



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street

Providence, RI 02903

(401) 222-3790 (Voice/TT) Fax: (401) 222-3382

ethics.email@ethics.ri.gov

<https://ethics.ri.gov>

NOTICE OF OPEN MEETING

AGENDA

10th Meeting

DATE: Tuesday, September 20, 2022

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 16, 2022.
3. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) 2021 Financial Disclosure; and
 - e.) Ethics Administration/Office Update.
4. Advisory Opinions.
 - a.) Ashley N. Selima, the State Archivist & Public Records Administrator for the Rhode Island Department of State, State Archives, Library & Public Information Division, requests an advisory opinion regarding whether the State Archives, Library & Public Information Division is prohibited by the Code of Ethics from accepting a stipend from the What Cheer Writers Club, a private nonprofit organization, following the Petitioner's participation as a panelist during an event sponsored by the What Cheer Writers Club. [Staff Attorney Radiches]

- b.) Gail Berlinghof, a member of the North Smithfield Zoning Board of Review, requests an advisory opinion regarding whether, following her recusal from official participation in all discussions and/or decision-making concerning a matter currently before the Zoning Board involving several acres of wetlands, she is prohibited by the Code of Ethics from publicly expressing her own opinion on said matter before the Zoning Board during a period of public comment. [Staff Attorney Radiches]
 - c.) Steven D'Agostino, the Director of Public Works in the City of Woonsocket, requests an advisory opinion regarding whether the Code of Ethics prohibits him from purchasing an unimproved parcel of land located in Woonsocket from a private party, given the Petitioner's employment with the City. [Staff Attorney Papa]
- 5. Annual Education Report (FY 2022). [Staff Attorney Radiches]
 - 6. Motion to go into Executive Session, to wit:
 - a.) Motion to approve minutes of Executive Session held on August 16, 2022, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Richard Nassaney, Complaint No. 2022-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) Motion to return to Open Session.
 - 7. Motion to seal minutes of Executive Session held on September 20, 2022.
 - 8. Report on actions taken in Executive Session.
 - 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 15, 2022

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: September 20, 2022

Re: Ashley N. Selima

QUESTION PRESENTED:

The Petitioner, the State Archivist & Public Records Administrator for the Rhode Island Department of State, State Archives, Library & Public Information Division, a state employee position, requests an advisory opinion regarding whether the State Archives, Library & Public Information Division is prohibited by the Code of Ethics from accepting a stipend from the What Cheer Writers Club, a private nonprofit organization, following the Petitioner's participation as a panelist during an event sponsored by the What Cheer Writers Club.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Rhode Island Department of State, State Archives, Library & Public Information Division is not prohibited by the Code of Ethics from accepting a stipend from the What Cheer Writers Club, a private nonprofit organization, following the Petitioner's participation as a panelist during an event sponsored by the What Cheer Writers Club, given that the stipend will not go to the Petitioner or to any individual person subject to the Code of Ethics but, rather, will go to the State Archives and be used to benefit the public.

The Petitioner is employed by the Rhode Island Department of State, State Archives, Library & Public Information Division ("State Archives") as its State Archivist & Public Records Administrator ("State Archivist"). She explains that the State Archives serves as the repository for official permanent records of Rhode Island state government and strives to protect, maintain, and preserve Rhode Island's history and ensure transparency and accessibility by making said records available to the public. The Petitioner cites among her duties as State Archivist the oversight and preservation of the aforementioned records and the management of day-to-day operations of the State Archives and Public Records Administration.

The Petitioner states that on September 28, 2022, in response to an invitation from the What Cheer Writers Club ("WCWC"), a private nonprofit organization based in Providence, she will participate as one of five panelists for an event sponsored by the WCWC entitled "Inside the Archives: The Art of Then." She further states that, in her role as a panelist, she plans to highlight and introduce writers to the State Archives' collection and provide practical advice on accessing the collection for future projects. The Petitioner explains that the WCWC is offering a stipend of \$1,000 to each of the organizations represented by a panelist, adding that, in her case, the stipend is being offered to the State Archives, and not to her as an individual.

The Petitioner represents that, if not prevented by the Code of Ethics from accepting the stipend, the State Archives intends to use said stipend to enhance public access to programming sponsored by the State Archives, such as that which might occur in the form of panel discussions or displays, and/or to engage in archive digitization, inspired by records currently in demand at the State Archives, such as Revolutionary War Records. The Petitioner specifies that she has no discretion regarding how the stipend would be applied, explaining that any recommendation that she might make would be subject to review, first by the Director of State Archives, then the Deputy Secretary of the Department of State and, ultimately, by the Director of Finance & Personnel for the Department of State. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether the State Archives may accept a stipend of \$1,000 from the WCWC following the Petitioner's participation as a panelist in the upcoming event sponsored by the WCWC.

