

RHODE ISLAND ETHICS COMMISSION



UNDERSTANDING THE CODE OF ETHICS

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What is the Rhode Island Ethics Commission?

An Ethics Amendment to the Rhode Island Constitution was enacted in 1986, creating the independent and nonpartisan Ethics Commission with the authority to adopt and enforce a Code of Ethics that applies to all state and municipal elected officials, appointed officials and employees. The Ethics Amendment reads:

The people of the State of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage. Such persons shall hold their positions during good behavior.

Article III, Section 7.

The general assembly shall establish an independent non-partisan ethics commission which shall adopt a code of ethics including, but not limited to, provisions on conflicts of interest, confidential information, use of position, contracts with government agencies and financial disclosure. All elected and appointed officials and employees of state and local government, of boards, commissions and agencies shall be subject to the code of ethics. The ethics commission shall have the authority to investigate violations of the code of ethics and to impose penalties, as provided by law; and the commission shall have the power to remove from office officials who are not subject to impeachment.

Article III, Section 8.

In addition to its enforcement duties, the Ethics Commission educates and advises public officials and employees about the standards of conduct set out in the Code of Ethics. Additionally, the Ethics Commission oversees the financial disclosure program which requires all elected officials, all candidates for public office and certain categories of persons appointed to serve as officers or members of state or municipal agencies to file statements annually.

The Commission is comprised of nine Rhode Islanders. Four are appointed directly by the Governor; five are appointed by the Governor from lists of nominees submitted by the majority and minority leaders in the House and Senate. No Commission Member may serve more than one full five-year term. While serving on the Ethics Commission, members are prohibited from holding or campaigning for public office, holding office in any political party or political committee, and participating in or contributing to any political campaign.

Guide to the Code of Ethics

This provides a brief overview of the Code of Ethics for public officials and employees. It is not meant to serve as formal advice or to substitute for legal counsel. The Ethics Commission conducts hearings to consider revisions to the Code of Ethics. For up-to-date and complete information, contact the Commission at 401-222-3790 or by email at ethics@ethics.ri.gov.

Nepotism and Favoritism:

You may not participate in official actions, decisions or deliberations that affect your family members, business associates, outside employers or any business you represent. You may not hire, evaluate, supervise or otherwise participate in employment decisions affecting your family members. For an exhaustive list of persons who qualify as family members, *See* Commission Regulation 36-14-5004(a)(2). Business associates include anyone with whom you have joined together to achieve a common financial objective. *See* R.I. Gen. Laws §§ 36-14-5(a), 5(d), 5(f), 7(a), 7(b), and Commission Regulations 36-14-5004 and 5005.

Gifts:

You may not accept anything of value based on the understanding that the gift will influence your judgment or official action. This prohibition includes anything of value given to your family or your business associates. *See* R.I. Gen. Laws § 36-14-5(g),(i). Additionally, if you participate in making decisions, you may not accept cash or forgiveness of debt from interested persons, but may accept things of value (gifts, loans, rewards, promises of future employment, favors, discounts, etc.) from interested persons having a value up to and including \$25 per instance and up to \$75 per year from each interested person. An interested person is a person, business, or representative that has a direct financial interest in a decision that you participate in making. *See* Commission Regulation 5009. If you are a state procurement official, you may not accept any goods or services for personal use for less than fair market value from state vendors or prospective vendors within a 24 month time period. *See* R. I. Gen. Laws § 36-14.1-2.

Honoraria:

You may be asked to speak at conferences, meetings, and other functions. You may not accept honoraria, or payment, if you use public time or resources to prepare for or make the presentation or if you have decision-making authority over the sponsor. *See* Commission Regulation 5010.

Municipal/State Property:

Public property, vehicles, equipment and supplies are intended to serve a public purpose. Any use of municipal or state property for private purposes must conform to laws, rules and regulations adopted by the state, city or by your department. *See* R.I.G.L. § 36-14-5(d).

Confidential Information:

You may not use or disclose, for financial gain, confidential information acquired in the course of your official duties. *See* R.I. Gen. Laws § 36-14-5(c).

Outside Employment:

You may have a private or public sector job in addition to your state/municipal position; however, you may not accept outside employment that impairs your independence of judgment or that induces you to disclose confidential government information. *See* R.I. Gen. Laws § 36-14-5(b).

Acting as an Agent or Attorney:

You may not receive compensation to represent any person or organization before any agency, board, commission or other government entity over which you exercise fiscal or jurisdictional control, in any matter in which the state has an interest or is a party. There are several exceptions: You may accept outside compensation to represent others in the manner described above, if you are acting as a representative of a duly certified bargaining unit or the representation takes place in a state court of public record or you are asking the government entity to carry out a mandatory duty that does not involve any discretion. *See* Commission Regulation 36-14-5008(a).

