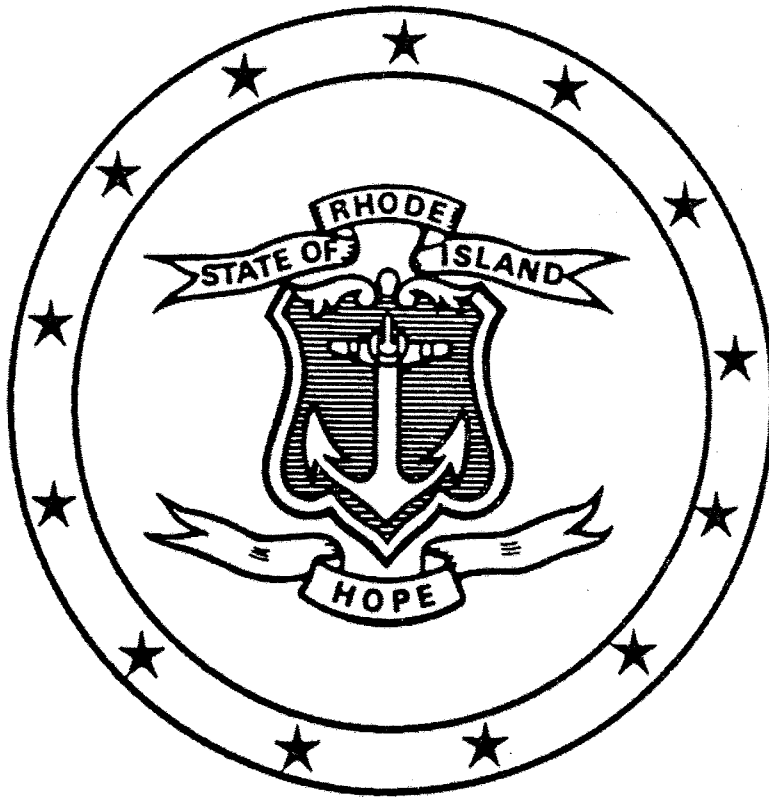


Rhode Island Ethics Commission

Meeting Materials



September 21, 2021

Rhode Island Ethics Commission

Open Session Meeting Materials



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street

Providence, RI 02903

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<https://ethics.ri.gov>

NOTICE OF OPEN MEETING

AGENDA

13th Meeting

DATE: Tuesday, September 21, 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 August 17, 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. Advisory Opinions.
 - a.) Edward Brady, a former member of the Cranston City Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against appearing before one's own board prior to the expiration of one year following one's official severance therefrom, for purposes of authorizing and/or directing his business partner to appear before the Cranston City Council in order to seek the transfer of a liquor license in connection with the pending purchase of property. [Staff Attorney Radiches]

5. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on August 17, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Brett Smiley, Complaint No. 2021-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Anthony Silva, Complaint No. 2021-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) Motion to return to Open Session.
6. Motion to seal minutes of Executive Session held on September 21, 2021.
7. Report on actions taken in Executive Session.
8. Discussion of election of Ethics Commission officers to be held on October 5, 2021.
9. New Business proposed for future Commission agendas and general comments from the Commission.
10. Discussion and vote on Resolution of the Rhode Island Ethics Commission in recognition and profound appreciation for distinguished service by Steven T. Cross, Chief of Investigations.
11. Motion to adjourn.

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

Posted on September 16, 2021

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

August 17, 2021

The Rhode Island Ethics Commission held its 12th meeting of 2021 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, August 17, 2021, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Marisa A. Quinn, Chair	Lauren E. Jones
Arianne Corrente, Vice Chair	Matthew D. Strauss
Kyle P. Palumbo, Secretary	Holly J. Susi
J. Douglas Bennett	

The following Commissioner was not present: M. Therese Antone.

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 9:00 a.m., the Chair opened the meeting and began by commending the staff for their hard work during the pandemic. The other Commissioners concurred.

The first order of business was:

Approval of minutes of the Open Session held on June 29, 2021.

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

VOTED: To approve the minutes of the Open Session held on June 29, 2021.