The Code of Ethics prohibits public officials and employees from accepting or receiving any gifts of cash, or any goods or services valued at more than twenty-five dollars, from an interested person. Commission Regulation 520-RICR-00-00-1.4.2 Gifts (36-14-5009) ("Regulation 1.4.2"). An "interested person" is defined as "a person or representative of a person or business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties." Regulation 1.4.2(C). Also, a public official or employee may not accept an honorarium, fee or reward, or other compensation for any activity which may be considered part of or directly relates to said person's official duties and responsibilities, unless; (1) she does not exercise decision-making authority over the source; and (2) she uses her own time and does not make improper use of public resources when engaging in or preparing for the activity." Commission Regulation 520-RICR-00-00-1.4.3 Honoraria (36-14-5010).

Additionally, under the Code of Ethics, a public official or employee may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties in the public interest. R.I. Gen. Laws § 36-14-5(a) ("section 5(a)"). A substantial conflict of interest exists if a public official or employee 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). The Code of Ethics further prohibits a public official or employee from using her public office or employment, or confidential information received through her public office or employment, to obtain financial gain for herself, her family member, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d) ("section 5(d)").

The Ethics Commission has previously addressed facts similar to those of the instant matter. In Advisory Opinion 2009-21, the Ethics Commission opined that the Rhode Island Commission for Human Rights ("RICHR") could accept a contribution of \$1,500 from Rhode Island for Community and Justice ("RICJ"), a private nonprofit organization, given that those funds would not go to any individual person subject to the Code of Ethics. The petitioner in that matter served as the Executive Director of the RICHR, and had collaborated in his public capacity with the RICJ and a number of other various public and private entities on a project to address the

disproportionate minority contact of juveniles within the Rhode Island justice system (“the DMC Collaboration”). The DMC Collaboration ultimately presented the petitioner with a check in the stated amount from the RICJ made out to the RICHR, along with a letter from the RICJ indicating that the money was intended to serve as an honorarium in acknowledgement of the petitioner’s active participation and role in the DMC Collaboration. The petitioner represented to the Ethics Commission that, if the RICHR were to accept the check, the funds would be deposited into the RICHR general state account and used to pay for rent, office supplies, salaries, and other budgeted items, adding that there would be no personal financial gain for him, but that the funds would be absorbed into the RICHR budget to the benefit of the State of Rhode Island.

In Advisory Opinion 2009-21, the Ethics Commission determined that neither Regulation 1.4.2¹ nor Regulation 1.4.3² were applicable to the petitioner’s set of factual circumstances, as both those regulations contemplate acceptance of a gift or honoraria by an individual person subject to the Code of Ethics, whereas, in that instance, the funds contributed to the RICHR would not benefit any individual public official or employee. Additionally, notwithstanding that the \$1,500 was described as “honoraria” to acknowledge the petitioner’s work with the RICJ on the DMC Collaboration, the Ethics Commission determined that the check was in fact merely a contribution to the RICHR, like any other contribution to the RICHR, only made by the RICJ in honor of the petitioner. Moreover, as that petitioner would receive no personal financial benefit from the RICHR’s acceptance of the contribution, there was nothing to implicate the prohibitions found at sections 5(a) or 5(d).

In the instant matter, the Petitioner will participate in her public capacity as a panelist to offer practical advice to members of the WCWC on how to access the State Archives’ collection for future projects. The stipend of \$1,000 is being offered to the State Archives, and not to the Petitioner as an individual, and would be used to enhance public access to programming sponsored by the State Archives. Similar to the circumstances in Advisory Opinion 2009-21, acceptance by the State Archives of a contribution from the WCWC would not constitute the acceptance of a gift or honoraria by a person subject the Code of Ethics. Additionally, notwithstanding that the payment of \$1,000 is described by the WCWC as a stipend to the State Archives for the Petitioner’s contribution as a panelist, the Ethics Commission recognizes the payment to be a contribution by the WCWC to the State Archives in honor of the Petitioner. Finally, as the Petitioner would receive no personal financial benefit from the State Archives’ acceptance of the contribution, there is nothing in the facts as presented to implicate the prohibitions found at sections 5(a) or 5(d).

