



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

14th Meeting

DATE: Tuesday, October 5, 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 September 21, 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.) Robert R. Moreau (part 1), the Executive Director of the Housing Authority of the City of Woonsocket, requests an advisory opinion regarding whether such employment subjects him to the provisions of the Rhode Island Code of Ethics. [Executive Director Gramitt]

- b.) Robert R. Moreau (Part 2), the Executive Director of the Housing Authority of the City of Woonsocket, 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 Housing Authority as a Data Entry Clerk. [Staff Attorney Radiches]
- 5. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on September 21, 2021, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Aimee M. Gardiner, Complaint No. NF2021-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) Motion to return to Open Session.
 - 6. Motion to seal minutes of Executive Session held on October 5, 2021.
 - 7. Report on actions taken in Executive Session.
 - 8. Election of Officers.
 - 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 September 30, 2021

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 5, 2021

Re: Robert R. Moreau

QUESTION PRESENTED:

The Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, requests an advisory opinion regarding whether such employment subjects him to the provisions of the Rhode Island Code of Ethics.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, is subject to the Rhode Island Code of Ethics.

The Petitioner represents that he has been employed by the Housing Authority of the City of Woonsocket (“Woonsocket Housing Authority” or “WHA”) since 2009, first as its Director of Security and, since January 1, 2019, as its Executive Director.¹ The Petitioner states that, as Executive Director, he is responsible for the day-to-day leadership and management of the WHA. The Executive Director is selected and appointed by the WHA’s 7-member Board of Commissioners, who themselves are all selected and appointed to their positions by the Mayor of the City of Woonsocket (“the City” or “Woonsocket”).

The Petitioner represents that the WHA, like other public housing authorities, is funded and regulated by the U.S. Department of Housing and Urban Development (“HUD”), and that it does not receive any state or municipal funds. He further states that, notwithstanding the political appointment of its Board members and while the WHA works “cohesively” with city and state leaders, its operations are “fully autonomous” from the City. For these reasons, he seeks clarification as to whether he is subject to the Rhode Island Code of Ethics.

Public Housing Authorities are Public Corporations

Public housing authorities (“PHAs”) exist in cities and towns across Rhode Island and the United States. Often referred to as “quasi-public” entities having characteristics of both private and public bodies, their authority, governance, and relationship to federal, state, and local governments are often misunderstood. A comprehensive report on public housing prepared by the Congressional

¹ The Petitioner previously served on the Woonsocket Police Department for twenty-three years, the Woonsocket Zoning Board for ten years, and the Woonsocket City Council from 2011 through 2016, serving as Council President in his last year.

Research Service for the members and committees of the United States Congress describes the history of public housing and PHAs as follows:

PHAs were, for the most part, created by states in response to the federal government's creation of the low-rent public housing program [in 1937]. Their authorities and structures are dictated by the state laws under which they were chartered. PHAs typically have an executive director as well as a governing board. The board generally has members appointed by local government officials, but it may also have elected members. The board's role is generally to approve policy, clarify goals, and delegate responsibility and authority to the executive director, who acts on its behalf. [PHAs' governing structures are dictated primarily by their state charters]²

And also:

Public housing has a unique administrative structure that pairs local administration and local discretion with federal funding and federal regulations. Public housing properties are owned and managed by quasi-governmental local public housing authorities (PHAs). PHAs have contracts, called Annual Contributions Contracts (ACCs), with the federal government. Under the terms of their contracts, PHAs agree to administer their properties according to federal rules and regulations, and in exchange they receive federal funding in the form of operating and capital grants³

All Rhode Island PHAs, including the WHA, were created and chartered by enabling legislation adopted by the General Assembly.⁴ As described in this enabling statute, a Rhode Island PHA is "a public body and a body corporate and politic, exercising public powers[.]"⁵ Therefore, a PHA is a "public corporation," which "is one of a large class of corporations created by the government to undertake public enterprises in which the public interests are involved to such an extent as to justify conferring upon such corporations important governmental privileges and powers."⁶

The Rhode Island Supreme Court has described PHAs as having "a dual nature which partakes of a public as well as a private character."⁷ However, "[a] housing authority is not a political subdivision of the state[.]"⁸ nor is it a municipal department.⁹ "Once created it becomes an

² Congressional Research Service, *Introduction to Public Housing*, 9-10 (2014).
<https://crsreports.congress.gov/product/pdf/R/R41654/14>.

