister. The Petitioner is further prohibited from participating in negotiations relative to any employee contract or collective bargaining agreement that addresses or affects his sister's employment, compensation, or benefits, but may participate in the decision to approve or reject an entire employee contract or collective bargaining agreement as a whole.

The Petitioner states that he is employed as the Executive Director for the Woonsocket Housing Authority ("Housing Authority"), having been hired for that position by the Housing Authority Board of Commissioners ("Board") on January 1, 2019. The Petitioner further states that the members of the Board, though appointed by the Mayor of Woonsocket, serve under the supervision of the U.S. Department of Housing and Urban Development ("HUD"). He adds that the Housing Authority receives no municipal funding and that the salaries of all Housing Authority employees are funded by HUD. The Petitioner represents that the Housing Authority employs approximately 50 full-time employees and 15 part-time employees, none of whom receive federal or municipal benefits, such as healthcare or pension, and all of whom must arrange for such benefits through private organizations.

The Petitioner represents that, immediately prior to becoming Executive Director, he worked as the Housing Authority's Director of Security, a position he held for nearly a decade after having been hired in April of 2009 by a former Housing Authority Executive Director. He further represents that, in April of 2016, during his tenure as Director of Security, his sister was hired by the Housing Authority Executive Director at the time for the position of Data Entry Clerk. The

Petitioner describes the responsibilities of a Data Entry Clerk as processing applications from individuals seeking public housing; verifying the accuracy of information and documentation provided by those applicants; and setting up applicant interviews. The Petitioner explains that, after passing an entrance exam required for candidates seeking the position of Data Entry Clerk, his sister was interviewed by an independent panel of Housing Authority employees that did not include the Petitioner. He emphasizes that, as Director of Security, he was not involved in his sister's hiring and did not supervise her.

The Petitioner states that, presently, his sister continues to be employed by the Housing Authority as a Data Entry Clerk and that she is a member of the American Federation of State, County and Municipal Employees ("AFSCME"). He further states that his sister reports directly to the Housing Authority's Service Center Manager who, in turn, reports directly to the Petitioner in his role as Executive Director. He adds that disciplinary matters, including such matters that could potentially involve the Petitioner's sister, are normally brought by the Service Center Manager to the attention of the Housing Authority's Human Resources Director, who would then seek input from the Executive Director with regard to any form of disciplinary action contemplated.

The Petitioner states that he does not participate in discussions or decision-making relative to either Housing Authority budgetary line items or approving or rejecting the entire budget as a whole, as responsibility for those matters lies with the Board. The Petitioner further states that, while he does not expect to be asked to assist the Housing Authority's legal counsel with the negotiation of an employee contract or collective bargaining anytime in the next 18-24 months, he does expect to be asked to participate in such negotiation eventually, at which time he will recuse himself from participation in light of his sister's employment with the Housing Authority. He adds that he will not be expected to participate in the decision to approve or reject an employee contract or collective bargaining agreement as a whole, given that such responsibility lies with the Board. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, it is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding what restrictions, if any, the Code of Ethics places upon him in carrying out his Executive Director duties, given that his sister is employed by the Housing Authority as a Data Entry Clerk.

Under the Code of Ethics, a public official or employee 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 or employee will have an interest that is in substantial conflict with the proper discharge of his duties or employment in the public interest if it is reasonably foreseeable that a direct monetary gain or loss will accrue, by reason of the public official or employee's activity, to the public official or employee himself, his family member, his business associate, or to any business by which the public official is employed or which the public official represents. Section 36-14-7(a). Further, section 36-14-5(d) prohibits a public official or employee from using his position, or confidential information received through his position, to obtain financial gain other than that provided by law for himself, any person within his family, his business associate, or any business by which the public official is employed or which the public official represents.

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

Under the general nepotism prohibitions of the Code of Ethics, specifically Commission Regulation 520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004) (“Regulation 1.3.1”), a public official or employee shall not participate in any matter as part of 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). 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 or employee 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 or employee 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 but for the public official or employee’s participation.

Thus, in the event that the Petitioner’s sister would be directly financially impacted or obtain an employment advantage by reason of the Petitioner’s decision-making, the Petitioner is required to recuse in accordance with section 36-14-6. See, e.g., A.O. 2019-19 (opining, *inter alia*, that a member of the Warwick School Committee was prohibited by the Code of Ethics from participating in any School Committee matter in which his mother was a party or participant, or in which she would be financially impacted or receive an employment advantage); 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 interim harbormaster and was also one of nineteen applicants for the permanent harbormaster position).

Advocacy/ Supervision of Petitioner’s Sister

Regulation 1.3.1 also 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 was not involved in his sister’s hiring and plays no role in his sister’s day-to-day supervision. However, in response to the Petitioner’s disclosure that in the event of a potential disciplinary matter involving his sister which has reached the attention of the Housing Authority’s Human Resources Director the matter would then be brought before the Executive Director, the Petitioner is advised that he is prohibited from participating in such matter and must

recuse consistent with section 36-14-6 and/or seek additional guidance from the Ethics Commission.