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

ABSTENTIONS: Marisa A. Quinn and J. Douglas Bennett.

The next order of business was:

Director's Report: Status report and updates.

Executive Director Gramitt informed that Commissioner Murphy tendered his resignation last week after six years of service on the Commission. He further informed that the Governor's office has been notified and will seek to fill the vacancy.

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

Executive Director Gramitt explained that the Governor's Executive Order allowing for remote meetings lapsed and the Commission has resumed meeting in person as of today. He informed that meeting via Zoom will no longer be an option even if a Commissioner cannot attend a given meeting in person. Executive Director Gramitt further informed that the staff has resumed mandatory mask-wearing pursuant to the CDC's guidelines and is limiting in-person contacts with the public. In response to Chair Quinn, Executive Director Gramitt stated that the General Assembly did not pass legislation to allow for remote meetings and the Governor's authority to issue executive orders to this effect are more constrained.

b.) Complaints and investigations pending

There are six active cases pending. Executive Director Gramitt informed that the Corrigan matters are closed, leaving three conflict of interest cases and three non-filing cases. He explained that due to the pandemic, the Commission did not file complaints against non-filers last year. Executive Director Gramitt stated that 48 persons had not filed financial disclosure statements for 2019 and 2020. He informed that the investigators had volunteered to reach out to those non-filers and help them with filing. As a result of their hard work and persistent efforts, all but three persons filed their statements and the staff filed complaints against those three remaining non-filers.

In response to Commissioner Palumbo, Executive Director Gramitt explained that the Commission implemented the Schedule of Fines around 2000 and authorized the staff to settle non-filing complaints pursuant to the Schedule of Fines which he will send to the Commissioners. The Schedule of Fines also authorizes the staff to adjust penalty amounts based on special circumstances.

c.) Advisory opinions pending

There are seven advisory opinions with six noticed for today's meeting.

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

There were eight APRA requests received since the last meeting, three of which were granted within one business day. Executive Director Gramitt informed that one request related to a complaint, one to a recusal, two to an advisory opinion, and four to financial disclosure.

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

Executive Director Gramitt informed that as of today, the compliance rate for filing is

at 99.38%, the highest in the Commission's history. He stated that there are 26 remaining non-filers for 2020.

At 9:10 a.m., upon motion made by Commissioner Bennett and duly seconded by Commissioner Jones, it was unanimously

VOTED: 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 Pilozzi, Complaint No. 2021-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- d.) Motion to return to Open Session.

At 10:05 a.m., the Commission reconvened in Open Session.

The next order of business was:

Motion to seal minutes of Executive Session held on August 17, 2021.

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

VOTED: To seal the minutes of the Executive Session held on August 17, 2021.

The next order of business was:

Report on actions taken in Executive Session.

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

1. Voted (5-0) to approve the minutes of the Executive Session held on June 29, 2021.
[Reporter's Note: The vote was as follows:
AYES: Arianne Corrente; Lauren E. Jones; Kyle P. Palumbo; Matthew D. Strauss; and Holly Susi.

ABSTENTIONS: Marisa A. Quinn and J. Douglas Bennett.]
2. Voted (6-0) in the matter of In re: Steven Merolla, Complaint No. 2020-6, that probable cause exists to believe that the Respondent, Steven Merolla, a member of the

Warwick City Council, violated Rhode Island General Laws § 36-14-5(a) and (d) by participating in the City Council's votes on: April 22, 2019, to approve the first extension of the Council's contract with YKSM and an increase in funding in the amount of \$30,000; and on June 17, 2019, to approve the second extension of the Council's contract with YKSM and an increase in funding in the amount of \$165,000, respectively.

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

AYES: Marisa A. Quinn; Arianne Corrente, J. Douglas Bennett; Kyle P. Palumbo; Matthew D. Strauss; and Holly J. Susi.

RECUSAL: Lauren E. Jones.]