³ *Id.* at 9.

⁴ The WHA was established on March 8, 1940 under the provisions of an enabling act, then R.I. Gen. Laws 1938, ch. 344, as amended, and now R.I. Gen. Laws § 45-25-1 *et seq.*

⁵ R.I. Gen. Laws § 45-25-15.

⁶ *Little v. Conflict of Interest Commission*, 397 A.2d 884, 887-88 (R.I. 1979)(quoting *Housing Authority of Woonsocket v. Fetzik*, 110 R.I. 26, 32-33, 289 A.2d 658, 662 (1972)). See also *State ex rel. Costello v. Powers*, 80 R.I. 390, 394, 97 A.2d 584, 586 (1953) (A housing authority is akin to "a public or quasi-municipal corporation which exercise[s] police powers in the general public interest . . .").

⁷ *Fetzik*, 110 R.I. at 33, 289 A.2d at 662 (citing *Parent v. Woonsocket Housing Authority*, 87 R.I. 444, 143 A.2d 146 (1958)).

⁸ *Id.*

⁹ *Parent*, 87 R.I. at 447, 143 A.2d at 147.

autonomous body, subject only to the limits of power imposed by law.”¹⁰ Nevertheless, “[a] housing authority exercises some of its powers as a representative of the city government and other powers as an agent of the federal government[.]”¹¹ Furthermore, the Rhode Island Supreme Court has stated that “the services which these authorities render are impressed with a public character to such an extent that we think it is a matter of public policy that they be bound in some particulars by the rules which govern the activities of municipal corporations and departments thereof.”¹²

In a recent audit of the WHA by HUD’s Office of Inspector General, the WHA was described as follows:

The Housing Authority of the City of Woonsocket, RI, was incorporated under the laws of the State of Rhode Island and operates under a board of commissioners. The executive director, who is appointed by the board of commissioners, runs the day-to-day operations of the Authority. The Authority owns and operates six developments under an annual contributions contract with the U.S. Department of Housing and Urban Development (HUD).¹³

An earlier report of HUD’s Inspector General described the WHA as “a quasi-governmental public entity responsible for the ownership, oversight, and management of [] low income units in the City of Woonsocket.”¹⁴

The above-discussed opinions of the Rhode Island Supreme Court, reports authored by the HUD Auditor General and the Congressional Research Service, as well as the WHA’s own chartering statutes enacted by the General Assembly, all make clear that the WHA’s legal status is that of either a “public corporation” or a “quasi-public corporation,” created and constrained by laws enacted by the Rhode Island Legislature. Therefore, the answer to the Petitioner’s question presented - whether he is subject to the State of Rhode Island’s ethics laws - depends upon whether Rhode Island law requires the employees of public or quasi-public corporations such as the WHA to be subject to the Code of Ethics.

Rhode Island’s Former Standards of Conduct and Persons Subject Thereto: 1977-1986

Rhode Island’s first comprehensive set of statutory “standards of conduct” for public officials was enacted by the General Assembly in 1976 and became effective in January of 1977, ten years prior to the creation of today’s Rhode Island Ethics Commission.¹⁵ These initial standards of conduct were enforced by a 9-member “Conflict of Interest Commission” and were applicable only to state or municipal *elected* and *appointed* officials who were defined as “an officer or member of state

¹⁰ *Fetzik*, 110 R.I. at 33, 289 A.2d at 662.

¹¹ *Id.* (citing *Costello*, 80 R.I. 390, 97 A.2d 584).

¹² *Parent*, 87 R.I. at 448, 143 A.2d at 147.

¹³ U.S. Department of Housing and Urban Development (HUD), *Office of Inspector General’s Audit of the Housing Authority of the City of Woonsocket, RI’s Public Housing Capital Fund 3* (2019)(footnotes omitted).
<https://www.hudoig.gov/sites/default/files/2019-06/2019-BO-1002.pdf>.