Participation in Collective Bargaining/Employee Contracts

Regulation 1.3.1(B)(4) also addresses a public official or employee's participation in collective bargaining/employee contracts. It specifically prohibits a public official or employee 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 or employee 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.

Regulation 1.3.1(B)(4)'s blanket prohibition against involvement in contract negotiations is based on an understanding that, during negotiations, the impact of decisions as to individual components of a contract can be difficult to predict. For that reason, an official's participation in a contract issue that is seemingly unrelated to a family member can still have a resulting impact on other areas of the contract that would directly affect the family member. For example, in Advisory Opinion 2011-14, the Ethics Commission opined that a member of the Foster-Glocester Regional School Committee was prohibited by the Code of Ethics from participating in contract negotiations between the School Committee and the Foster-Glocester Teachers' Union, given that her husband was a teacher in the Foster-Glocester Regional School District and a member of the Foster-Glocester Teachers' Union. However, that petitioner could participate in the School Committee's decision to accept or reject a contract in its entirety once negotiated by the School Committee and Foster-Glocester Teachers' Union without her participation, provided that her husband was impacted by the contract as a member of a significant and definable class of persons, and not individually or to any greater extent than other similarly situated members of the Foster-Glocester Teachers' Union.

Here, the Petitioner must recuse from participating in any negotiations relative to an employee contract or collective bargaining which addresses or affects the employment, compensation or benefits of his sister, and his representation that he is prepared to recuse from such participation is duly noted. When recusing, the Petitioner must complete a statement of conflict of interest consistent with the provisions of section 36-14-6. The Petitioner's representation that the responsibility of voting to approve or reject a collective bargaining agreement as a whole lies with the Board notwithstanding, the Code of Ethics does not prohibit the Petitioner from voting to approve or reject an employee contract or collective bargaining agreement as whole, provided that his sister 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.

Conclusion

In conclusion, in consideration of the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from participating in any Housing Authority matter in which his sister is a party or participant, or by which his sister will be financially impacted or receive an employment advantage. 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 negotiations relative to an employee contract or collective bargaining which addresses or affects his sister's employment, compensation, or benefits but may participate in the vote to approve or reject an employee contract or collective bargaining agreement 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-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2019-19

A.O. 2016-26

A.O. 2013-8

A.O. 2011-14

Keywords:

Conflict of Interest

Nepotism

C



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Fax Number: 222-3382
ethics.email@ethics.ri.gov
<https://ethics.ri.gov>

August 6, 2021

Thomas R. Doyle
P.O. Box 1858
Block Island, RI 02807

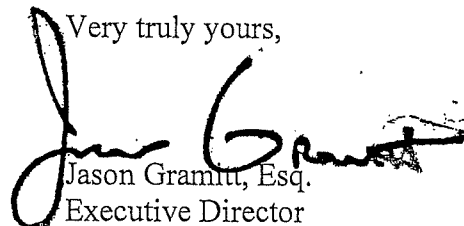
Dear Mr. Doyle:

In response to your request for an Advisory Opinion, enclosed is a Draft Opinion that has been prepared by Commission staff. This Draft Opinion will be considered by the Commission on August 17, 2021, at 9:00 a.m., in Open Session. If approved, the Commission will issue a formal Advisory Opinion, a copy of which will be mailed to you.

The meeting will be held at the Rhode Island Ethics Commission, Hearing Room – 8th Floor, 40 Fountain Street, Providence, RI 02903. You are strongly encouraged to attend this meeting.

If you have any questions, please contact this office.

Very truly yours,


Jason Gramitt, Esq.
Executive Director

JG:cma

Enclosure

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 17, 2021

Re: Tom Doyle

QUESTION PRESENTED:

The Petitioner, a member of the New Shoreham Sewer Commission, 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 an agency of which he is a member in order to appeal a sewer assessment against his personal residence.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, a member of the New Shoreham Sewer Commission, a municipal appointed position, may appear before that agency in order to appeal a sewer assessment against his personal residence, based upon a finding that the unique facts as represented justify application of the hardship exception as provided in R.I. Gen. Laws § 36-14-5(e).

The Petitioner is a member of the New Shoreham Sewer Commission ("Sewer Commission") to which he was appointed by the New Shoreham Town Council ("Town Council") in 2013.¹ The Petitioner states that he resides in the Town of New Shoreham, also known as Block Island ("Town" or "Block Island"), in a home that he purchased with his wife in 1989 and which has been their primary, full-time residence since 2004. The Petitioner represents that last April he noticed a pinhole leak in one of the water pipes in the basement of his home and contacted several plumbers to fix the problem. The Petitioner explains that Block Island's resident plumber retired last year after many years of service and that two of his contemporaries are now deceased. The Petitioner tried to engage plumbers located off Block Island to no avail. Ultimately, the Petitioner was able to hire a plumber who happened to be helping out one of the Petitioner's acquaintances on Block Island. The Petitioner states that the plumber was able to fix the leak in the water pipe as of May 12, 2021.² However, by that time, because the Petitioner's sewer bill is based on water usage, his sewer bill was \$800 as compared to \$190 for the same time period the year before. The Petitioner

¹ The Petitioner states that he is also a member of the New Shoreham Water Commission ("Water Commission") to which he was appointed by the Town Council in 2015. The Petitioner explains that the two commissions conduct joint meetings to discuss matters relative to rates, contracts, and other matters of general concern to both commissions; however, each of the commissions conducts its own separate meetings and reviews agenda items specific to the respective commissions.