Voted (6-0) in the matter of **In re: Steven Merolla**, Complaint No. 2020-6, that probable cause exists to believe that the Respondent, Steven Merolla, a member of the Warwick City Council, violated Rhode Island General Laws § 36-14-5(a) and (d) by taking official actions, including signing five invoices authorizing payments to YKSM; signing an engagement letter with YKSM for services to be performed for the City Council from January 1, 2019, through December 31, 2019; signing a letter on February 1, 2019, to the City's Finance Director and a letter on April 4, 2019, to the City's Purchasing Division requesting and authorizing a contract extension and additional funds; and directing City personnel to make payments to YKSM, all of which actions resulted in a direct financial impact upon the Respondent's business associates, YKSM and Thomas Lisi, and constituted the Respondent's use of public office.

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

AYES: Marisa A. Quinn; Arianne Corrente, J. Douglas Bennett; Kyle P. Palumbo; Matthew D. Strauss; and Holly J. Susi.

RECUSAL: Lauren E. Jones.]

3. Unanimously voted (7-0) in the matter of **In re: Anthony Piloizzi**, Complaint No. 2021-2, to initially determine that the Complaint states facts that, if true, are sufficient to constitute a violation of the Code of Ethics and authorized an investigation.
4. Unanimously voted (7-0) to return to Open Session.

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:

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 presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Radiches noted edits on pages three and four of the draft opinion where the word "justice" should read "judge" in two instances and the word "or" should be inserted after "counsel" and before "other." The Petitioner addressed the Commission and represented that he will return before the Commission if he needs further guidance. In response to Commissioner Palumbo, the Petitioner explained that the zoning cases he handles before the Zoning Board of Review are not matters that would go before the Municipal Court on which he serves given that the two bodies address different subject matters. He represented, however, that if a client whom he represented before the Zoning Board of Review should appear before him in Municipal Court, he will recuse. In response to Commissioner Bennett, the Petitioner explained that traffic violations involving the Police Department are handled either in Municipal Court or the RI Traffic Tribunal, but because there is no overlap between the state and municipal courts, matters heard before the Traffic Tribunal would not come before him in Municipal Court. Upon motion made by Commissioner Jones and duly seconded by Commissioner Corrente, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to **The Honorable Steven A. Moretti**, an Associate Judge of the Cranston Municipal Court, who in his private capacity is a practicing attorney.

The next advisory opinion was that of:

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 presented the Commission Staff recommendation. The Petitioner was present. The Petitioner addressed the Commission and queried whether he is an "employee" for purposes of the Code of Ethics given that the Woonsocket Housing Authority ("Housing Authority") is not affiliated with the City of Woonsocket. The Petitioner explained that the Housing Authority is comprised of a Board of Commissioners ("Board") whose seven members are appointed by the Mayor. He further explained that the Mayor has no oversight or other involvement with the Housing Authority and that the Board hired him as the Executive Director. The Petitioner informed that the Housing Authority is completely overseen and funded by the United States Department of Housing and Urban Development ("HUD"), and he does not receive any remuneration from the City. Staff Attorney Radiches cited to the definition of "employee" under R.I. General Laws § 36-14-2(4) of the Code of Ethics and Legal Counsel DeSimone cited to § 36-14-2(9) to support the finding that the Petitioner is an employee under the Code. In

response to Commissioner Susi, the Petitioner stated that the Housing Authority is subject to HUD's rules and regulations, including those relating to nepotism.

The Petitioner further queried whether, if he is subject to the Code of Ethics, the class exception analysis would apply to permit him to engage in negotiations with the union regarding the collective bargaining agreement ("CBA"). Staff Attorney Radices explained that the advisory opinion was drafted based on the facts presented by the Petitioner and that a future draft could be prepared to address more specific issues and application of the class exception to those issues. The Petitioner expressed concern over carrying out his day-to-day duties given that issues involving negotiations with the union frequently arise. He provided the example of the recent Juneteenth holiday for which he had to engage in negotiations to provide a floating holiday to employees. In response to Chair Quinn, the Petitioner explained that there is no one above him in the chain of command other than the Board, and HUD does not approve of Board members getting involved in day-to-day functions of the Housing Authority. He stated that the Human Resources Director is his subordinate. Staff Attorney Radices pointed out that the Code prohibits the Petitioner from delegating his duties to his subordinate. Commissioner Corrente noted that the draft opinion does not address how the Petitioner should handle day-to-day issues that arise. Commissioner Jones expressed concern over the language in the draft informing the Petitioner that he must recuse when it is possible that he may qualify for the class exception in certain circumstances. Executive Director Gramitt explained that the nepotism provisions under the Code require the Petitioner to recuse from any negotiations involving the union and/or the CBA and the class exception analysis would not apply. Executive Director Gramitt further explained that the class exception may apply, however, to standard day-to-day issues that do not involve CBA negotiations.