¹⁴ U.S. Department of Housing and Urban Development, *Audit Report of the Office of Inspector General*, 1 (1998),
<https://archives.hud.gov/offices/oig/reports/files/ig811003.pdf>.

¹⁵ 1976 R.I. Pub. Laws, ch. 93, § 1.

or municipal government . . . ”¹⁶ State or municipal *employees*, however, were not subject to the those standards of conduct enacted at that time.

Notwithstanding this narrow definition, in its first year of existence the Conflict of Interest Commission asserted that it had jurisdiction over an appointed member of another form of municipal public corporation, the Narragansett Redevelopment Agency. The dispute over this issue was recounted, and resolved, by an opinion of the Rhode Island Supreme Court in *Little v. Conflict of Interest Commission*.¹⁷ There, the Court affirmed a decision of the Superior Court holding that a member of the Narragansett Redevelopment Agency, a public corporation compared by the Court to public housing authorities, was not required to file an annual financial disclosure statement because he was not an appointed “officer or member of state or municipal government,” as was then-required under the statute.¹⁸ The Court reasoned that the Conflict of Interest Act in effect at that time must be given its plain and ordinary meaning, and “the Legislature was aware at the time it enacted the Conflict of Interest Act that this court had refused unequivocally to equate *public corporations* with municipal government.”¹⁹ The clear takeaway from *Little* was that if the General Assembly had intended to include public or quasi-public corporations within the reach of its standards of conduct for public officials, it could and should have done so by clearly referring to them in the Conflict of Interest Act. Some years later, apparently aware of the Court’s holding in *Little*, the General Assembly did just that.

The Rhode Island Code of Ethics: 1987-Present

After the 1986 Constitutional Convention and successful ballot measure creating the Rhode Island Ethics Commission, in 1987 the General Assembly repealed the Conflict of Interest Act and replaced it with a new “Code of Ethics in Government” to be administered and enforced by the Ethics Commission.²⁰ This new Code of Ethics applied not only to appointed and elected officials, as had the prior Conflict of Interest Act, but also specifically included state and local employees as well as employees of public and quasi-public state and municipal corporations. Section 36-14-4, entitled “Persons subject to the Code of Ethics,” which is still in effect today, was enacted as follows:

The following persons shall be subject to the provisions of the Rhode Island Code of Ethics in government:

- (1) State and municipal elected officials;
- (2) State and municipal appointed officials; and
- (3) *Employees of state and local government, of boards, commissions and agencies.*²¹

In order to leave no doubt as to which employees were meant to be included in subsection (3), above, the new Code of Ethics defined its entire phrase:

¹⁶ R.I. Gen. Laws §§ 36-14-2 and 36-14-3(2) (1977).

¹⁷ *Little*, 121 R.I. 232, 397 A.2d 884.

¹⁸ *Id.* at 886-887.

¹⁹ *Id.* at 888 (emphasis added).

²⁰ 1987 R.I. Pub. Laws ch. 195, §§ 1, 3.

²¹ R.I. Gen. Laws § 36-14-4 (emphasis added).

“Employees of state and local government, of boards, commissions and agencies” means any full-time or part-time employees in the classified, non-classified and unclassified service of the state or of any city or town within the state, any individuals serving in any appointed state or municipal position, and any employees of any public or quasi-public state or municipal board, commission or corporation[.]²²

This deliberate and express addition in 1987 of “employees of any public or quasi-public . . . municipal . . . commission or corporation” to the list of persons “subject to the provisions of the Code of Ethics” appears to directly address the Supreme Court’s opinion in *Little*, and leaves no doubt that the employees of public corporations such as the WHA are subject to the Code of Ethics. Just as the Court noted in *Little* that, “we must presume that the Legislature, when enacting the [1977] Conflict of Interest Act, was familiar with our prior analysis of the relationship between public corporations . . . and municipal government[.]”²³ the Ethics Commission must also presume that the General Assembly was aware of the Court’s ruling in *Little* when, in its aftermath, it adopted the new Code of Ethics and expressly added employees of public and quasi-public corporations as regulated persons.