² The Petitioner informs that the plumber sent a letter to the New Shoreham Water Company, with copies to the Sewer and Water Commissions, informing it that he had fixed a water leak in the Petitioner's home.

states that he would like to appeal these sewer charges before the Sewer Commission.³ Cognizant of the Code of Ethics' prohibition against appearing before the Sewer Commission, given his membership on it, the Petitioner seeks a hardship exception to allow him to appeal the sewer charges. He states that he will recuse from the Sewer Commission's consideration of this matter.

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); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) ("Commission Regulation 1.1.4"). Pursuant to Commission Regulation 1.1.4(A)(1)(a), a person will "represent him or herself before a state or municipal agency" if he or she "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in his or her own favor." 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 in order to avoid any appearance of impropriety in the matter. Section 36-14-5(e)(1). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review ("BZB") and permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB's consideration of his request for relief).

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

We do not believe that public officials should be prevented from challenging municipal assessments against their personal residences or their businesses, provided that they request and receive advisory opinions prior to representing themselves before agencies of which they are

³ The Petitioner explains that because he utilizes a water well on his property and is not connected to the Town water system, he does not receive a water bill from the Town. Therefore, there is no need for him to appear before the Water Commission to appeal any water charges in connection with his aforementioned sewer charges.

members, by which they are employed, or over which they have appointing authority. The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before agencies of which they were members or for which they were the appointing authority in connection with municipal assessments against either their personal residences or their businesses. See, e.g., A.O. 2020-18 (granting a hardship exception to a member of the Jamestown Town Council so he could appear before the Jamestown Tax Assessment Board of Review, over which the Town Council had appointing authority, in order to appeal the tax assessment of his personal residence); 2019-57 (granting a hardship exception to a Bristol Board of Tax Assessment Review member, permitting her to appear before her own board to appeal the tax assessment of her personal residence, provided that she recuse from participating in the board's consideration of and voting on her appeal); A.O. 2015-8 (granting a hardship exception to a Woonsocket City Council member so that he could represent himself before the Woonsocket Board of Tax Review, over which he had appointing authority as a member of the City Council, in order to appeal the tangible property tax assessed against a business that he owned).

Here, the Petitioner seeks to appear before the Sewer Commission, of which he is a member, to appeal the sewer charges incurred against his personal residence as a result of a leak in one of the home's water pipes. The Petitioner has owned his home since 1989 and has resided there full-time since 2004, which predates his appointment to the Sewer Commission in 2013. Furthermore, the relief sought is personal as opposed to commercial in nature. In consideration of the facts as represented above, and consistent with the applicable provisions of the Code of Ethics and past advisory opinions issued, it is the opinion of the Ethics Commission that the totality of the circumstances justifies making an exception to section 5(e)'s prohibitions. Accordingly, the Petitioner may appear before the Sewer Commission to appeal the sewer charges assessed against his residence. However, the Petitioner must recuse himself from participating in the Water Commission's consideration of, and voting on, the matter. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the other Sewer Commission members of his receipt of the instant advisory opinion and of his recusal in accordance 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:

A.O. 2020-18

A.O. 2019-57

A.O. 2015-8

A.O. 2014-26

Keywords:
Hardship Exception

DRAFT

D



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Fax Number: 222-3382
ethics.email@ethics.ri.gov
<https://ethics.ri.gov>

August 6, 2021

Robert Almeida
Rhode Island Department of Health
50 Orms Street
Providence, RI 02904

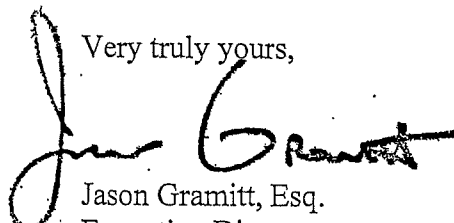
Dear Mr. Almeida:

In response to your request for an Advisory Opinion, enclosed is a Draft Opinion that has been prepared by Commission staff. This Draft Opinion will be considered by the Commission on August 17, 2021, at 9:00 a.m., in Open Session. If approved, the Commission will issue a formal Advisory Opinion, a copy of which will be mailed to you.

The meeting will be held at the Rhode Island Ethics Commission, Hearing Room – 8th Floor, 40 Fountain Street, Providence, RI 02903. You are strongly encouraged to attend this meeting.

If you have any questions, please contact this office.

