

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-16

Approved: April 4, 2023

Re: Kimberly Shockley

QUESTION PRESENTED:

The Petitioner, a member of the Coventry Town Council, a municipal elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in Town Council discussions and decision-making relative to a petition seeking a zoning change of a vacant lot, given that: 1) the lot is in close proximity to the Petitioner's personal residence; and 2) the person requesting the zoning change is the President of a private neighborhood association of which the Petitioner is a member.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Coventry 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 a petition seeking a zoning change of a vacant lot, notwithstanding that: 1) the lot is in close proximity to the Petitioner's personal residence; and 2) the person requesting the zoning change is the President of a private neighborhood association of which the Petitioner is a member.

The Petitioner is a member of the Coventry Town Council ("Town Council"). She represents that a developer would like to build a housing development with a sports complex ("proposed development") on a vacant lot located at the corner of Nooseneck and Harkney Hill Roads in Coventry ("property"). The Petitioner further represents that the proposed development is currently being reviewed by the Coventry Planning Commission ("Planning Commission") and is not expected to come before the Town Council. However, the Petitioner states that a Coventry resident ("applicant") who lives in the neighborhood known as Wood Estates, which abuts the property, has requested that the Town Council rezone the property from its current mixed-use designation to farmland. The Petitioner explains that such a change in the zoning designation of the property would prohibit the proposed development.

The Petitioner represents that she also lives in Wood Estates and is a dues-paying member of the Wood Estates Residents Association ("WERA"), a private neighborhood organization of homeowners in Wood Estates. The Petitioner states that membership in WERA is optional and that her membership dues entitle her to the use of a local dock, boat launch, beach and outing area, and to the access to events such as barbecues, hayrides, and a Fourth of July parade and fireworks. The Petitioner represents that WERA has officers, but that she is not one of them. However, she further represents that the applicant who has requested that the Town Council rezone the property

is the President of WERA. The Petitioner states that she does not have any familial or business association with the applicant or the developer of the property.

The Petitioner represents that she is unable to see the property from her residence and does not expect to be able to see the proposed development either. She notes that multiple houses and streets separate her residence from the property and that a line of trees separates Wood Estates from the property. The Petitioner states that the proposed development is expected to have its own entrance that will not allow traffic to pass through Wood Estates. She represents that the abutters to the property are other homeowners who live in Wood Estates and that there are no common areas owned by WERA that abut the property. The Petitioner further represents that she is not sure of the exact distance between her residence and the property, but she estimates it to be approximately 1,000 feet. She states that she would not receive an abutter's notice relative to the development or the zoning change of the property. The Petitioner represents that she has no financial interest in the proposed development; has no business, financial, or familial relationship with any of the abutters; and will not otherwise be financially impacted by the proposed development or the request for a zoning change of the property. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in the Town Council's discussions and decision-making relative to the applicant's request for a zoning change of the property.¹

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, 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 conflict of interest exists if a public official 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 also prohibits a public official from using her public office, or confidential information received through her public office, to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002), a public official must recuse from participation in any matter in which her business associate appears or presents evidence or arguments before the public official's state or municipal agency. A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3). A person is defined as "an individual or a business entity." Section 36-14-2(7).

¹ In her request for an advisory opinion, the Petitioner also asked whether the Code of Ethics prohibits her from participating in Town Council discussions and decision-making relative to the rezoning of the property, given that her 11-year-old son plays soccer for the sports club that is the anticipated owner of the athletic complex that is part of the proposed development. The Petitioner states that she pays a fee for her son to play for this club but she is not an officer of the club. Under these circumstances, the Petitioner would not be considered a business associate of the sports club, given that her only financial link to the sports club is the fee she pays for her son to play soccer and, therefore, no conflict of interest exists under the Code of Ethics based on such relationship with the club that would require her recusal. See A.O. 2016-18 (opining that a member of the Woonsocket City Council could participate in the City Council's consideration of a Payment in Lieu of Taxes Agreement for Mount Saint Charles Academy, a private Catholic junior-senior high school attended by the petitioner's daughter).

