

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-15

Approved: April 9, 2024

Re: The Honorable Katherine S. Kazarian

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether she may participate in discussion and decision-making relative to proposed legislation that, if passed, will prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, given that her mother owns and resides in a home along this section of 114A.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island House of Representatives, a state elected position, may participate in discussion and decision-making relative to proposed legislation that, if passed, will prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more, from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, notwithstanding that her mother owns and resides in a home along this section of 114A.

The Petitioner is a legislator serving in the Rhode Island House of Representatives as its Majority Whip. The Petitioner explains that, in 2018, the East Providence City Council passed a resolution preventing large commercial motor trucks from traveling on Route 114A, East Providence between Pawtucket Avenue and the Massachusetts state line, also known as Pleasant Street. She further explains that the resolution was the result of concerns raised by residents living along Pleasant Street and the neighboring streets. The Petitioner states that, although the City Council passed that resolution, the passing of state legislation is also necessary because Pleasant Street is a state road. Therefore, in 2023, at the request of constituents living on Pleasant Street, the Petitioner and State Senator Robert Britto introduced such legislation in their respective chambers. The Petitioner explained that the legislation passed both chambers, but was ultimately vetoed by Governor McKee.

The Petitioner states that the Pleasant Street residents and those from the neighboring streets, who are also her constituents, continue to express concerns and complain about the large commercial motor trucks because they create loud noises, premature deterioration of the road, and destruction of the small bridge in the neighborhood. The Petitioner represents that the residents are also concerned about speeding, the safety of their children while waiting at their bus stops along

Pleasant Street, and the safety of drivers who are getting on or off Pleasant Street because of the traffic congestion and reduced visibility created by the large commercial motor trucks.

The Petitioner states that her constituents have requested that the subject legislation be introduced again this legislative session and have collected more than one hundred signatures on a petition in support of the legislation. The signatures include not only those of residents who live on Pleasant Street, but also those of residents who live on neighboring streets. The Petitioner states that Representative Matthew S. Dawson recently introduced legislation that seeks to prohibit commercial motor trucks with a gross weight rating of 26,001 pounds or more from traveling on Pleasant Street. The Petitioner describes Pleasant Street as a narrow residential road stretching one-quarter of a mile in length, with one lane in each direction. She adds that most of that street has no sidewalk or curbing, with homes that closely abut the road. The Petitioner states that the historic Hunts Mills Homestead, which is open to the public, is also located on the same small stretch of road, as is the entrance to a popular reservoir hiking trail and dog park that is frequented by many pedestrians.

The Petitioner represents that her mother owns a home on Pleasant Street and has lived in it since 1991. The Petitioner further represents that, unlike many other neighbors on the same street, her mother's home does not have a driveway that directly feeds out to Pleasant Street, and does not have any children that use the bus stop on Pleasant Street. The Petitioner adds that her mother has neither signed the petition nor worked with the other residents to support the legislation. The Petitioner states that neither her mother nor her mother's property will be financially impacted by the legislation. The Petitioner represents that not all commercial motor vehicles will be prohibited by the legislation, but just the very large ones and, therefore, she does not expect the values of the properties along Pleasant Street, including her mother's, to be affected either positively or negatively by the passing of the legislation.¹ Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether she may participate in House discussion and decision-making relative to the legislation.

A person subject to the Code of Ethics 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 occurs if a public official has reason to believe or expect that she, or any person within her family, or 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. R.I. Gen. Laws § 36-14-7(a). A substantial conflict of interest does not exist if the monetary gain or loss accrues to the person because of her membership in a group, or in a significant and definable class of persons within such group, to no greater extent than to any other similarly situated member of the group. § 36-14-7(b). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," that is, when the probability is greater than "conceivably," but the conflict of interest need not be certain to occur. Commission Regulation

¹ The Petitioner was not able to obtain information relative to the number of properties located on Pleasant Street and, therefore, did not provide Ethics Commission staff with information regarding that number. Through an online search, Ethics Commission staff was able to estimate, for informational purposes only, that there are approximately 23 properties with Pleasant Street addresses, some of which are commercial. The number of properties, however, is not necessary for the application of the analysis herein.

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using her public office or confidential information received through her holding public office to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate, or her employer.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether, in this particular case, the Petitioner's mother would be directly financially impacted by the official action that is under consideration. If a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in discussion and voting on the proposed legislation. See A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the General Assembly's discussion and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned a number of child care centers in Rhode Island and voluntarily reimbursed applicants for the cost of obtaining a criminal-records check because, notwithstanding the petitioner's choice to voluntarily reimburse applicants, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment); A.O. 2019-25 (opining that a member of the Cranston City Council could participate in City Council discussion and voting relative to a proposed ordinance that would ban the use of plastic bags by Cranston business establishments, notwithstanding that the petitioner owned and operated a restaurant in Cranston, given the petitioner's representation that the proposed ordinance's ban on plastic bags would have no impact on his current operations).

Here, the Petitioner represents that her participation in House discussion and voting on the proposed legislation that, if passed, will ban the large commercial trucks from traveling on Pleasant Street will have no direct financial impact on her mother or the mother's property. Specifically, she states that banning only the large commercial trucks is not expected to directly impact the values of the properties on Pleasant Street. Also, based on the Petitioner's representations as to safety concerns, there is no indication that the Petitioner's mother would be impacted more directly or differently than any of the other residents or visitors who use the road for travel or recreation.

Accordingly, based upon the Petitioner's representations, a review of 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 may participate in House discussion and decision-making relative to the proposed legislation.

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)

§ 36-14-7(b)

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

Related Advisory Opinions:

A.O. 2021-17

A.O. 2019-25

Keywords:

Financial Interest