Very truly yours,


Jason Gramitt, Esq.
Executive Director

JG:cma

Enclosure

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 17, 2021

Re: Robert Almeida

QUESTION PRESENTED:

The Petitioner, the Supervising Forensic Scientist for the Rhode Island Department of Health, a state employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from working, on his own time, as a private consultant on matters outside of and with no relation to the State of Rhode Island.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Supervising Forensic Scientist for the Rhode Island Department of Health, a state employee position, is not prohibited by the Code of Ethics from working as a private consultant on matters outside of and with no relation to the State of Rhode Island, provided that: all work is performed on his own time and without the use of public resources or confidential information obtained as part of his state employment at the RIDOH; he does not use his public employment to recruit or obtain potential clients; and he does not use his public employment to advertise or promote his private work.

The Petitioner is the Supervising Forensic Scientist in the Laboratory of Forensic Toxicology ("Forensic Toxicology") within the Rhode Island Department of Health ("RIDOH") Center for Forensic Sciences. The Petitioner represents that he has been employed full-time in Forensic Toxicology for the past seven years and that his normal working hours are Monday through Friday from 8:30 a.m. to 4:00 p.m. The Petitioner states that Forensic Toxicology works closely with the Office of the State Medical Examiners and state law enforcement agencies to provide unbiased evaluation of evidence and courtroom testimony. The Petitioner explains that, for example, Forensic Toxicology examines autopsy specimens for the presence and quantity of drugs, alcohol, and/or poisons in order to help the State Medical Examiners' Office determine the cause and manner of someone's death. He also explains that Forensic Toxicology examines blood specimens obtained from motor vehicle operators suspected of driving under the influence of alcohol or drugs. The Petitioner represents that as a supervisor he rarely performs the testing himself, but that he is responsible for the accurate performance of these tests. He adds that he is also responsible for the budgetary needs of Forensic Toxicology.

The Petitioner represents that he would like to begin private consulting work ("consulting work") outside of his primary public employment with the RIDOH. He states that such consulting work would include, but not be limited to, the review of post-mortem toxicology analyses as well as toxicology analyses relative to matters such as impaired driving and drug-facilitated crimes. The

Petitioner adds that he would also provide written opinions and/or testimony at depositions and, less commonly, at trials. Additionally, he notes that there could be opportunities for him to participate in continuing education trainings and/or presentations, guest lecturing, general development of scientific materials, and laboratory test review. Cognizant of the fact that all toxicology tests in matters related to Rhode Island are performed by Forensic Toxicology and overseen by him, the Petitioner states that his consulting work will be performed exclusively in connection with cases outside of and with no relation to the State of Rhode Island. He further states that the consulting work would be performed outside of his normal working hours at the RIDOH, on the weekends, or during his vacation time, and never with any state resources or materials.

The Petitioner represents that, in accordance with the RIDOH policy on secondary employment, he sought and received approval for his proposed consulting work from the Center Lead, the Division Director, the Chief Administrative Officer, and the RIDOH Secondary Employment Review Committee ("Review Committee"), which noted that the approval may be withdrawn at any time if it is determined that the secondary employment has an adverse impact on the Petitioner's primary employment. The Review Committee also noted that the Petitioner's proposed secondary employment shall not be permitted when it would create either directly or indirectly a conflict of interest with the Petitioner's primary employment, or impair in any way the Petitioner's ability to perform all expected duties, to make decisions and to carry out in an objective fashion the responsibilities of his public position. The Review Committee further noted that no RIDOH funds may be used to meet the salary paid to the Petitioner by any secondary consultation work related to his request.

It is in the context of the Petitioner's representations, subject to the RIDOH's restrictions as outlined above, that the Petitioner seeks guidance from the Ethics Commission regarding whether his proposed consulting work is prohibited by the Code of Ethics.

No person subject to the Code of Ethics shall 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. R.I. Gen. Laws § 36-14-5(b). Further, 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. Section 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 any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). Finally, no person subject to the Code of Ethics shall use his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding employment that is secondary to their primary public employment or positions subject, however, to certain restrictions and provided that their private employment would neither impair their independence of judgment nor create an interest in

substantial conflict with their public duties. See, e.g., A.O. 2016-7 (opining that a probation and parole training officer and intern/volunteer coordinator at the Rhode Island Department of Corrections ("DOC") could continue working at the Rhode Island Batterer's Intervention Program ("RIBIP") as a facilitator, given that her official duties at the DOC did not involve the supervision of any offenders or probation/parole officers, or the referral of anyone to RIBIP classes, and because her private employment occurred on her own time and without the use of any DOC resources or equipment); A.O. 2008-12 (opining that the Building Official for the Town of Little Compton could simultaneously work as a finish carpenter in the Town of Little Compton, provided that he did not inspect his own work); A.O. 2003-55 (opining that the Alternate Building Official for the Town of Coventry could do work in the Town of Coventry that did not require a permit or inspection, such as cabinetry work, painting, and tile work, provided that he would not be inspecting projects for which he provided services).