Appearances Before Your Own Agency:

You may not represent yourself or anyone else before the agency you are a member of or employed by or any other agency for which your agency is the appointing authority. You also may not serve as an expert witness before your own agency. These prohibitions continue for one year after you leave your public job. *See* R.I. Gen. Laws § 36-14-5(e). The Ethics Commission may grant a hardship exemption allowing you to represent yourself before your own agency. To obtain an exemption you must request an advisory opinion. *See* R.I. Gen. Laws § 36-14-11 and Ethics Commission Procedural Regulation 1024.

Public Forum Exception:

The Code of Ethics does not limit your right to express your opinions and viewpoints in a public forum on any matter of general public interest, or any matter which affects said individual or his or her spouse or dependent child. *See* Ethics Commission Regulation 36-14-7003.

Revolving Door:

Members of a public body may not accept appointment from that body to any position that carries with it financial benefit or remuneration. This prohibition continues until one year after you leave your position. *See* Commission Regulation 36-14-5006. If you hold a senior policy-making, discretionary or confidential position on the staff of a state elected official or the General Assembly, you may not seek or accept other state employment in the classified, unclassified, or nonclassified service. This prohibition continues until one year after you leave your job. *See* R.I. Gen. Laws § 36-14-5(o). Limited exceptions apply under both provisions.

Contracts:

You may not enter into any contract with state or local government unless the contract is awarded through an open and public bidding process, including prior public notice and subsequent public disclosure. You may not be hired to provide professional services unless there is prior public notice and subsequent disclosure. These prohibitions also apply to your family, your business associates and to any business in which you, your family or business associates have a 10% or greater equity interest or a \$5000 or greater cash value interest. *See* R.I. Gen. Laws § 36-14-5(h).

Transactions with Subordinates:

You may not engage in a financial transaction, including private employment, loans, monetary, political or charitable contributions with an employee, contractor, or consultant over whom you exercise supervisory responsibilities. Exceptions include transactions in the normal course of a regular commercial business, or if the subordinate initiates the financial transaction, or for charitable events that are sponsored by the highest official or governing body of the state or municipality. *See* Commission Regulation 36-14-5011.

DO I HAVE A CONFLICT OF INTEREST?

Ask yourself if it is "reasonably foreseeable" that:

1. A decision you are helping to make as part of your public duties,
2. Will result in a financial benefit *or* detriment,
3. To:
 - A. You; or
 - B. Your family or household member; or
 - C. Your outside employer; or
 - D. Your business associate*.
4. Or, even if there is no financial impact, is a family member, household member, employer or business associate a party to, or participating in, the matter being discussed?

If the answer is "**Yes,**" then you have a conflict of interest and **you must recuse** from participation in the matter.

*Your "business associates" are any persons or entities that you are joined with to achieve a common financial objective. These include not only your business partners, but also people you have hired such as an attorney, accountant, realtor, contractor, etc. These also include any business or organization, even if not-for-profit, for which you are an officer or director.

How to Recuse

The Code of Ethics provides that public officials and employees must file a statement of conflict of interest, also called a recusal form, concerning matters where he or she may have a conflict of interest in the discharge of his or her official duties. A conflict of interest may exist if an official or employee can reasonably expect that his or her official conduct will directly result in a financial benefit to the official, his or her family, business associates, employers, or businesses that the official represents. The conflict need not be certain to occur, but the probability must be greater than "conceivably." See R.I. Gen. Laws §36-14-6, and Regulations 36-14-5002 and 36-14-6001.

What is recusal?

Recusal, under the Code of Ethics, refers to a public official or employee declining to participate in a matter because of a potential conflict of interest under the Code of Ethics. Recusal is not the same as abstaining which may mean that the public official will not vote, but has participated in discussions on a matter. Recusal means that you are not participating in deliberations or debates, making recommendations, giving advice, considering findings, or in any other way assuming responsibility for or participating in any aspect of the work or decision-making relating to the matter where there are potential conflicts of interest. It does not mean that the public official must leave the room if it is an open meeting, although a public official may voluntarily choose to do so. However, if the public body is in executive session, once the official has recused, he or she has no more right to be in the room than any other member of the general public. An official may be able to speak as a private citizen under the "Public Forum Exception," however, this does not include substantive discussions in forums not available to members of the general public, nor does it allow a public official to represent the views of others or act as an expert witness before his or her own agency.

Options:

A public official with a potential conflict of interest must recuse from participation and file a recusal form as soon as he or she has reason to believe that he or she has a conflict of interest. If there is a matter that does not actually rise to that level, a public official may still provide notice (some recusal forms contain this option) of the perceived conflict along with an explanation as to the reasons why he or she believes that he/she is able to participate objectively, fairly, and in the public interest.