The Ethics Commission’s Longstanding and Consistent Exercise of Authority Over PHAs

Following the 1987 enactment of the Code of Ethics by the General Assembly, the Ethics Commission enacted regulations consistent with the statutory Code of Ethics, clarifying that the definition of “Employees of state and local government, of boards, commissions and agencies” includes “any individual receiving a salary from any public or quasi-public state or municipal board, commission, corporation, or other public or quasi-public agency however named[.]”²⁴ Consistent therewith, the Ethics Commission began asserting its jurisdiction over PHA employees throughout the state, and it has continued that practice to the present through the issuance of numerous advisory opinions.²⁵

Furthermore, another amendment to the Code of Ethics by the General Assembly, in 1992, expanded the definition of “municipal agency” to expressly include any “quasi-public authority,”

²² R.I. Gen. Laws § 36-14-2(4)(emphasis added).

²³ *Little*, 121 R.I. at 237-238, 397 A.2d 887 (citing *Romano v. Duke*, 111 R.I. 459, 462, 304 A.2d 47; 49 (1973); *Loretta Realty Corp. v. Massachusetts Bonding & Insurance Co.*, 83 R.I. 221, 225-26, 114 A.2d 846, 848-49 (1955)).

²⁴ Commission Regulation 520-RICR-00-00-1.1.3(C)(4) Additional Definitions (36-14-2002).

²⁵ See A.O. 88-53 (A violation of the Code of Ethics will arise for the Executive Director of the Lincoln Housing Authority if his spouse applies for, or is hired to the position of Assistant Executive Director); A.O. 97-131 (Executive Director of the Pawtucket Housing Authority will not violate the Code of Ethics if he is a member of the Laborer's International Union pension plan and also participates in the negotiation of the Laborer's Union contract with the Housing Authority, given that his own salary and pension benefits would not be affected by those negotiations but are set by the City); A.O. 2002-42 (Central Falls Housing Authority employee must recuse from participation in any Housing Authority matters involving his own property); A.O. 2018-13 (an employee and tenant of the Providence Housing Authority may become a member of the Housing Authority’s Board of Commissioners, but must recuse from Commission matters that would financially impact her as an employee and tenant); A.O. 2018-25 (the Code of Ethics does not prohibit a Research/Executive Assistant at the Pawtucket Housing Authority from seeking election to the Pawtucket School Committee).

thereby further clarifying that the General Assembly considered the *appointed* PHA board members/commissioners to also be within the reach of the Code of Ethics.²⁶ Since then, the Ethics Commission has, on numerous occasions, issued advisory opinions applying the Code of Ethics to the actions of appointed PHA commissioners, including the commissioners of the WHA.²⁷

The WHA's Administrative Regulations Support Application of the Code of Ethics

Finally, we find support in the WHA's own duly adopted regulations, which appear to recognize the applicability of the Code of Ethics to its employees and commissioners. The General Assembly has authorized PHAs to promulgate regulations that are necessary for the just and effective administration of their operations.²⁸ Pursuant thereto, the WHA has enacted its own Administrative Regulations, some of which govern conflicts of interest by WHA commissioners and employees.²⁹ Section 9-11 of its Administrative Regulations, entitled "Application of Other Codes of Conduct," reads:

This article is *in addition to* other requirements relating to the conduct of Authority employees. *Authority officers, directors and employees are required to follow the*

²⁶ 1992 R.I. Pub. Laws, ch. 396.