The Petitioner expressed further concern that the draft does not provide him with any direction as to what he can and cannot do in his day-to-day work. Executive Director Gramitt stated that the guidance in the draft is general. In response to Commissioner Palumbo, Executive Director Gramitt informed that the definition of a municipal agency includes a "quasi-public authority" such as a housing authority. Commissioner Corrente stated that the Commission should revisit the issue of whether housing authority employees are subject to the Code and that the Petitioner's conundrum may also apply to other housing authorities throughout the state. Commissioner Susi queried whether housing authority employees are federal or municipal employees. Commissioner Jones stated that more facts are needed to distinguish issues involving the CBA in which the Petitioner cannot participate from those day-to-day issues in which he can participate. Staff Attorney Radices proposed that the Petitioner withdraw the instant advisory opinion request and submit a new one. In response to Commissioner Palumbo, Executive Director Gramitt informed that if the Commission takes no action today, the staff will consider the question of whether employees of the Woonsocket Housing Authority are subject to the Code of Ethics in a future draft or memorandum.

The Petitioner withdrew his request and the Commission took no action.

The next advisory opinion was that of:

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 Popova Papa presented the Commission Staff recommendation. The Petitioner was present. The Petitioner addressed the Commissioner and clarified that he has been a toxicologist for the past seven years but a supervisor since March of this year. Staff Attorney Popova Papa confirmed that the draft accurately represented the Petitioner's tenure at the Department of Health. Upon motion made by Commissioner Bennett and duly seconded by Commissioner Corrente, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to **Robert Almeida**, the Supervising Forensic Scientist for the Rhode Island Department of Health.

The next advisory opinion was that of:

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 Popova Papa presented the Commission Staff recommendation. The Petitioner was present along with Amy Goins, Esq., Assistant City Solicitor. The Petitioner addressed the Commission and informed that he was appointed as Chairperson of the Waterfront Commission in September 2019 and would have come before this Commission sooner but for the pandemic. In response to Commissioner Bennett, the Petitioner stated that he does not receive any remuneration for his position as Chairperson. In response to Commissioner Jones, the Petitioner explained that he is an *ex officio* member of the Planning Board and will recuse from staff reports relative to matters pending before the Waterfront Commission. Upon motion made by Commissioner Corrente and duly seconded by Commissioner Jones, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to **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.

The next advisory opinion was that of:

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 Popova Papa presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney Popova Papa explained that the Petitioner could not attend but had consented to the Commission proceeding in his absence. In response to Commissioner Jones, Staff Attorney Popova Papa explained that many petitioners are aware of the

requirement and procedure for filing recusal forms with the Commission, but she will make it clear to this Petitioner as well. Upon motion made by Commissioner Jones and duly seconded by Commissioner Corrente, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to **Thomas R. Doyle**, a member of the New Shoreham Sewer Commission.

The final advisory opinion was that of:

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 Popova Papa presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney Popova Papa explained that the Petitioner could not attend but had consented to the Commission proceeding in his absence. Upon motion made by Commissioner Susi and duly seconded by Commissioner Corrente, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to **Stephen R. Ucci**, a former legislator who served as a member of the Rhode Island House of Representatives.

The next order of business was:

Education Update.

