

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-26

Approved: 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 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)

§ 36-14-5(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