²⁷ See A.O. 96-27 (Chairperson of the Cumberland Housing Authority who is also an attorney engaged in the practice of law may represent an outside vendor's employee in a personal injury action that does not involve the Housing Authority); A.O. 96-77 (Newport Housing Authority Board of Commissioners member must recuse herself from participation in any discussion or voting in matters concerning her employer, Newport Residents Council Inc.); A.O. 96-92 (Chairperson of the Westerly Housing Authority Board of Commissioners is not prohibited from voting on a union contract involving Local 1217 given that he is also employed by the Town of Westerly and a member of the same union, but a different local, Local 1215, and would not be impacted by the vote); A.O. 96-94 (Commissioner of the Woonsocket Housing Authority, a municipal appointed official, may not participate in decisions of the Housing Authority to purchase advertising time at a radio station for which he is employed as general manager); A.O. 96-116 (Westerly Housing Authority Commissioner is not prohibited by the Code of Ethics from purchasing gifts for staff with public funds, provided such gifts are not for the benefit of Commissioners); A.O. 97-113 (Woonsocket Housing Authority Commissioner is not prohibited by the Code of Ethics from participating in discussions or votes on matters concerning the Police Department, where she is employed); A.O. 99-115 (members of the Glocester Housing Authority may not receive compensation for their efforts if the members of the Housing Authority themselves take action to provide for or set their own compensation); A.O. 2000-21 (a member of the Pawtucket Housing Authority Commission may not participate in negotiations, votes or other matters affecting the labor contract with the Laborers' Union of the Housing Authority, a labor organization representing half of the approximately 45 employees of the Housing Authority, given that his son-in-law is an employee represented by that union); A.O. 2000-67 (the Pawtucket Housing Authority Chairperson must recuse from all participation in Housing Authority matters relating to his tenant's employer); A.O. 2000-74 (the Code of Ethics prohibits Westerly Housing Authority Commissioners from participating in the discussion or vote to donate funding to the Westerly Housing Association, a non-profit association, since they are all members of the Board of Directors of the Association); A.O. 2005-46 (Commissioner for the Cumberland Housing Authority may continue his full-time employment with the Cumberland School Department); A.O. 2010-24 (a member of the Coventry Housing Authority Board of Commissioners is prohibited by the Code of Ethics from accepting employment from the Housing Authority as its Maintenance Director, while serving on the Housing Authority and for one year thereafter); A.O. 2012-14 (a prospective Commissioner for the Johnston Housing Authority is not prohibited by the Code of Ethics from serving as a Commissioner while he is also a Section 8 landlord in Johnston, given that his tenant's Section 8 housing choice voucher was transferred from the Johnston Housing Authority to Rhode Island Housing).

²⁸ R.I. Gen. Laws § 42-25-18.1(b).

²⁹ *Woonsocket Housing Authority Administrative Legislation and Administrative Regulations*. <https://ecode360.com/WO1105> (last visited Sept. 29, 2021).

*Rhode Island laws and regulations relating to the conduct of public officials and employees.*³⁰

The “Rhode Island laws and regulations relating to the conduct of public officials and employees” are those contained in the statutory and regulatory provisions of the Code of Ethics.

Conclusion

Based on all of the above, including a clear statutory grant of jurisdiction by the General Assembly in the Code of Ethics and the Ethics Commission’s longstanding interpretation thereof, it is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the WHA, is subject to the provisions of the Code of Ethics.³¹

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:

R.I. Gen. Laws § 36-14-2(4)

R.I. Gen. Laws § 36-14-2(8)

R.I. Gen. Laws § 36-14-2(9)

R.I. Gen. Laws § 36-14-4

Commission Regulation 520-RICR-00-00-1.1.3(C)(4) Additional Definitions (36-14-2002)

Other Authorities:

R.I. Gen. Laws § 45-25-10

R.I. Gen. Laws § 45-25-10.5

R.I. Gen. Laws § 45-25-15

Little v. Conflict of Interest Commission, 121 R.I. 232, 397 A.2d 884 (R.I. 1979)

Housing Authority of City of Woonsocket v. Fetzik, 110 R.I. 26, 289 A.2d 658 (1972)

Parent v. Woonsocket Housing Authority, 87 R.I. 444, 143 A.2d 146 (1958)

State ex rel. Costello v. Powers, 80 R.I. 390, 97 A.2d 584 (1953).

Related Advisory Opinions:

A.O. 2018-25

A.O. 2018-13

³⁰ *Woonsocket Housing Authority Administrative Legislation and Administrative Regulations, Ch. 9 Ethics and Standards of Conduct*. <https://ecode360.com/14482439> (last visited Sept. 29, 2021).