1. Property Located in Close Proximity to Petitioner's Personal Residence

First, the Ethics Commission must ascertain whether the Petitioner will be financially impacted by the official action that is contemplated. In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning property that abuts her own (“abutting property”). See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussion or vote on decisions concerning abutting property, absent reliable evidence that their official action would not affect the financial interests of the public official, either positively or negatively.

Just as the Ethics Commission has presumed a financial impact for abutting property, the Ethics Commission has applied the opposite presumption of no financial impact relative to property that is near, but not abutting, a subject property. See, e.g., A.O. 2023-14 (opining that a Coventry Planning Commission member could participate in Planning Commission discussions and decision-making relative to a proposed development of real property, notwithstanding that: 1) the development would be located on land that was in close proximity to the petitioner’s personal residence; and 2) representatives of a private neighborhood association to which the petitioner belonged were expected to appear before the Planning Commission to provide public comment about the development); A.O. 2003-44 (opining that a member of the Cranston City Council could participate in the Safety Services and Licensing Committee’s consideration of a proposed license for a Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, in the absence of evidence indicating a reasonable foreseeability of financial impact).

Here, the Petitioner estimates that her personal residence is located approximately 1,000 feet from the property. Additionally, the Petitioner represents that she will not be financially impacted either by the proposed development or by the request for a zoning change; has no financial interest in the proposed development; and has no business, financial, or familial relationship with any of the abutters to the property. Accordingly, there is no indication or presumption that the Town Council’s decision-making concerning a zoning change for the property would financially impact the Petitioner. Therefore, she may participate.

2. Applicant Seeking Rezoning is President of the Neighborhood Organization of Which the Petitioner is a Member

Next, the Ethics Commission must determine whether the Petitioner’s participation in the review of an application submitted by the President of the neighborhood organization, of which the Petitioner is a member, would constitute a conflict of interest for the Petitioner, thereby requiring her recusal.

As previously discussed, the Code of Ethics requires the Petitioner’s recusal from matters in which her business associate appears to present evidence or arguments before the Town Council. The Ethics Commission has consistently opined that persons are “business associates” of, among others, the entities for which they serve as either officers or members of the Board of Directors, or

in some other leadership position that permits them to affect the financial objectives of the organization. *See, e.g.*, A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“DEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC).

In contrast, however, the Ethics Commission has generally held that mere membership in an organization, as opposed to the holding of a position as a director, officer, or other position of leadership, does not create a business association requiring recusal. *See, e.g.*, A.O. 2023-14, *supra*; A.O. 2013-26 (opining that a Newport City Council member was not prohibited from participating in City Council matters involving the Newport Yacht Club, notwithstanding that her husband was an individual member of the Yacht Club and paid annual dues to the Yacht Club, but was not an officer or member of the Yacht Club’s Board of Directors).

In the present matter, the Petitioner states that she is a dues-paying member of WERA, which entitles her to the use of a local dock, boat launch, beach and outing area, and to the access to events such as barbeques, hayrides, and a Fourth of July parade and fireworks. The Petitioner further states, however, that she is not an officer of WERA. Accordingly, the Petitioner’s mere membership in WERA does not constitute a business associate relationship between the Petitioner and WERA or any of its officers under the Code of Ethics and, for that reason, the Petitioner is not prohibited from participating in Town Council discussions and decision-making relative to the zoning change petition submitted by the President of WERA, nor does she have to recuse when the applicant appears before the Town Council relative to his request.

In summary, and for all of the foregoing reasons, 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 applicant’s request for a change of the zoning designation of the property, notwithstanding that the Petitioner’s personal residence is in close proximity to it and that the applicant is the President of the neighborhood association of which the Petitioner is a member.

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)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2023-14

A.O. 2016-18

A.O. 2014-14

A.O. 2013-26

A.O. 2012-28

A.O. 2012-4

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

A.O. 2003-44

Keywords:

Business Associate

Conflict of Interest

Property Interest