Although the Ethics Commission has previously opined that certain public officials and employees could not hold secondary private employment within the same jurisdiction in which they publicly served because of a substantial conflict of interest between their public and private employment, the Ethics Commission has consistently allowed such public officials and employees to engage in secondary employment that was outside of their official public jurisdiction. In Advisory Opinion 2015-36, for example, the Ethics Commission opined that an Assistant Medical Examiner for the State of Rhode Island was not prohibited by the Code of Ethics from working as a private consultant medical examiner and/or expert witness on cases outside of Rhode Island, provided that she performed all private consulting work on her own time and without the use of state resources or equipment, and that she did not work on cases that were subject to the jurisdiction of any state or federal court in Rhode Island or involved decedents who were residents of Rhode Island at the time of their death, or in which Rhode Island residents were parties to the lawsuit or criminal complaint. See also A.O. 2016-16 (opining that an Environmental Health Food Specialist for the Rhode Island Department of Health, Office of Food Protection was not prohibited by the Code of Ethics from working as a food safety consultant for food establishments in Connecticut and/or Massachusetts, provided that the owners of those establishments did not also own food establishments within her assigned region of public employment in Rhode Island; she performed such work on her own time and without the use of public resources or equipment; and she did not use her public employment to recruit or obtain potential clients); A.O. 2009-31 (opining that the Chief Plumbing Investigator for the Rhode Island Department of Labor and Training, who was also licensed as a master plumber and pipefitter, was prohibited from working as a plumber and pipefitter in the State of Rhode Island, but was not prohibited from performing such work outside of the State of Rhode Island, provided that such work was performed on his own time and without the use of public resources and that he did not use his state position to recruit potential clients); 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 the petitioner had no involvement with matters subject to the Bristol Police Department's official jurisdiction).

Here, based on all of the Petitioner's representations and particularly in the light of the approval issued by the RIDOH Secondary Employment Review Committee, it is the opinion of the Ethics Commission that there is no evidence that the Petitioner's consulting work on matters outside of and with no relation to the State of Rhode Island would either impair his independence of

judgement or create an interest in substantial conflict with his public duties at the RIDOH. Accordingly, the Code of Ethics does not prohibit the Petitioner from working as a consultant in his private capacity on matters outside of and with no relation to the State of Rhode Island, provided that all the work is performed on his own time and without the use of public resources or confidential information obtained as part of his state employment at the RIDOH. Furthermore, the Petitioner may not use his public employment to recruit or obtain potential clients nor may he use his public employment to advertise or promote his private work. The Petitioner is advised to seek further guidance from the Ethics Commission if any changes occur within his RIDOH employment that could present a conflict of interest under the Code of Ethics that is not anticipated within this advisory opinion.

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)
§ 36-14-7(a)

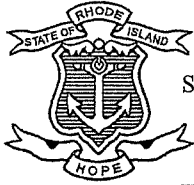
Related Advisory Opinions:

A.O. 2016-16
A.O. 2016-7
A.O. 2015-36
A.O. 2009-31
A.O. 2008-12
A.O. 2003-55
A.O. 2001-46

Keywords:

Secondary Employment

E



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Fax Number: 222-3382
ethics.email@ethics.ri.gov
<https://ethics.ri.gov>

August 6, 2021

William J. Fazioli
City of East Providence
145 Taunton Avenue
East Providence, RI 02914

Dear Mr. Fazioli:

In response to your request for an Advisory Opinion, enclosed is a Draft Opinion that has been prepared by Commission staff. This Draft Opinion will be considered by the Commission on August 17, 2021, at 9:00 a.m., in Open Session. If approved, the Commission will issue a formal Advisory Opinion, a copy of which will be mailed to you.

The meeting will be held at the Rhode Island Ethics Commission, Hearing Room – 8th Floor, 40 Fountain Street, Providence, RI 02903. You are strongly encouraged to attend this meeting.

If you have any questions, please contact this office.

Very truly yours,

Jason Gramitt, Esq.
Executive Director

JG:cma

Enclosure

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 17, 2021

Re: William J. Fazioli

QUESTION PRESENTED:

The Petitioner, the Chairperson of the East Providence Waterfront District Commission, a quasi-public state appointed position, who also serves as the Director of the Department of Planning and Economic Development for the City of East Providence, a municipal employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits his simultaneous service in both positions.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Chairperson of the East Providence Waterfront District Commission, a quasi-public state appointed position, who also serves as the Director of the Department of Planning and Economic Development for the City of East Providence, a municipal employee position, is not prohibited by the Code of Ethics from simultaneously serving in both positions.

The Petitioner is the Chairperson of the East Providence Waterfront District Commission ("Waterfront Commission"). He states that he has served on the Waterfront Commission since his appointment by the East Providence City Council ("City Council") in 2006, and that he was appointed Chairperson by the Governor in 2018. The Petitioner represents that this position does not carry any remuneration and his service on the Waterfront Commission is purely voluntary. The Petitioner further represents that the Waterfront Commission is a quasi-public state agency¹ that was created in 2003 by the General Assembly to "create a State-local-private sector partnership to plan, implement, administer, and oversee the development of the East Providence Water District and [] to authorize, provide for, and facilitate the consolidated exercise of development and redevelopment powers existing at the State and local levels." According to the enabling legislation, a copy of which is attached to the Petitioner's request for an advisory opinion, the Waterfront Commission is comprised of nineteen members. The Petitioner represents that the Waterfront Commission has exclusive jurisdiction over the review and approval of all private and public sector development plans relative to properties located in the City of East Providence's ("City" or "East Providence") Waterfront District.