³¹ In his letter requesting an advisory opinion, the Petitioner correctly notes that he and other executive directors of public housing authorities have not been directed to file annual financial disclosure statements with the Ethics Commission. While this is true, it is not relevant to our analysis of whether such employees are subject to the Code of Ethics. Only a small fraction of public, or quasi-public, employees are required to file financial disclosure statements under the current statutory scheme, but *all* are nevertheless subject to the conduct requirements of the Code of Ethics.

A.O. 2012-14
A.O. 2010-24
A.O. 2005-46
A.O. 2002-42
A.O. 2000-74
A.O. 2000-67
A.O. 2000-21
A.O. 99-115
A.O. 97-131
A.O. 97-113
A.O. 96-116
A.O. 96-94
A.O. 96-92
A.O. 96-77
A.O. 96-27
A.O. 88-53

Keywords:

Code of Ethics

Jurisdiction

Public Corporations

Quasi-Public

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 5, 2021

Re: Robert R. Moreau

QUESTION PRESENTED:

The Petitioner, the Executive Director of the Housing Authority of the City of Woonsocket, an employee position at a municipal public corporation, 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 Housing Authority as a Data Entry Clerk.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Executive Director of the Housing Authority for the City of Woonsocket, an employee position at a municipal public corporation, is prohibited by the Code of Ethics from participating in any 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 an employee contract or collective bargaining agreement that addresses or affects his sister's employment, compensation, or benefits, but may provide information relative to Housing Authority operations to those persons involved in the negotiations of such an employee contract or collective bargaining agreement, provided that it is not reasonably foreseeable that the Petitioner's sister will be financially impacted by the Petitioner's official activity, and further provided that the Petitioner is not present during the negotiations of such an employee contract or collective bargaining agreement.

The Petitioner states that he is employed as the Executive Director of the Housing Authority for the City of Woonsocket ("Woonsocket Housing Authority" or "WHA"), having been hired for that position by the WHA Board of Commissioners ("Board") on January 1, 2019. He informs that the WHA employs approximately 50 full-time employees and 15 part-time employees. The Petitioner identifies among his responsibilities as Executive Director the leadership and management of the WHA and the establishment and administration of Board policies. He offers as an example of the establishment and administration of Board policies his implementation earlier this year of a "floating holiday" for all WHA employees who are members of the American Federation of State, County and Municipal Employees ("AFSCME" or "union") in response to President Biden's declaration of June 19th ("Juneteenth") as a federal holiday. The Petitioner explains that, because all federal holidays must be observed under the Collective Bargaining Agreement ("CBA")

currently in place between the WHA and the union, he collaborated with union leaders to determine the manner in which observation of the holiday would be implemented.

The Petitioner represents that, immediately prior to becoming Executive Director, he worked as the WHA's Director of Security, a position he held for nearly a decade after having been hired in April of 2009 by a former WHA Executive Director. He further represents that, in April of 2016, during his tenure as Director of Security, his sister was hired by the WHA Executive Director at the time for the position of Data Entry Clerk. The Petitioner identifies the responsibilities of a Data Entry Clerk as follows: 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 WHA 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 WHA as a Data Entry Clerk and that she is a union member. He further states that his sister reports directly to the WHA'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 WHA'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 WHA 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 WHA'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. 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.

The Petitioner states that, in the event that a question about the language in an existing CBA arises, or if an existing CBA is silent on a particular matter, he will communicate with union officers in order to seek a resolution. He cites as an example the recent resolution of the interpretation of language in the current CBA addressing the manner in which a union employee would be paid for being called back to work for any number of hours in addition to those for which he or she had been scheduled ("call-back language"). He adds that his sister is not subject to the call-back language portion of the CBA. The Petitioner states that the CBA also outlines training opportunities for WHA employees who are union members, the implementation of which requires decision-making by the Executive Director.

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 WHA as a Data Entry Clerk and is a member of the union.

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).

