

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-2

Approved: January 24, 2023

Re: Edward P. Morrone

QUESTION PRESENTED:

The Petitioner, a member of the Westerly Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Town Council discussions and decision-making relative to certain matters expected to be submitted by Winn Properties, LLC, given that the principals of Winn Properties, LLC are the Petitioner's neighbors and friends.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Westerly Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to certain matters expected to be submitted by Winn Properties, LLC, notwithstanding that the principals of Winn Properties, LLC are the Petitioner's neighbors and friends.

The Petitioner was elected to the Westerly Town Council ("Town Council") in November of 2022, and currently serves as its president. He states that, just prior to his election, the outgoing Town Council considered and ultimately denied an application submitted by Winn Properties, LLC ("Winn Properties") for a zoning ordinance amendment that would have altered certain regulations currently applicable to the Commercial Recreation Zoning District, which includes yacht clubs and golf courses. The Petitioner explains that the approval of the zoning ordinance amendment would have allowed Winn Properties to upgrade the facilities of the Winnapaug Golf Course ("Golf Course"), which is owned by Winn Properties, to include a new clubhouse, a hotel, condos for rental, and extensive course upgrades.¹

The Petitioner expects Winn Properties to resubmit its application for a zoning ordinance amendment, which would ultimately be reviewed by the current Town Council. The Petitioner

¹ During a telephone conversation with the Staff of the Ethics Commission, the Town Solicitor explained that the Winn Properties' zoning ordinance amendment application was submitted initially to the Westerly Planning Board ("Planning Board") along with an application for a proposed development project relative to the Golf Course. The Town Solicitor further explained that the Planning Board then forwarded the zoning ordinance amendment application along with its advisory recommendation to the Town Council for review and approval. The Solicitor stated that approval of the zoning ordinance amendment by the Town Council was a prerequisite for the review of the proposed development project by the Planning Board. The Town Solicitor further stated that Winn Properties is not precluded from resubmitting its applications for a proposed development and/or zoning ordinance amendment. He explained that any new application for a zoning ordinance amendment would ultimately be reviewed by the Town Council.

states that the principals of Winn Properties, Jill and Nick Scola (collectively, the “Scolas”) have been his abutting neighbors for more than twenty years, during which time they have become friends. The Petitioner further states that, although his property abuts the Scolas’ property, it does not abut the Golf Course. The Petitioner represents that he has never been a member of the Winnapaug Golf Club, that neither he nor any of his family members are employed by the Winnapaug Golf Club, and that he does not have a business relationship with the Scolas. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in the Town Council’s discussions and decision-making relative to the anticipated resubmission of Winn Properties’ application in connection to its desired zoning ordinance amendment or any other potential matter relative to Winn Properties’ desired upgrades of the facilities of the Golf Course.

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 in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, 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 the public official’s official activity. Section 36-14-7(a). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3). The Code of Ethics further prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

In prior advisory opinions, the Ethics Commission has concluded that a social relationship or personal acquaintance between a public official and a person appearing before that public official does not, in and of itself, create an inherent conflict of interest within the meaning of the Code of Ethics. In Advisory Opinion 2019-9, for example, the Ethics Commission opined that a member of the Smithfield Planning Board was not prohibited from participating in the Planning Board’s discussions and decision-making relative to a proposed development of property owned by the petitioner’s friend, whose son had contributed to the petitioner’s prior political campaign for election to the Smithfield Town Council, because there was no familial or business relationship between the petitioner and the petitioner’s friend or between the petitioner and his friend’s son. See also A.O. 2017-45 (opining that a member of the Woonsocket City Council was not prohibited by the Code of Ethics from participating in discussions and decision-making relative to matters that involved and financially impacted her former employer, notwithstanding the personal relationship between the parties and provided that she could remain impartial regarding the matter); A.O. 92-72 (opining that a Middletown Zoning Board member could participate in a matter where a social relationship but no business relationship existed with the applicant in the matter, provided that the Zoning Board member could act in an impartial manner concerning the matter).

Here, no familial or business relationship exists between the Petitioner and the Scolas that would bar the Petitioner from participating in and voting on Town Council matters concerning the anticipated application or any other matter relative to Winn Properties’ desired upgrades to the

Golf Course. Accordingly, based on the facts as represented by the Petitioner, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making relative to the above-referenced matters that involve and financially impact the Scolas, notwithstanding the personal relationship between the Petitioner and the Scolas.

The Ethics Commissions notes that this advisory opinion is limited to whether the Petitioner may participate in Town Council discussions and decision-making relative to matters that involve and financially impact his neighbors and friends, the Scolas. It does not address whether any other conflict may exist relative to the applications that may require his recusal, given that the applications have yet to be submitted. The Petitioner is advised that, when in doubt, he should seek further guidance from the Ethics Commission or recuse pursuant to section 36-14-6. Further, the Rhode Island Constitution states that: “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.” R.I. Const. art III, sec. 7. Therefore, although the Code of Ethics permits the Petitioner’s participation in the Town Council’s discussions and decision-making relative to the matters referenced above involving his friends, the Petitioner should give due consideration to the appearance of such participation under the circumstances, focusing on the question of whether it is reasonable for him to remain fair and impartial in carrying out his duties in the public interest.

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:

§ 36-14-2(3)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

Constitutional Authority

R.I. Const., art. III, sec. 7

Related Advisory Opinions:

A.O. 2019-9

A.O. 2017-45

A.O. 92-72

Keywords:

Code Jurisdiction

Conflict of Interest

Recusal