

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-19

Approved: June 4, 2024

Re: Paul Jordan

QUESTION PRESENTED:

The Petitioner, a Data Analyst with the Rhode Island Department of Environmental Management, a state employee position, who as part of his public duties serves as the assistant state liaison officer to the National Park Service's Land and Water Conservation Fund, requests an advisory opinion regarding whether the Code of Ethics prohibits him from reviewing an application submitted by the Town of South Kingstown for the conversion of the use of a town lot for the construction of a new high school, given that the Petitioner is a resident of the town.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Data Analyst with the Rhode Island Department of Environmental Management, a state employee position, who as part of his public duties serves as the assistant state liaison officer to the National Park Service's Land and Water Conservation Fund, is not prohibited by the Code of Ethics from reviewing an application submitted by the Town of South Kingstown for the conversion of the use of a town lot for the construction of a new high school, notwithstanding that the Petitioner is a resident of the town.

The Petitioner is employed by the Rhode Island Department of Environmental Management (DEM) as a Data Analyst and as part of his public duties serves as the assistant state liaison officer to the National Park Service's (NPS) Land and Water Conservation Fund (LWCF). He explains that he assists municipal officials in maintaining compliance with federal grant requirements relative to the LWCF. The Petitioner represents that the Town of South Kingstown is planning to construct a new high school building on the existing high school property. He explains that the current high school property consists of two lots, one approximately 6.9 acres in size that houses the current high school building (school lot) and another, adjacent to the school lot, approximately 5.2 acres in size that houses the recreational field (recreational lot). The Petitioner states that the town proposes that the new high school building be constructed on the recreational lot and, upon the demolition of the old high school building, a new recreational field be created in its place on the former school lot.

The Petitioner represents that because the recreational lot was developed with LWCF money, federal rules require that its use remain the same in perpetuity. The Petitioner further represents that in order for the town to use the recreational lot for the construction of the new school building, the town must first convert its use. The Petitioner explains that conversion of the recreational lot

to another use is possible if the town shows that suitable replacement land is available, demonstrates a compelling need for the conversion, has all land values appraised, shows a plan for recreational development on the replacement land, and addresses social equity or environmental justice concerns through a meaningful public engagement process. The Petitioner states that applications for conversion are submitted to the DEM and reviewed by him, followed by a review by his superior, the Chief of DEM Planning and Development, who is the LWCF state liaison officer. The Petitioner further states that upon approval of the conversion application by the DEM, the application will then be forwarded to the NPS for approval. The Petitioner informs that some town residents have expressed concern about the Petitioner's participation in the review of the town's conversion application and his objectivity, given that the Petitioner resides in South Kingstown.

The Petitioner states that he is not an abutter to the school property, his home is located approximately one-half mile away from it, and he does not see the school property from his home. He further states that he has not received an abutters' notice relative to the new school construction project, does not have family members or business associates who abut the school property, and does not have school-age children. He represents that a review of the conversion application would not have a financial impact on him, although the approved school project would increase property taxes for all town residents equally based on their property values. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from reviewing the town's conversion application.

Under the Code of Ethics, a public official 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 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 his official activity. R.I. Gen. Laws 36-14-7(a). 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, a member of his family, his business associate, or any business by which he is employed or which he represents. § 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 absent evidence indicating a reasonable foreseeability of

financial impact. 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 a 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 upon him); 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 represents that he is not an abutter to the school property, his home is located approximately one-half mile away from it, and he does not see the school property from his home. He states that he has not received an abutters' notice relative to the new school construction project, he does not have family members or business associates who abut the school property, and does not have school-age children. He represents that approval or disapproval of the conversion application would not have a financial impact on him, other than a potential impact to all taxpayers in South Kingstown. Accordingly, based on the foregoing analysis, it is the opinion of the Ethics Commission that the Petitioner may participate in the review of the town's conversion application relative to the construction of the new school building without running afoul of the provisions of the Code of Ethics, notwithstanding that he is a resident of the town.

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:

Property Interest