¹ The Waterfront Commission is a subsidiary of the Rhode Island Commerce Corporation and its enabling legislation is found at R.I. Gen. Laws § 42-64-7.1. See also <http://www.eastprovidencewaterfront.com/wp-content/uploads/2020/07/S1187-2003-Creation.pdf> and <http://www.eastprovidencewaterfront.com/wp-content/uploads/2020/07/Enabling-Legislation-Amended-2010.pdf> (Last accessed July 30, 2021).

Additionally, the Petitioner is employed as the Director of the Department of Planning and Economic Development ("Director") for the City. He represents that he has served in that position since his appointment by the Mayor of East Providence in 2019 and that this is his primary source of income. The Petitioner explains that the duties and responsibilities of the Department of Planning and Economic Development ("Department") and those of the Director are set forth in Section 2-178 of the City's Code of Ordinances ("Section 2-178"), a copy of which is attached to the Petitioner's request for an advisory opinion. According to Section 2-178, the Department is comprised of two divisions: the division of planning and the division of economic development. The division of planning creates, maintains, and implements all neighborhood, redevelopment and special area plans, and oversees environmental planning, historic preservation planning, and transportation planning and transit initiatives. The division of economic development is responsible for identifying and promoting development opportunities for business growth and development in the City. This division is also responsible for disbursing and monitoring the expenditure of federal community development funding. Section 2-178 identifies the Director as the administrative head of the Department and his duties include, but are not limited to, the following: working with the Division of Building Inspection for the purpose of coordinating permitting for developments from the design phase to final inspection; working with the Director of Finance and other members of the Finance Department as may be necessary for the purpose of maximizing economic development initiatives in the City and to promote a long-term financial well-being of the City; and serving as the technical advisor to the Planning Board.

The Petitioner states that his duties as Director and those of Chairperson of the Waterfront Commission are separate and distinct. He represents that the Waterfront Commission has the sole decision-making authority over certain properties located in the City's Waterfront District. He explains that there are occasions when the Waterfront Commission may seek the opinion of the East Providence Planning Board ("Planning Board") regarding whether a certain project is consistent with the City's Comprehensive Plan. In those circumstances, the Planning Board may ask the Department for a staff report on the matter. The Petitioner states that the staff report does not review the merits of an application, but only whether a project is consistent with the City's Comprehensive Plan. The Petitioner represents that to the extent that his input as Director is sought on a staff report addressing a matter pending before the Waterfront Commission he will recuse. The Petitioner states that such report will be prepared by either the Chief City Planner or the Principal Planner. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics permits him to continue serving as both the Chairperson of the Waterfront Commission and the Director of the Department of Planning and Economic Development.

Under the Code of Ethics, a public official or employee 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 or employee will have an interest that is in substantial conflict with the proper discharge of his official duties if he has reason to believe or expect that a direct monetary gain or a direct monetary loss will accrue, by virtue of his official activity, to the official himself, his family member, his business associate, or any business by which the public official is employed or which he represents. Section 36-14-7(a). A public official or employee is also prohibited from accepting 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). Additionally, section 36-14-5(d) prohibits a public official or employee 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 prior advisory opinions, the Ethics Commission has consistently concluded that the Code of Ethics does not create an absolute bar against a person's simultaneous service in different governmental entities, even if they are within the same municipality. Rather, the Ethics Commission has determined that a matter by matter evaluation and determination must be made as to whether substantial conflicts of interest exist with respect to the person carrying out his or her duties in the public interest. In particular, the Ethics Commission has considered whether a person's service on either entity would result in an impermissible financial impact and whether a person's independence of judgment would be impaired as to his or her public responsibilities. In Advisory Opinion 2005-45, for example, the Ethics Commission opined that the Chairman of the East Providence Planning Board could simultaneously serve as a member of the East Providence Waterfront Special Development District Commission, having determined that absent some direct financial nexus between the petitioner's two public roles, no inherent conflict of interest would preclude his simultaneous service. The Ethics Commission had also factored in the Petitioner's representation that he would recuse himself from participating in any matter before the Planning Board related to the Waterfront Commission, and *vice versa*, and that he would likewise recuse himself from participation in actions taken by both the Planning Board and the Waterfront Commission regarding advisory opinions sought regarding the Waterfront Commission. See also A.O. 2011-18 (opining that the Chief of Staff for the Town of Johnston was not prohibited by the Code of Ethics from continuing to serve as the Chairman of the Board of Commissioners for the Rhode Island Resource Recovery Corporation absent some direct financial nexus between the petitioner's two duties).