How to recuse:

- Complete a *Statement of Conflict of Interest* form, or write or sign a memo which includes the following information:
 - Name
 - Position & agency
 - Describe the nature of your conflict
 - Indicate that you are recusing from participation
 - Sign the memo or form under penalty of perjury
- Present the original to your presiding officer, appointing authority, director, or immediate superior
- Send a copy to the Ethics Commission

Statement of Conflict of Interest
pursuant to R.I. Gen. Laws § 36-14-6

I _____, holding the position of _____, hereby under oath depose and say:
(job title or appointed/elected position and name of board/commission/agency/department)

1. A matter involving _____ is presently before _____
(name of board/commission/agency/department)

2. I have the following interest in the matter noted in paragraph 1 above:

3. [Please select one of the following]:

() A. In compliance with R.I. Gen. Laws § 36-14-6(1), I hereby recuse from participating in the discussion of or taking official action relating to said matter. (This does not prohibit participation as a member of the public in an open meeting, pursuant to Commission Regulation 7003.)

() B. In compliance with R.I. Gen. Laws § 36-14-6(1), I hereby state that despite the interest described above, I believe I am able to participate fairly, objectively and in the public interest regarding said matter for the following reasons:

Signed under the penalties of perjury this ____ day of _____, 2____.

Signature

GIFTS

(Ethics Commission Regulation 5009)

TO WHOM DOES THE GIFT REGULATION APPLY?

- All State Elected and Appointed Officials, and State Employees.
- All Municipal Elected and Appointed Officials, and Municipal Employees.

WHAT GIFTS ARE PROHIBITED?

- Gifts of CASH, debt forbearance or debt forgiveness of any amount.
- A gift of GOODS or SERVICES having either a market value or actual cost greater than \$25.
- Multiple Gifts from a single interested person or entity in one calendar year having an AGGREGATE market value or aggregate actual cost of greater than \$75.

DOES THE GIFT REGULATION APPLY TO GIFTS RECEIVED FROM ANYONE?

- No. The Gift Regulation only applies to gifts received from an "interested person." An interested person is a person or a representative of a person or business that has a financial interest in a decision that the public official or employee is authorized to make or participate in, as part of his or her official duties.

ARE THERE EXCEPTIONS?

- If the interested person receives lawful consideration of equal or greater value in return, then the transfer is not considered to be a gift.
- If the gift is *immediately* returned or given to a bona fide charity with no benefit accruing to the public official or employee, then the transfer is not considered to be a gift.
- Lawful campaign contributions are not subject to the gift regulation.
- Certain *services* to assist an official or employee in the performance of *official duties* and responsibilities are not considered to be gifts.
- A plaque or similar item in recognition of service to field of specialty or charity.
- A gift from a family member who is also an interested person.
- A gift that is given because of the recipient's membership in a group, the majority of whose members are not subject to the Code of Ethics, and the same or equivalent gift is given or offered to the other members of the group.

MORE QUESTIONS?

Call the Ethics Commission at (401) 222-3790, or write to: RI Ethics Commission, 40 Fountain Street, Providence, RI 02903.

Revolving Door and Post-Public Employment

The Code of Ethics includes provisions that regulate some activities of public officials and employees after they have left state or municipal service. The following information provides some general guidance on the various provisions of the Code that address such post-employment activities. Former public officials and employees with questions about post-employment issues can call the Ethics Commission at (401)-222-3790 or request an advisory opinion in writing, which includes a complete statement of the relevant facts, any relevant time constraints, the reason for requesting the opinion and the signature of the individual making the request. *See* R.I. Gen. Laws § 36-14-11 and Commission Regulation 1024.

Appearing Before Your Former Agency:

Several provisions within the Code of Ethics place limitations on former public officials and employees appearing before their former agency after exiting public service. In general, after leaving state or municipal service, a person may not represent themselves, represent any other person, or act as an expert witness before their former agency for a period of one year after officially severing employment or service with that former agency. In some circumstances, the Ethics Commission may grant a "hardship" exception and allow such representation in a formal advisory opinion issued by the Commission. *See* R.I. Gen. Laws § 36-14-5(e)(4) and Regulations 36-14-5015 and 36-14-5016.

Confidential Information:

Several provisions of the Code of Ethics prohibit public officials and employees from using or disclosing confidential information acquired during the course of, or by reason of, their official duties or employment, for financial gain. These prohibitions continue after an official or employee has severed from service. *See* R.I. Gen. Laws § 36-14-5(b)-(d).

