

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-7

Approved: February 27, 2024

Re: Melanie Reeves

QUESTION PRESENTED:

The Petitioner, the finance director at the Block Island School, a municipal employee position, requests an advisory opinion regarding what limitations, if any, the Code of Ethics places upon her in carrying out her duties as described herein, given that her spouse is expected to submit a bid in response to a request for proposal relating to a project at the school.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the finance director at the Block Island School, may carry out her duties as described herein in conformance with the Code of Ethics at this time, notwithstanding that her spouse is expected to submit a bid in response to a request for proposal relating to a project at the school, because the Petitioner's limited duties relative to the project are ministerial in nature and will not directly financially impact her spouse.

The Petitioner is employed by the Block Island School as its finance director. She states that she has held this position for more than ten years and works under the direct supervision of the school superintendent. The Petitioner identifies among her official duties the following: payroll, accounts payable, purchasing, employee benefits, budgeting, and school audits. She states that the school recently received grant funding from the Rhode Island Department of Education, one hundred percent of which is to be used to construct an outdoor classroom at the school. The Petitioner further states that the funding, including its intended use, was discussed in open session at a recent school committee meeting. She explains that the project will involve the pouring of concrete and construction of a prefab shade structure to be modeled after an existing structure at a local park. The Petitioner states that her husband is a self-employed, full-time excavation contractor who she expects will be interested in submitting a bid in response to the request for proposal ("RFP") that is issued for the project.

The Petitioner represents that the RFP was developed by an architect, the project manager, and two teachers from the school. She further represents that the project manager then forwarded the RFP to the Petitioner for posting on the Block Island Bulletin and Bidnet.¹ The Petitioner states that the project manager invited her to edit the RFP to reflect consistency with a previously used format or to use a different format. The Petitioner represents that her role in the editing of the RFP

¹ The Petitioner describes Bidnet as a national public forum used to post public solicitations.

did not include discretion to make any substantive changes to it. She explains that her edits to the RFP were limited to changing the deadline dates for the release of the RFP, the site visit by potential bidders, and the submission of bids from a Thursday to the immediately preceding Wednesday in order to align with the superintendent's work schedule. The Petitioner further explains that the award date for the project was changed from March 8, 2024, to March 18, 2024, in order to align with a previously scheduled school committee meeting. The Petitioner states that her final edit to the RFP was to correct the name of the school, which had been inadvertently misidentified.

The Petitioner states that submissions in response to the RFP will be addressed to the superintendent's administrative assistant. She further states that the submissions will be scored by the superintendent, the superintendent's administrative assistant, and the school's facilities director. The Petitioner represents that she has in the past scored bid submissions for school projects in her capacity as finance director. She further represents that, when this particular project was announced, she eliminated herself as a potential member of the scoring team because she suspected her spouse might be interested in responding to the RFP. The Petitioner adds that the superintendent then made his administrative assistant a member of the scoring team for this project. The Petitioner represents that the project manager developed the following 100 point system for scoring the bids: technical requirements (30 points); pricing (35 points); past project experiences (25 points); and references (10 points). She states that once the scores have been determined, the superintendent will make a recommendation to the school committee, which will have the discretion to accept or reject that recommendation.

The Petitioner represents that once a contract is awarded to the successful bidder, she in her capacity as finance director will have no role in approving payments to that person. She explains that the superintendent will be responsible for the approval of all purchase orders and that the Petitioner will only be responsible for coding payments, which she describes as assigning a string of numbers to the expenditures in conformance with the Uniform Chart of Accounting required by the state. The Petitioner states that she will be tasked with grant reporting on the project, which involves submitting quarterly reports of expenditures as a prerequisite to requesting a next round of funding. She further states that she will be asked to print and mail checks issued by the school committee to the contractor, but not sign them. The Petitioner affirmatively represents that she will exercise no discretion in her role as finance director while performing any of her official duties associated with this project. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks guidance regarding what limitations, if any, the Code of Ethics places upon her in carrying out her official duties, given that her spouse is among those expected to bid on the project.

The Code of Ethics provides that a public employee shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of her duties in the public interest if she has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). A public employee has reason to believe

or expect a conflict of interest exists when it is “reasonably foreseeable,” specifically, when the probability is greater than “conceivably,” but the conflict of interest need not be certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001).

A public employee is further prohibited by the Code of Ethics from using her public position, or confidential information received through her public position, to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or her employer. Section 36-14-5(d). Additionally, a public official is required to recuse herself from participation when a business associate or any person within her family appears or presents evidence or arguments before her public agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(1) Additional Circumstances Warranting Recusal (36-14-5002). The Code of Ethics also provides that a public employee shall not participate in any matter as part of her public duties if she has reason to believe or expect that any person within her family 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, as the case may be. Commission Regulation 520-RICR-00-00-1.3.1(B)(1) Prohibited Activities – Nepotism (36-14-5004).

The Ethics Commission has previously opined that a public employee or public official was not prohibited by the Code of Ethics from performing their official duties in situations where those duties were not expected to directly financially impact their family member. For example, in Advisory Opinion 2010-45, a chief distribution officer for the Rhode Island Department of Environmental Management sought an advisory opinion regarding whether he would have a conflict of interest in the event that his brother, who owned and operated a landscaping business, responded to a bid on a contract to clean and landscape state beaches. After clarifying for the Ethics Commission that he had no input into the request for bids or bid specifications, would have no part in reviewing the bids, and that the contract would be supervised by the regional managers and division chief of RIDEM’s Division of Parks and Recreation who were not within that petitioner’s supervisory chain of command, the Ethics Commission opined that the submission of a bid on the contract by the petitioner’s brother would not create a conflict of interest for the petitioner. See also A.O. 2019-40 (opining that a member of the Smithfield School Building Committee was not prohibited from participating in the review of an RFP for, and the selection of, a construction manager for an elementary school reconfiguration project, and from all other building committee matters concerning the selected construction manager, notwithstanding that his daughter was employed by a company that was expected to bid on the project, because the petitioner’s daughter would not be directly financially impacted by reason of his official activity). Contra A.O. 2019-17 (opining that a member of the Smithfield School Building Committee was prohibited from participating in the school building committee’s selection of a construction manager for the elementary school reconfiguration project, given the reasonable foreseeability of direct financial impact upon his son who, in his capacity as the manager of business development for a company that was expected to bid on the project, would have been eligible for a bonus should his employer have been awarded the contract).

Here, the Petitioner’s responsibilities as she describes them, which include editing dates associated with the RFP to accommodate her supervisor’s work schedule and correcting the school’s name prior to arranging for the RFP to be advertised, appear to have been solely ministerial in nature. Additionally, the Petitioner, who properly eliminated herself as a potential participant in the RFP

process, did not take part in developing the RFP or the scoring system to review the bids. Nor will the Petitioner participate in scoring the bids, awarding the contract, supervising the work performed under the contract, or reviewing and approving payments under the contract. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and a review of prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may carry out her duties as described herein in conformance with the Code of Ethics at this time, notwithstanding that her spouse is among those expected to respond to the RFP for a project at the school.

This Advisory 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)

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

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

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

Related Advisory Opinions:

A.O. 2019-40

A.O. 2019-17

A.O. 2010-45

Keywords:

Conflict of Interest

Family Member

Nepotism