

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-44

Approved: November 14, 2023

Re: Joy Cordio

QUESTION PRESENTED:

The Petitioner, a member of the Westerly Town Council, a municipal elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from continuing to participate in Town Council discussions and decision-making relative to a proposed plan for the reuse of the former Tower Street School, given that the Tower Street School property is located in close proximity to the Petitioner's personal residence.

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 continuing to participate in Town Council discussions and decision-making relative to a proposed plan for the reuse of the former Tower Street School, notwithstanding that the Tower Street School property is located in close proximity to the Petitioner's personal residence.

The Petitioner is a member of the Town of Westerly ("Town" or "Westerly") Town Council ("Town Council"), having served in that position since her election in November of 2022. The Petitioner represents that the Town Council is currently reviewing plans for the reuse of the former Tower Street School property ("Tower Street School" or "Property") proposed by the Royce Family Fund ("Fund").¹ According to "The Tower Street School Reuse Study 2021-2022 Summary Report" ("Report")² submitted by the Fund to the Town Council on February 23, 2023, the Tower Street School building was constructed in 1955 as an elementary school which is currently 45,000 square feet in size and situated on 11.28 acres of land. The Report indicates that in 2010, because of a decrease in demographics, the Town consolidated schools and a school of such size was no longer needed. The Report further indicates that, although no longer used as a school, the Town continued to maintain the building for public use as a community center managed by the Westerly School Department. Further, according to the Report, the community center combined educational, recreational, health and wellness, and social and emotional services; it was

¹ On the Rhode Island Secretary of State's website, the Fund's functions are described as follows: "exclusively religious charitable scientific literacy and educational purposes [sic] within the meaning of section 501c3 of the internal revenue code of 1986 making grants and providing financial assistance." <https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001664018> (last accessed on November 1, 2023).

² See <https://westerlyri.gov/816/Tower-Street-School-Reuse-Study> (last accessed on October 31, 2023).

opened seven days per week; and welcomed upwards of 2,000 people per day. The Report indicates that in 2020 the facility shut down because of the COVID-19 pandemic and has remained vacant since. The Report further indicates that in 2021 the Property was slated to be sold to a private developer but, because the Town Council was interested in exploring more community-based options for the facility, the Town Council President contacted a representative of the Fund to discuss alternatives to the sale. As a result, in December of 2021, the Fund entered into a Lease Purchase Agreement with the Town whereby the Fund agreed to, “coordinate a community-wide assessment of possible future use(s) of the [P]roperty and evaluation of said uses,” for a period of one to two years.³ The Report states that the Fund established an *ad hoc* committee and launched the 2022 Tower Street School Reuse Study, which was comprised of two major parts: the Technical Evaluation of the building and the Community Needs Assessment.

The Petitioner states that the Fund proposes that the existing school building be demolished and replaced with a new building with the same basic footprint and similar square footage. It is also proposed that the Town remain the owner of the land and that the building be again used as a community center with various tenants offering a wide array of services. The Petitioner states that the Tower Street School is located a quarter mile from her home⁴ which she has owned and occupied for the last 25 years. The Petitioner further states that she is not an abutter to the Property and that she has not received an abutter’s notice relative to the proposed project. She represents that the Property borders Tower Street and Narragansett Avenue and that she cannot see the Property from her home. The Petitioner further represents that she does not have any familial, financial, or business relationship with any of the abutters of the Property, nor with any of the principals or employees of the Fund.

The Petitioner explains that the current plan proposes that the Property’s parking lot be accessed through Narragansett Avenue and not through Tower Street. The Petitioner does not expect her property to be financially impacted, given that the use of the Tower Street School building will remain the same as its prior use. The Petitioner states that a question was recently raised regarding whether the Petitioner’s continued participation in discussions and decision-making relative to the reuse of the Tower Street School violates the Code of Ethics, given that the Petitioner’s primary residence is located in close proximity to the Property. Therefore, given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from continuing to participate in Town Council discussions and decision-making relative to the proposed plan for the reuse of the Tower Street School.

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 substantial conflict of interest exists if a public official has reason to believe or expect that she, her family member, her business associate, or her employer 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,

³ See <https://westerlyri.gov/816/Tower-Street-School-Reuse-Study> (last accessed on October 31, 2023).

⁴ The Petitioner informs that her home is located on 36 Tower Street in Westerly.

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).

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 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 discussions or votes concerning properties abutting their own properties, absent reliable evidence that their official actions would not affect the financial interests of the public officials, either positively or negatively.

Just as the Ethics Commission has presumed that a property owner will be financially impacted by official action concerning abutting property, the Ethics Commission has also presumed that a property owner will not be financially impacted by official action concerning property that is near, but not abutting a subject property. See A.O. 2023-14 (opining that a member of the Coventry Planning Commission was not prohibited by the Code of Ethics from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property located a half-mile from the petitioner's personal residence); 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 the Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, absent evidence indicating a reasonable foreseeability of financial impact); A.O. 2002-30 (opining that a Jamestown Town Council member could participate in the determination of the location for a highway garage, notwithstanding that two of the location options were 1000 and 900 feet away from her land).

Here, the Petitioner states that the property on which her personal residence is situated is located a quarter mile from the Tower Street School. Additionally, the Petitioner represents that the new building that will replace the existing former school building will continue to be used as a community center consistent with its use prior to being closed because of the COVID-19 pandemic; therefore, she does not expect to be financially impacted by the proposed development. The Petitioner further represents that she has no financial interest in the proposed development, and has no business, financial, or familial relationship with any of the abutters to the Property, nor with any of the principals or employees of the Fund. Accordingly, based on the foregoing analysis, it is the opinion of the Ethics Commission that the Petitioner may participate in Town Council discussions and decision-making concerning the proposed reuse of the Tower Street School.

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)

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2023-14

A.O. 2012-4

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

A.O. 2003-44

A.O. 2002-30

Keywords:

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RHODE ISLAND
ETHICS COMMISSION

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Rhode Island Ethics Commission Offices
40 Fountain Street
Providence, Rhode Island 02903

October 25, 2023

Dear Sir/Ma'am

My name is Joy Cordio. I am an elected Town Councilor in the Town of Westerly, sworn into office in November 2022 for a two-year term.

I write today to ask for an Advisory Opinion regarding matters coming before me on the Town Council that may or may not be a conflict of interest. In 2021 the Town of Westerly closed a Community Center on Tower Street. Owned by the town, this former elementary school building needed many physical repairs, and the programming of the center was a cost burden the town chose not to continue. Once closed and vacated The Royce Family Foundation entered into a lease agreement with the Town to conduct studies for best uses of the site, viability of the building, and partners for a new Community Center. After a year and a half of planning by the Royce Family Foundation plans are being presented to the Town Council to vote on.

The new, proposed Tower Street Center is a quarter of a mile from my property at 36 Tower Street in a densely populated residential neighborhood. Given that the old school/community center has been there for over 50 years, and plans suggest the same use of the site, I do not know if there will be any changes to my property values. Out of an abundance of caution I ask for your opinion as to whether I should recuse from discussion and votes regarding the Tower Street Center.

Please feel to contact me with any questions or requests for information.

Respectfully submitted,
Joy Cordio
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