Education Coordinator Radiches presented an update on ethics trainings conducted during FY 2021 which included a document summarizing information about the trainings by month and category and an alphabetical listing by category of all groups that received training. She informed that, effective September 1, 2021, online training will be available through the Rhode Island Learning Center and explained the seven PowerPoint modules that will comprise the online program. Education Coordinator Radiches stated that all state employees will be able to access the training modules through the Learning Center and non-state employees will be able to enroll upon request to Alicia Ridge, Coordinator of Employee Training for the state. She further stated that Ms. Ridge will provide monthly reports to the Commission regarding the progress of the trainings. Education Coordinator Radiches informed that online training is not expected to replace in-person training but is offered as a convenient supplement or when immediate access to information is needed. She stated that the Commissioners will receive access codes by the end of the day to view the modules themselves, if they are so inclined. Education Coordinator Radiches informed that she has started scheduling some in-person trainings again and continues to receive requests for same. Commissioner Corrente stated that the number of trainings was positive, and she and the other Commissioners expressed appreciation for Education Coordinator Radiches' efforts.

The final order of business was:

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

Commissioner Jones inquired whether a general discussion of housing authorities could be noticed on a future agenda. Executive Director Gramitt stated that the staff will engage in drafting a memo or a new advisory opinion to Mr. Moreau to address this issue. He further stated that the staff will begin its analysis with the Woonsocket Housing Authority given that not all housing authorities are the same.

At 11:42 a.m., upon motion made by Commissioner Corrente and duly seconded by Commissioner Bennett, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

Kyle P. Palumbo
Secretary

A



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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September 15, 2021

Edward Brady
12 Thunder Trail
Cranston, RI 02921

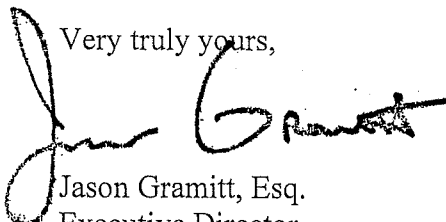
Dear Mr. Brady:

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 September 21, 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: September 7, 2021

Re: Edward Brady

QUESTION PRESENTED:

The Petitioner, a former member of the Cranston City Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against appearing before one's own board prior to the expiration of one year following one's official severance therefrom, for purposes of authorizing and/or directing his business partner to appear before the Cranston City Council in order to seek the transfer of a liquor license in connection with the pending purchase of property.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former member of the Cranston City Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against appearing before one's own board prior to the expiration of one year following one's official severance therefrom, for purposes of authorizing and/or directing his business partner to appear before the Cranston City Council in order to seek the transfer of a liquor license in connection with the pending purchase of property.

The Petitioner was a member of the Cranston City Council ("City Council") from June of 2017 through August 25, 2021. Initially appointed by the City Council to fill a vacancy in 2017, the Petitioner was later twice elected to serve two-year terms in both 2018 and 2020. The Petitioner states that, in his private capacity, he is one of the owners of the Dig In Dining Restaurant Group, which currently operates several restaurants in Rhode Island. The Petitioner states that he resigned from the City Council because he believes that he can better serve his community as a businessperson and philanthropist. He further states that he and a business partner have signed a Purchase and Sales Agreement ("PSA") to jointly purchase the Park Theatre in Cranston from its current private owner. The Petitioner describes the Park Theatre as a historic site that has been closed now for more than a year, adding that it had gone up for auction after being listed for many months with no viable buyers. The Petitioner states that he and his business partner are looking to protect the continued growth of the arts in Cranston by purchasing the Park Theatre. The closing on the purchase is scheduled for November of 2021.

