

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-1

Approved: January 9, 2024

Re: Paul M. Rodrigues

QUESTION PRESENTED:

The Petitioner, a member of the Middletown Town Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in Town Council discussions and decision-making regarding the proposed revision of an ordinance relating to short-term rental properties in Middletown, given the close proximity between the Petitioner's property and three short-term rental properties.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Middletown Town Council, a municipal elected position, is not prohibited by the Code of Ethics from participating in Town Council discussions and decision-making regarding the proposed revision of an ordinance relating to short-term rental properties in Middletown, notwithstanding the close proximity between the Petitioner's property and three short-term rental properties.

The Petitioner has been elected to ten consecutive two-year terms as a member of the Middletown Town Council ("Town Council") and currently serves as the Town Council President. He states that he has resided in his Middletown home for the last 29 years. The Petitioner further states that, in the past three years, three houses which are located across the street from his home were purchased by the same person who now operates all three houses as Short-Term Rental ("STR") properties. The Petitioner represents that Middletown currently has more than 400 STR properties, a number which the Petitioner claims to have doubled in recent years. He explains that the Town Council has begun discussions to address the increasing number of STR properties in Middletown and potentially revise the current ordinance addressing STR properties to require that STR properties be owner-occupied and house no more than four people at a time.¹ The Petitioner represents that a revised ordinance would not impact the value of the STR properties themselves but, rather, would likely impact the ways in which those STR properties may be operated and, potentially, the amount of income that STR property owners may collect as a result. He further represents that a revised ordinance would not impact the value of his own property. The Petitioner adds that none of his family members, business associates, or his private employer own a STR property in Middletown. The Petitioner informs that no abutter's notices were required or sent out in anticipation of the Town Council's consideration of revisions to the current ordinance.

¹ The Petitioner acknowledges that, while the current general focus of a revised ordinance is the owner-occupancy requirement and four-person limit, a new ordinance could contain additional provisions not yet contemplated.

The Petitioner states that, out of an abundance of caution, he has to date recused himself from participating during two executive sessions and one public discussion on the topic of STR properties. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he may participate in Town Council discussions and decision-making regarding the proposed revision of an ordinance relating to short-term rental properties in Middletown.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which 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 with the proper discharge of a public official's duties occurs if the 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 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 of a conflict of interest is greater than conceivable but not necessarily certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). The Code of Ethics also prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner would be financially impacted by the official action that is under consideration. If a financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner will not be required by these provisions of the Code of Ethics to recuse from participation in the Town Council discussions and decision-making relative to revising the current ordinance relating to STR properties. For example, in Advisory Opinion 2005-40, a legislator serving in the Rhode Island House of Representatives was allowed to participate in House deliberations and voting on legislation that authorized family childcare providers to engage in collective negotiations with certain state agencies, notwithstanding that the petitioner was a licensed family childcare provider. There, the petitioner's status as a family childcare provider was inactive. Because she did not utilize her license, did not participate in the Starting Right Child Care Assistance Program administered by the Rhode Island Department of Human Services that provided financial assistance for authorized child care services rendered to eligible children by approved childcare providers, and had no plans to do so in the reasonably foreseeable future, it did not appear that the petitioner stood to be financially impacted by the legislation at issue, notwithstanding her licensure. See also A.O. 2001-20 (opining that a legislator serving in the Rhode Island House of Representatives who was employed as a police officer for the City of Cranston was not prohibited from sponsoring and/or advocating for the passage of legislation that would allow the City of Cranston to finance the unfunded liability in its police and fire pension system because although the petitioner, upon retirement, would be a pensioner receiving payments from the system, the proposed legislation would not affect whether and to what extent he would receive future pension benefits from the system, and any benefit that would accrue to him as a result of the proposed legislation was at best speculative and remote).

Here, the Petitioner states that he does not own a STR property in Middletown, nor do any of his family members, business associates, or his employer. There is nothing in the facts as represented to indicate that the Petitioner's contemplated official action would directly financially impact himself, any of his family members, his business associates, or his private employer. Nor would the Petitioner's contemplated action directly financially impact the value of the STR properties which neighbor his property. Rather, the Petitioner's contemplated official action would likely impact the ways in which those STR properties may be operated and potentially impact the amount of income that STR property owners may collect as a result.

Accordingly, 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 regarding the proposed revision of an ordinance relating to short-term rental properties in Middletown. However, should the proposed revisions extend beyond those described herein in a manner in which it would be reasonably foreseeable that the Petitioner, any of his family members, business associates, or private employer would be directly financially impacted, the Petitioner should either recuse from further participation or seek additional guidance from the Ethics Commission.

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)

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

Related Advisory Opinions:

A.O. 2005-40

A.O. 2001-20

Keywords:

Financial Interest