Accordingly, based on the facts as represented, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the State Archives is not prohibited by the Code of Ethics from accepting a contribution from the WCWC following the Petitioner’s participation as a panelist during an event sponsored by the WCWC, given that the contribution will not go to the Petitioner or to any individual person subject to the Code of Ethics but, rather, will go to the State Archives and be used to benefit the public.

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

¹ In 2009, Regulation 1.4.2 was known as Commission Regulation 36-14-5009 Prohibited Activities – Gifts.

² In 2009, Regulation 1.4.3 was known as Commission Regulation 36-14-5010 Honoraria.

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-00-00-1.4.2 Gifts (36-14-5009)

520-RICR-00-00-1.4.3 Honoraria (36-14-5010)

Related Advisory Opinions:

A.O. 2009-21

Keywords:

Financial Interest

Gift

Honorarium

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: September 20, 2022

Re: Gail Berlinghof

QUESTION PRESENTED:

The Petitioner, a member of the North Smithfield Zoning Board of Review, a municipal appointed position, requests an advisory opinion regarding whether, following her recusal from official participation in all discussions and/or decision-making concerning a matter currently before the Zoning Board involving several acres of wetlands, she is prohibited by the Code of Ethics from publicly expressing her own opinion on said matter before the Zoning Board during a period of public comment.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Smithfield Zoning Board of Review, a municipal appointed position, is not, following her recusal from official participation in all discussions and/or decision-making concerning a matter currently before the Zoning Board involving several acres of wetlands, prohibited by the Code of Ethics from publicly expressing her own opinion on said matter before the Zoning Board during a period of public comment, given that the Petitioner's proposed activity involves a matter of general public interest consistent with the provisions outlined in Commission Regulation 1.2.3 Public Forum Exceptions (36-14-7003).

The Petitioner is a member of the North Smithfield Zoning Board of Review ("Zoning Board"). Initially appointed by the North Smithfield Town Council ("Town Council") in 2018 as an alternate member, she was appointed to full membership earlier this year. The Petitioner represents that there is currently pending before the Zoning Board a matter involving several acres of wetlands ("subject property") on which the owner of a nearby private metals recycling business ("business owner") wishes to construct a warehouse to be used to operate a second metals recycling business. The Petitioner informs that the subject property is located above an aquifer, which she describes as an area that contains permeable rock well below the ground's surface in which groundwater is located. She further informs that the aquifer is situated in a community well head, which she describes as an area protected from development and pollution, adding that the groundwater located within the aquifer serves as a source of drinking water for many North Smithfield ("Town") residents.

The Petitioner states that, in order for the business owner to construct the warehouse, he will require several variances from the Zoning Board, including a loading dock variance, the

application for which has been scheduled for hearing before the Zoning Board on September 27, 2022. The Petitioner explains that the business owner was last before the Zoning Board on August 23, 2022, at which time he sought two other variances relative to the subject property. The Petitioner further explains that, although she was unable to attend that particular meeting due to illness, had she been present, she would have recused from participating in any discussion and/or decision-making relative to the business owner's variance applications, given that the Petitioner works closely with an abutter to the subject property.¹

The Petitioner states that, following her recusal from participation as a member of the Zoning Board when the matter involving the subject property is next before the Zoning Board, she would like to publicly express her personal opinion about it during the period of public comment. She informs that she is among the roughly sixty percent of the approximately 13,000 Town residents who live above the aquifer on which the subject property is located. She further informs that some thirty homeowners, who live within a 200-foot radius of the subject property and who received notice of the Zoning Board meeting at which the business owner's requests for variances will be considered, could be directly affected should the requested variances be granted. The Petitioner represents that, because she lives some seven miles away from the subject property, there is no way to know whether or to what extent she would be directly affected if the business owner's requests for variances are granted.²

The Petitioner represents that there are a number of Town residents living above the aquifer whose wells are polluted and who are currently getting their water from a river in the City of Woonsocket. She explains that the City of Woonsocket treats its river water with chemicals to purify it, and adds that she does not wish to drink water that has been chemically treated, especially when the aquifer located below the subject property is intended to be protected from development and pollution. The Petitioner expresses her concern that, if the business owner is granted his requests for variances that would allow him to operate a second metals recycling warehouse over a natural aquifer that serves as a source of clean local drinking water for Town residents, not only will that water source be put at risk, but that other business owners might seek similar variances that could lead to water pollution. Cognizant of the Code of Ethics and desirous of acting in conformance therewith, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from publicly expressing her own opinion on the subject property before the Zoning Board during its period of public comment.