Furthermore, the Ethics Commission acknowledges and commends the Petitioner's readiness to recuse, as Director, from matters pending before the Waterfront Commission. However, the Ethics Commission has on several occasions opined that a public official is not necessarily prohibited by the Code of Ethics from voting on a matter in one forum and then voting on the same matter in another forum due to holding two public roles. The Ethics Commission has allowed public officials to do so in circumstances where there is no financial impact on the public official, his/her family member, his/her business associate or employer. The Ethics Commission had also indicated that the Code of Ethics does not consider a public body to be a "business" or the relationship between a public official and a public body to be that of "business associates."² See A.O. 2018-40 (opining that a member of the Rhode Island Scenic Roadways Board ("SRB"), a public entity, who also served as the Executive Director of the East Providence Waterfront Special Development District Commission ("Water Commission"), a quasi-public entity, was not prohibited by the Code

² A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7). A business is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted." Section 36-14-2(2).

of Ethics from participating in the SRB's discussions and voting to approve aesthetic development along Veterans Memorial Parkway, notwithstanding that the Waterfront Commission was responsible for approving structural developments in areas that abut Veterans Memorial Parkway, because neither the SRB nor the Waterfront Commission were considered to be "businesses" or "business associates" of the petitioner); A.O. 2007-13 (opining that the Director of the Quonset Development Corporation ("QDC"), who was also a member of the North Kingstown Town Council, could participate in QDC's decisions and vote on a development proposal within North Kingstown pending before the QDC because, while the Code of Ethics would prohibit the petitioner from making decisions as a member of the QDC that would financially impact any *business associate* or any *business* by which he was employed or represented, the Town was not considered under the Code of Ethics to be a "business" or a "business associate" of the petitioner). However, each matter has to be reviewed based on its particular facts.

Here, the Petitioner's public duties as described above appear to be separate and distinct. Absent some direct financial nexus between the Petitioner's two public roles, no inherent conflict of interest would preclude his simultaneous service. Furthermore, based on the Petitioner's representations, he will recuse from any discussions involving staff reports relative to matters pending before the Waterfront Commission. Finally, there is no indication that serving in either one of the above-described public capacities would impair the Petitioner's independence of judgment as to his public responsibilities in his other public role.

Accordingly, it is the opinion of the Ethics Commission that the Code of Ethics does not prohibit the Petitioner from simultaneously serving in both positions. The Petitioner is advised, however, that if any particular matter should arise in either of his public positions that would financially impact the Petitioner, any person within his family, or his business associate, then the Petitioner must recuse from participation in such matter or seek further guidance from the Ethics Commission. 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:

- § 36-14-2(2)
- § 36-14-2(3)
- § 36-14-2(7)
- § 36-14-5(a)
- § 36-14-5(b)
- § 36-14-5(d)
- § 36-14-6
- § 36-14-7(a)

Related Advisory Opinions:

A.O. 2018-40

A.O. 2011-18

A.O. 2007-13

A.O. 2005-45

Keywords:

Dual Public Roles

DRAFT

F



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street
Providence, RI 02903
(401) 222-3790 (Voice/TT)
Fax Number: 222-3382
ethics.email@ethics.ri.gov
<https://ethics.ri.gov>

August 11, 2021

Stephen R. Ucci
12 East Scenic Drive
Johnston, RI 02919

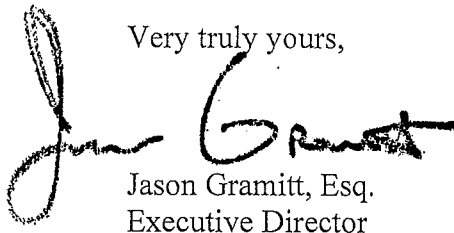
Dear Mr. Ucci:

In response to your request for an Advisory Opinion, enclosed is a Draft Opinion that has been prepared by Commission staff. This Draft Opinion will be considered by the Commission on August 17, 2021, at 9:00 a.m., in Open Session. If approved, the Commission will issue a formal Advisory Opinion, a copy of which will be mailed to you.

The meeting will be held at the Rhode Island Ethics Commission, Hearing Room – 8th Floor, 40 Fountain Street, Providence, RI 02903. You are strongly encouraged to attend this meeting.

If you have any questions, please contact this office.

Very truly yours,



Jason Gramitt, Esq.
Executive Director

JG:cma

Enclosure

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: August 17, 2021

Re: Stephen R. Ucci

QUESTION PRESENTED:

The Petitioner, a former legislator who served as a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether he may, prior to the expiration of one year after leaving legislative office, accept an appointment by the Speaker of the Rhode Island House of Representatives to the Special Commission on Reapportionment.

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 House of Representatives, a state elected position, may, prior to the expiration of one year after leaving legislative office, accept an appointment by the Speaker of the Rhode Island House of Representatives to the Special Commission on Reapportionment, given that the members receive no compensation for their services.