The Petitioner represents that, in order to proceed with the purchase and revival of the Park Theatre, he and his business partner will need to seek permission from the City Council to transfer the full liquor license ("liquor license") from the current owner. He further represents that the

transfer of the liquor license is a contingency of the PSA. The Petitioner states that the application for the transfer of the liquor license will require an appearance before the City Council's Safety Services & Licensing Committee ("Committee") on which the Petitioner previously served and, assuming passage there, a vote by the full City Council to finalize the liquor license transfer. He further states that, in his experience as a member of the City Council, the transfer of a liquor license is typically a simple process, assuming that the current license holder has no debt owed to a distributor. The Petitioner represents that he is not aware of any debt owed by the seller of the Park Theatre to a distributor. The Petitioner states that he cannot recall the application for a transfer of a liquor license ever being denied while he served on the Cranston City Council or the Committee. He explains that his business partner would be the one to appear before both the Committee and the City Council, as has been their practice in the past for their existing restaurant in Cranston, the license for which was acquired eight years ago, well prior to the Petitioner's appointment to the City Council.¹

Cognizant of the Code of Ethics, and desirous of acting in accordance therewith, it is in the context of the representations herein that the Petitioner asks whether his business partner may appear before the City Council, prior to the expiration of one year following the Petitioner's resignation therefrom, for purposes of seeking the transfer of a liquor license.

The Code of Ethics prohibits a public official from representing himself, or authorizing another person to appear on his behalf, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4"). While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid section 5(e)'s prohibitions. Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, section 5(e)'s prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receipt of a hardship exception the public official must also follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter. Section 5(e)(1)(iii).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing himself, or authorizing another person to appear on his behalf, before an agency of which he was a member, prior to the expiration of one year following his official severance from said agency. Having determined that section 5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear, and/or his business partner to appear on the Petitioner's behalf, before the City Council in order to seek the transfer of a liquor license.

¹ The Petitioner included in his letter seeking the instant advisory opinion a request that he also be granted a hardship exception that would allow him to pursue a tax stabilization agreement in connection with the purchase of the Park Theatre, which would also require an appearance before the City Council. The Petitioner has since withdrawn that request.

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

In prior advisory opinions, the Ethics Commission has declined to grant a hardship exception for matters involving new commercial ventures. For example, in Advisory Opinion 2006-43, the Ethics Commission declined to grant a hardship exception to a member of the Barrington Planning Board ("BPB") who sought approval from his own board to construct an affordable housing development because the property was not the petitioner's residence or principal place of business; the development appeared to be in furtherance of a commercial venture; and the petitioner's legal interest in the property did not predate his appointment to the BPB.

However, in Advisory Opinion 2006-54, under circumstances similar to those in the instant matter, the Ethics Commission did grant a hardship exception that allowed a member of the Lincoln Town Council to seek and obtain approval from the Lincoln Town Council to accept the transfer of a liquor license in conjunction with the petitioner's purchase of a local restaurant. There, the petitioner represented that he would recuse from any consideration by the Lincoln Town Council consideration of the transfer, neither contact any member of the Lincoln Town Council concerning his application nor appear at any Lincoln Town Council hearing on the matter, and that he would be represented by an attorney before the Lincoln Town Council. The hearing would take place approximately one month prior to the termination of the petitioner's office, for which the petitioner had not sought reelection. Although the circumstances determined to support a finding of hardship in Advisory Opinion 2006-54 included an acknowledgement of the petitioner's precarious financial situation, the petitioner also stated that that he owned other liquor licenses in Rhode Island and Massachusetts which had always been renewed without difficulty. The petitioner further represented to the Ethics Commission that he had no reason to believe that that instant transfer, from one Lincoln restaurant to another, would not be granted *pro forma*.

In granting the hardship exception to the petitioner in Advisory Opinion 2006-54, the Ethics Commission cited other advisory opinions resulting from similar requests and for which hardship exceptions under section 5(e) were granted relative to commercial ventures. See, e.g., A.O. 2006-34 (granting a hardship exception to allow a Narragansett Town Council member to seek and obtain design and site plan review from the Narragansett Planning Board and Zoning Board for the development of property owned by the petitioner, where the relief sought was limited to site plan review of a permitted use in an already appropriately zoned area under circumstances which required the petitioner to purchase the subject property in order to protect his preexisting use, and where the petitioner agreed to not personally appear before the boards or to participate in any appointments thereto until after subsequent elections. See also A.O. 2014-10 (granting a hardship exception that allowed a member of the Gloucester Town Council to appear before that agency for purposes of renewing an earth removal license, provided that he recused from the Gloucester Town Council's discussion and vote regarding his license renewal application).