¹ The Petitioner states that the abutter owns a private company for which the Petitioner serves in a strictly volunteer capacity as a co-producer and researcher for a documentary being directed and co-produced by the abutter that is in no way related to the subject property or the business owner. The Petitioner has not requested a determination by the Ethics Commission of whether her affiliation with the abutter constitutes a business associate relationship under the Code of Ethics, representing that, even if the abutter were deemed not to be her business associate under the Code of Ethics, she would still recuse from participation in this matter in order to avoid even an appearance of impropriety. The Ethics Commission appreciates the Petitioner's decision to recuse under such circumstances and, given her recusal from participating in the Zoning Board's decision, there is no need for us to examine the nature of her affiliation with the abutter.

² The Petitioner states that there are hundreds of other homeowners living above this particular aquifer in close proximity to the subject property who, while not considered abutters, have wells which are either already polluted or have yet to be tested for pollution. She further states that the pollution of those wells is from an unconfirmed source, but that the business owner who is seeking the variances owns and operates a metals recycling business a short distance from where he seeks to construct the warehouse and to operate his second metals recycling business.

The Code of Ethics prohibits a public official 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, her family member, her business associate, or her employer. R.I. Gen. Laws § 36-14-5(d). The Code of Ethics also specifically prohibits a public official from representing herself or authorizing another person to appear on her behalf before a state or municipal agency of which she is a member, by which she is employed, or for which she is the appointing authority. Section 36-14-5(e)(1); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). However, the Code of Ethics contains a “Public Forum Exception” which provides that it shall not be a violation of the Code of Ethics for any person to publicly express her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or her spouse or dependent child. Commission Regulation 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003) (“Regulation 1.2.3”).

Prior to this year, the Ethics Commission had advised public officials about their rights under the “Public Forum Exception” primarily in situations where a petitioner was an abutter to a property under consideration, resulting in a rebuttable presumption of financial impact upon the petitioner. See, e.g., A.O. 2020-33 (opining that a member of the West Warwick Town Council could address the Planning Board, the Zoning Board, and/or the Town Council, upon recusal, during public hearings regarding a proposed development of property located across the street from his personal residence, provided that he did not receive access or priority not available to any other member of the public); A.O. 2019-41 (opining that a member of the Middletown Town Council could attend and speak at public hearings before the Planning Board and/or, potentially, the Zoning Board regarding a proposed development of property located across the street from her personal residence, provided that the petitioner did not receive access or priority not available to any other member of the public); and A.O. 2003-15 (opining that a member of the Scituate Town Council could, upon recusal, attend and provide public comment at meetings of the Zoning Board regarding a special use permit application for property to which he was an abutter, provided that he did not receive special access or priority not available to any other member of the public).

Earlier this year, in Advisory Opinion 2022-22, the Ethics Commission opined that a member of the East Greenwich Town Council was not prohibited by the Code of Ethics from appearing as a member of the public during public hearings of the East Greenwich Planning Board (“Planning Board”), over which the East Greenwich Town Council has appointing authority, to provide public comment on a proposed major development of property located within a mile of the petitioner’s home. The petitioner was not an abutter to the proposed development; thus, there was no rebuttable presumption of financial impact upon her or her family relative to the proposed development. Nor was that petitioner certain at the time that she sought the advisory opinion whether or to what extent the proposed development would or could financially impact her property. The Ethics Commission determined that the development, described by the petitioner as “the largest proposed development in East Greenwich to date,” qualified as a matter of general public concern justifying the application of the Public Forum Exception, and allowed the petitioner to address the Planning Board as a member of the public during its period of public comment, provided that she did not receive access or priority not available to any other member of the public. The petitioner was further advised that she could not use her public position in any way to influence members of the Planning Board regarding that, or any other, subject matter.