However, section 36-14-7(b) of the Code of Ethics, often referred to as the "class exception," states that a public official or employee will not have an interest which is in substantial conflict with the proper discharge of his official duties if any benefit or detriment accrues to him, any person within his family, any business associate, or any business by which he is employed or which he represents "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group."¹ 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, 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, 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 participant in such matter or will derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004) ("Regulation 1.3.1"). 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

¹ When determining whether any particular circumstance supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official or employee; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

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 official activity, 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). An example of a matter from which the Petitioner would be required to recuse would include, though not be limited to, the exercise of discretion by the Petitioner when selecting training opportunities for his sister that are not made available to other similarly situated employees. To the extent that the Petitioner were to select training opportunities that would also be available to and appropriate for all other Data Entry Clerks and similarly situated WHA employees, the "class exception" would likely apply to such decision-making. The Petitioner is encouraged to consult with the Ethics Commission regarding such matters.

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 regarding the potential approval of a proposed alternate chain of command.²

² While not determinative of the instant request for an advisory opinion, we note that section 18-17 of the WHA's own personnel regulations appears to prohibit the Petitioner from serving in a position in which he works directly above his sister's immediate superior. <https://ecode360.com/14482761>.

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). See General Commission Advisory 2009-1. 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. However, the Ethics Commission has allowed a municipal employee to provide information to those persons involved in the negotiations of a collective bargaining agreement. In Advisory Opinion 2021-4, the Ethics Commission opined that the Chief of the Lime Rock Fire Department ("Fire Department") was not prohibited by the Code of Ethics from continuing to provide information to the Chair of the Board of Commissioners for the Fire Department concerning the negotiation of a collective bargaining agreement addressing the employment of firefighters within the Fire Department, notwithstanding that a firefighter within the Fire Department had recently become the petitioner's son-in-law.

That petitioner had represented that the nature of his consultations with the Chair were limited to providing information relative to Fire Department operations, and specifically excluded financial matters such as firefighter compensation or benefits. Furthermore, the petitioner had stated that he did not attend the collective bargaining agreement negotiation sessions, was not actively involved in those negotiations, and had no voting authority over the collective bargaining agreement which would eventually be presented to members of the Board of Commissioners for consideration. The Ethics Commission determined that the petitioner's communications with the Chair did not rise to the level of participation in negotiations relative to the collective bargaining agreement and, therefore, did not trigger the provisions of Regulation 1.3.1(b)(4)(a). Nor was it reasonably foreseeable that such communications would result in a direct financial impact upon the petitioner's son-in-law as prohibited by Regulation 1.3.1(b)(1).

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. However, the Petitioner is not prohibited from providing information relative to WHA operations to those persons involved in the negotiations of a collective bargaining

agreement between the WHA and the union, provided that it is not reasonably foreseeable that the Petitioner's sister will be financially impacted by the petitioner's official activity.

The Petitioner's example of collaborating with union leaders concerning the implementation of a floating holiday in response to the addition of Juneteenth as a federal holiday that is to be observed under the CBA does not constitute the negotiation of an employee contract or collective bargaining agreement. Rather, the decision to give WHA employees who are union members a floating holiday constitutes the accomplishment of a contract provision previously negotiated. Similarly, the Petitioner's example of communicating with union officers to interpret the language addressing the manner of compensation as regards the call-back language of the CBA (language to which the Petitioner's sister is not even subject) does not constitute the negotiating of an employee contract or collective bargaining agreement but, rather, amounts to an interpretation or clarification of an employee contract or collective bargaining agreement provision that had already been negotiated and voted on by others, and which applies to a group of similarly situated employees. The Petitioner is not prohibited from discussing or interpreting a union contract that was negotiated by others and that applies to a similarly situated group of employees that may include his sister.

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 WHA matter in which his sister is a party or participant, or by which his sister will be financially impacted or receive an employment advantage other than as a member of a class of similarly situated employees. 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. However, the Petitioner may provide information relative to WHA operations to those persons involved in the negotiations of such an employee contract or collective bargaining agreement between the WHA and the union, provided that it is not reasonably foreseeable that the Petitioner's sister will be financially impacted by the Petitioner's official activity, and further provided that the Petitioner is not present during the negotiations of such an employee contract or collective bargaining agreement. 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)

§ 36-14-7(b)

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

Related Advisory Opinions:

A.O. 2021-4

A.O. 2019-19

A.O. 2016-26

A.O. 2013-8

General Commission Advisory 2009-1

Keywords:

Conflict of Interest

Nepotism