In the instant matter, the Petitioner seeks a hardship exception which would allow his business partner to represent him before the City Council, prior to the expiration of one year following the Petitioner's departure therefrom, for purposes of seeking the transfer of a liquor license in connection with the purchase of the Park Theatre for commercial use. Although the Petitioner's ownership of the property for which he seeks the liquor license transfer does not predate his appointment to public office, and the relief sought involves a new commercial venture, those factors alone are not determinative. The Ethics Commission recognizes that, under these particular circumstances, the application for the transfer of the liquor license from one Cranston business to another is substantially ministerial in nature. The Ethics Commission is further satisfied with the Petitioner's representation that, in his experience as a member of the City Council, the transfer of a liquor license is typically a simple process and that the Petitioner cannot recall the application for a transfer of a liquor license ever being denied while he served on the Cranston City Council or the Committee.

Accordingly, based on the facts as represented, the relevant provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the exceptional circumstances here justify the granting of a hardship exception to the Code of Ethics' prohibition against the Petitioner appearing before the City Council within a period of one year following his official severance therefrom. Therefore, the Petitioner may authorize his business partner to represent him before the City Council for the purpose of seeking the transfer of the liquor license in connection with the sale of the Park Theatre. The Petitioner is held to his representation that he will not attend the hearing at which said application will be considered and is advised not to contact any member of the City Council concerning his application.

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)

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

Related Advisory Opinions:

A.O. 2014-10

A.O. 2006-54

A.O. 2006-43

A.O. 2006-34

Keywords:

Revolving Door

B

**RESOLUTION OF THE RHODE ISLAND ETHICS COMMISSION
IN RECOGNITION AND PROFOUND APPRECIATION FOR DISTINGUISHED SERVICE BY**

STEVEN T. CROSS, CHIEF OF INVESTIGATIONS

WHEREAS, from 1971 to 1996, Steven T. Cross served with distinction in the City of Providence Police Department, holding various positions including patrolman, the Department's first "Officer Friendly," Instructor at the Providence Police Academy, Investigator for the Internal Affairs Bureau, and ultimately serving as a veteran Detective in the Narcotics and Organized Crime Bureau, playing a critical role in both state and federal criminal prosecutions; and

WHEREAS, Steven T. Cross agreed to retire from the Providence Police Department in order to join the Rhode Island Ethics Commission, on April 24, 1996, as its Chief of Investigations, where he was placed in charge of all Ethics Commission investigations into allegations that public officials and employees had committed violations of the Rhode Island Code of Ethics; and

WHEREAS, as Chief of Investigations, Steven T. Cross brought his vast experience, professionalism, and exceptional investigative skills to the Ethics Commission to improve and transform its investigative procedures, leading and advising on countless Ethics Commission investigations and prosecutions brought against persons who were sworn to uphold the public trust; and

WHEREAS, during his tenure at the Ethics Commission, Steven T. Cross served as a trusted mentor, advisor and sounding board for all of his colleagues on the Commission staff, and became known to the Ethics Commissioners, public officials appearing before the Ethics Commission, and members of the public seeking assistance, for not only his deep expertise in law enforcement and ethics investigations, but also for his honesty, trustworthiness, humility, and empathy; and

WHEREAS, after twenty-five years of service to the State of Rhode Island, Steven T. Cross will retire from his position at the Ethics Commission on September 21, 2001, it is hereby:

RESOLVED, that the Rhode Island Ethics Commission extends its profound appreciation to Steven T. Cross for his fifty years of distinguished service to the People of the State of Rhode Island and its capital, the City of Providence, during which time he was instrumental in the establishment of a more ethical, open, and accountable administration of government.

The undersigned hereby attests that the foregoing Resolution was duly adopted by a unanimous vote of the Rhode Island Ethics Commission on this 21st day of September 2021 and directs that said Resolution shall be duly recorded in the official minutes of the Rhode Island Ethics Commission.

Marisa A. Quinn, Chair

Jason Gramitt, Executive Director