Like the petitioner in Advisory Opinion 2022-22, the instant Petitioner is not seeking a hardship exception that would allow her to represent herself before a municipal agency of which she is a member (or, in the case of the petitioner in Advisory Opinion 2022-22, before a municipal agency for which she was the appointing authority). The Petitioner lives above the aquifer that is located below the subject property. While it remains to be determined whether the business owner's variance applications directly affect the Petitioner, given that her home is located seven miles away from the subject property and her representation that there is no way to know whether or to what extent she would be directly affected if the business owner's requests for variances are granted, the potential pollution of a natural drinking water source for hundreds of Town residents that could result from the construction of a metals recycling warehouse constitutes a matter of general public interest justifying the application of the Public Forum Exception. Accordingly, based on the representations by the Petitioner, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner, may, following her recusal from official participation in all discussions and/or decision-making concerning the matter currently before the Zoning Board involving the subject property, appear and address the Zoning Board to express her own opinion during the period of public comment regarding the subject property, provided that she does not receive access or priority not available to any other member of the public. The Petitioner is further advised that she may not use her public position in any way to influence members of the Zoning Board regarding this, or any other, matter.

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(d)

§ 36-14-5(e)

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

520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003)

Related Advisory Opinions:

A.O. 2022-22

A.O. 2020-33

A.O. 2019-41

A.O. 2003-15

Keywords:

Public Forum Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: September 20, 2022

Re: Steven D'Agostino

QUESTION PRESENTED:

The Petitioner, the Director of Public Works in the City of Woonsocket, a municipal employee position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from purchasing an unimproved parcel of land located in Woonsocket from a private party, given the Petitioner's employment with the City.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the Director of Public Works in the City of Woonsocket, a municipal employee position, is not prohibited by the Code of Ethics from purchasing an unimproved parcel of land located in Woonsocket from a private party, notwithstanding the Petitioner's employment with the City.

The Petitioner is the Director of the Department of Public Works ("Department") in the City of Woonsocket ("City") and has served in that position since his appointment by the Mayor in 2014. The Petitioner explains that the powers of the Department and his responsibilities relate to the oversight of all aspects of construction, reconstruction, alteration, repair, maintenance, operation, and engineering associated with City highways, street lighting, public parking lots, public parking, waste disposal, sewer and water supply, and recreational areas.

The Petitioner represents that he would like to purchase an undeveloped parcel of land located within the City boundaries ("Land"), which has been on and off the market for the past several years. The Petitioner states that the Land is for sale by a private party and that, aside from recording the deed in the City's Land Evidence Records upon purchase of the Land, he would not have to appear before any of the City's departments, including his own, relative to the purchase of the Land. He adds that he would not be required in his public capacity to take any official action relative to the purchase of the Land. The Petitioner represents that in his official capacity as the Director he has not obtained any confidential information concerning the Land, or information that is not publicly available. Nor has the Petitioner had any interaction with the owner(s) of the Land, taken any official action relative to the Land, or had any supervisory authority over the Land. The Petitioner further represents that he has not yet made any plans for the Land's future, if he is successful in purchasing it. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from purchasing the Land.

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. Section 36-14-5(e)(1); Commission Regulation 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). Further, under the Code of Ethics, a public official 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 has an interest that is in substantial conflict with the proper discharge of his duties or employment in the public interest if he has reason to believe or expect that he, or any person within his family, or his business associate, or any business by which he is employed or which he represents, will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," which means that the probability is greater than "conceivably," but the conflict of interest is not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, a public official may not use his public office, or confidential information received through his public office, to obtain financial gain, other than that provided by law, for himself, for any person within his family, for his business associate, or for any business by which he is employed or which he represents. Section 36-14-5(d).

The above prohibitions of the Code of Ethics are inapplicable here, given the Petitioner's representations that, beyond potentially needing to record the deed in the City's Land Evidence Records following his purchase of the Land, he would neither be required to appear before any of the City's departments or boards, nor would he, in his capacity as Director, be required to take any official action relative to the purchase of the Land. Additionally, the Petitioner would be purchasing the Land from a private party rather than the City. Finally, there is nothing in the facts as represented to indicate that the Petitioner would use his public office, or confidential information received through his public office, to obtain financial gain for himself, for any person within his family, for his business associate, or for any business by which he is employed or which he represents.

Therefore, it is the opinion of the Ethics Commission that, based on the facts as represented, the Code of Ethics does not prohibit the Petitioner from purchasing the Land. However, the Petitioner is advised that although the above provisions of the Code of Ethics are inapplicable at this time, they may be implicated following the purchase of the Land depending upon the Petitioner's intended future development plans. Thus, the Petitioner is advised to remain vigilant about potential conflicts that could arise should he purchase the Land, and to seek further guidance from the Ethics Commission as needed.

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)

§ 36-14-5(e)

§ 36-14-7(a)

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

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

Related Advisory Opinions:

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Keywords:

Property Interest

DRAFT