The Petitioner is a former member of the Rhode Island House of Representatives ("House of Representatives") having served in that capacity for 16 years until January 5, 2021. The Petitioner represents that he has been asked by the Speaker of the House of Representatives to serve as a member of the Special Commission on Reapportionment ("Reapportionment Commission"), which the Petitioner has agreed to do subject to approval by the Ethics Commission. The Petitioner states that the Reapportionment Commission is a joint commission of the House of Representative and the Rhode Island Senate ("Senate") which is formed every ten years following the completion of the state census. He adds that the purpose of the Reapportionment Commission is to review the updated census data and offer to the General Assembly a proposed reapportionment (redistricting) plan for the 75 House and 38 Senate districts, as well as for the two United States Congressional seats. The Petitioner further states that the Reapportionment Commission is comprised of 18 members, six of whom are members of the House of Representatives, six of whom are members of the Senate, six of whom are members of the general public, and none of whom receive financial compensation for their service on the Reapportionment Commission. The Petitioner notes that he formerly served on the Reapportionment Commission as its chair in 2011. Cognizant of the "revolving door" provisions of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks guidance from the Ethics Commission regarding whether he may accept the appointment to the Reapportionment Commission prior to the expiration of one year after leaving public office.

The Code of Ethics contains both statutory and regulatory "revolving door" provisions that apply to a number of public officials, including current and former members of the legislature. Pursuant to R.I. Gen. Laws § 36-14-5(n)(1) ("section 5(n)"):

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.

Section 36-14-2(8)(i) defines "state agency" as follows:

[A]ny department, division, agency, commission, board, office, bureau, authority, or quasi-public authority within Rhode Island, either branch of the Rhode Island general assembly, or any agency or committee thereof, the judiciary, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions other than in an advisory nature[.]

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 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")

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 state 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 the petitioner would have been paid a commission. Similarly, 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. Notably, however, the receipt of compensation for services rendered is a

common element in the advisory opinions cited above and a necessary element in the application of the provisions of section 5(n) and Regulation 1.5.2.

Here, as a joint committee of the General Assembly, the Reapportionment Commission falls squarely within the above definition of a state agency. However, the Petitioner represents that the members of the Reapportionment Commission receive no compensation for their service. Thus, service on the Reapportionment Commission does not constitute employment, which renders section 5(n) and Regulation 1.5.2 inapplicable here. 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 is not prohibited by the Code of Ethics from accepting appointment to the Reapportionment Commission prior to the expiration of one year after leaving legislative office.

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

Related Advisory Opinions

A.O. 2009-44

A.O. 2006-25

Keywords:

Revolving Door

G

ETHICS TRAINING SUMMARY

FY 2021

July 1, 2020 – June 30, 2021

Totals:

Number of Trainings	Number of Training Hours	Number of Attendees
45	46 Hours 40 Minutes	1,662

Breakdown by Month

Month	Trainings	Training Hours	Attendees	In-Person	ZOOM (Other)
July 2020	0	0	0	0	0
August 2020	0	0	0	0	0
September 2020	0	0	0	0	0
October 2020	4	4	114	0	4
November 2020	4	6 Hours 10 Mins	146	0	4
December 2020	2	2	48	0	2
January 2021	6	6 Hours 15 Mins	249	0	6
February 2021	7	6 Hours 30 Mins	488	1	6
March 2021	8	8	222	0	8
April 2021	6	7	124	0	6
May 2021	4	4	131	0	4
June 2021	4	2 Hours 45 Mins	140	0	4

Breakdown by Category

Category	Number of Trainings	Number of Attendees
Municipal	24	730
State	17	731
New State Employees	1	101
Other	3	100

An alphabetical listing by category of the groups that received ethics training during FY2021 appears on the next page.

Municipal

Bristol Elected & Appointed Officials and Employees
Cranston City Council
Cranston (Department Directors)
Cumberland Elected & Appointed Officials
Foster Elected & Appointed Officials
Glocester Elected & Appointed Officials and Employees
Hopkinton Elected & Appointed Officials and Employees
Jamestown Elected & Appointed Officials and Employees
Johnston Elected & Appointed Officials and Employees
Juvenile Hearing Boards for Johnston & Smithfield
League of Cities and Towns
Little Compton School Committee
Middletown Elected & Appointed Officials
Municipal RI Latino Elected Officials
Newly Elected Members of RI Town Councils & School Committees
North Smithfield Elected & Appointed Officials and Employees
Providence Employees: Board of Licenses and Bureau of Vital Statistics (2)
Providence Human Relations Commission
Smithfield Elected & Appointed Officials
Smithfield Employees
South Kingstown School Committee & School Leadership
Tiverton Elected & Appointed Officials
Warwick School Committee

State

Council on the Arts
Department of Administration - Division of Purchases
Department of Elementary & Secondary Education - Leadership & Management
Department of Elementary & Secondary Education - Leadership & Staff
Department of Health – Purchasing
Department of Transportation (5)
Governor's Senior Staff
Health Services Council and Rhode Island Department of Health Attorneys
New State Employees
Parole Board and Staff
Rhode Island Bar Association Government Lawyers Committee
Rhode Island House of Representatives
Rhode Island Senate
Rhode Island State Police

Other

Accountants and Auditors Institute
Defense Institute of International Legal Studies (DIILS)
Johnson & Wales University Ethics in Government Class