Employment with Other State/Municipal Agencies or From Your Former Board:

The Code of Ethics places a number of restrictions on former state and municipal officials and employees seeking employment within the first year of severing from public service. The nature of the restriction varies depending on whether the person was a state or municipal official, an elected or appointed official, or a state or municipal employee. For specific guidance, see the applicable portion of the Code, but in general, for the first year following severance from service:

- Elected state officials and General Assembly Members may not seek or accept employment with state agencies, other than that held at the time of election, except that such person may seek election to any other constitutional office and may be appointed to a senior policy-making position on a general officer's or general assembly's staff, or appointment by the governor as a department director. The Ethics Commission may authorize additional exceptions. *See* R.I. Gen. Laws § 36-14-5(n) and Regulation 36-14-5007.

- Persons holding senior policy-making, discretionary, or confidential positions on a state elected official's staff are prohibited from accepting employment with other state agencies, except that such persons having five years or more of uninterrupted state service are exempt from the prohibition and that such individuals may serve as independent contractors or consultants for the first 90 days after severance to assist in the transition. Furthermore, the prohibition does not prevent such persons from being appointed to other such senior policy-making, discretionary or confidential positions or from seeking or accepting such employment. *See* R.I. Gen. Laws § 36-14-5(o) and Regulation 36-14-5018.
- Elected and appointed officials may not accept appointment or election to positions that carry any financial benefit that requires approval by the body that the person was a formerly a member of, except that the Ethics Commission may allow for exceptions in hardship situations. *See* Regulation 36-14-5006.
- Members of the General Assembly serving as members of executive, public or quasi-public boards, authorities, corporations, commissions or agencies may not seek or accept employment, including as an agent, attorney, service provider or consultant for any business with a financial interest in a contract in which the board was an interested party and was in effect during the member's time of service. *See* Regulation 36-14-5013(c).
- Municipal elected officials and school committee members may not seek or accept employment within any municipal agency in the municipality of service, for the first year after leaving office, other than that held at the time of election. *See* Regulation 36-14-5014.
- For restrictions on persons holding positions in the Governor's Office or the Department of Administration, *see* Regulation 36-14-5015.

Advisory Opinions

Advisory opinions are interpretations of the Rhode Island Code of Ethics. Pursuant to R.I. Gen. Laws § 36-14-11 and Commission Regulation 1024, public officials and employees may request specific guidance from the Commission about a particular circumstance through the advisory opinion process. Any advisory opinion rendered by the Commission, until amended or revoked by a majority of the Commission, shall be binding on the Commission in any subsequent proceeding concerning the person or entity who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated in the request for the opinion. Additionally, advisory opinions are based upon the representations made by, or on behalf of, the person or entity requesting the opinion, and are not the result of adversarial or investigative proceedings.

How to Request an Advisory Opinion

If you are an elected or appointed public official of state or local government, or if you are a public employee of state or local government, you may request advice from the Ethics Commission. If you believe you may face a real or potential conflict of interest, the time to request an advisory opinion is before you take any official action. Prior to writing to the Ethics Commission to request an advisory opinion, *it is recommended that you telephone the Commission at (401) 222-3790 and ask to speak to a staff member about obtaining an opinion.* The Commission staff will assist you in framing your question properly, and help to determine what information should be included within the formal request.

To obtain an advisory opinion, one must write a letter to the Commission requesting the opinion. The Commission will not accept emailed requests. The letter should contain a complete statement of the facts. You may write a paragraph or several pages depending on your particular circumstances. You should include:

- Your name and official position.
- Briefly, the name, jurisdiction and powers of your agency, commission, or office.
- The nature of the potential conflict.
- A summary of relevant facts.
- Any time constraints.
- Your mailing address and a telephone number where you can be reached.

The Commission will send you a letter confirming receipt of your request. All hearings involving advisory opinions are open public hearings. Sometime prior to the hearing in which your request will be heard, you will receive a draft recommendation prepared by a staff attorney. Persons requesting advisory opinions are encouraged to attend the public hearing on their request as factual questions may arise that require the requestor's presence. At the hearing, the Commission will consider both the draft recommendation and comments or concerns submitted by the requesting party. The Commissioners may also ask questions to clarify any relevant facts.

The Commission will adopt an advisory opinion by a vote of at least 5 of the 9 members. You will receive a written copy. This opinion and your written request are public records.

All advisory opinions are "binding" on the Commission. That means that if you abide by the opinion in good faith, and if you did not misstate or omit material facts in your request for the opinion, you cannot be held in violation of the Code of Ethics in any subsequent proceeding concerning your actions.

For more information see *R.I. Gen. Laws 36-14-11* and *Rhode Island Ethics Commission Regulation 1024*, or call the Commission at (401) 222-3790 (V/TT).