

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-25

Approved: July 23, 2024

Re: Dennis Turano

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 revision of an ordinance regulating residential short-term rental properties, given that the Petitioner owns such a property but the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones.

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 revision of an ordinance regulating residential short-term rental properties, notwithstanding that the Petitioner owns such a property, given that the revised ordinance, if passed, would apply only to new residential short-term rental properties and not to existing ones.

The Petitioner was elected to the Middletown Town Council in 2016 and has served continuously in that capacity since. His current term ends in November 2024. The Petitioner states that there are currently approximately 525 residential short-term rental (STR) properties in Middletown which are regulated by a municipal ordinance that will likely soon be revised. He further states that an STR subcommittee comprised of three of the seven town council members (of which the Petitioner was not one) was recently tasked with presenting to the full town council recommended changes to the existing municipal ordinance regulating residential STR properties. The Petitioner represents that, because he currently owns a residential STR property and was awaiting this advisory opinion, he recused from participation in the discussion and decision-making relative to the two draft revised ordinances presented by the subcommittee and the ultimate selection of one of them to be forwarded to the Middletown Planning Board for its review and input.¹ He adds that after the planning board has reviewed the draft revised ordinance and provided its opinion regarding it, the matter will once again be before the town council for further discussion and voting.

¹ The Petitioner informs that he made a motion to postpone the town council's discussion and vote on the drafts of the revised ordinances presented by the subcommittee until such time as he could receive an advisory opinion from the Ethics Commission in response to the instant request. However, because his motion to postpone was not seconded, he recused from participation.

The Petitioner states that he learned only the day before the subcommittee presented its proposed revisions to the town council that, as the owner of a current residential STR property in Middletown, he will remain subject to the existing ordinance and be exempt from any revised ordinance that may pass. He further states that he has no plans to purchase or operate any additional residential STR property that would be subject to the revised ordinance, nor is he aware of any member of his family, any business associate, or his private employer having such plans. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether he is prohibited from participating in future town council discussions and decision-making regarding the potential revision of the existing residential STR ordinance.²

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 occurs 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). 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 is greater than “conceivably,” but the conflict of interest is not necessarily certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, § 36-14-5(d) prohibits a public official from using his position, or confidential information received through his position, to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or a business by which he is employed or which he represents.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner will 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 town council discussions and decision-making regarding potential revisions to the subject ordinance. For example, in Advisory Opinion 2024-22, an Exeter Planning Board member was permitted to continue drafting proposed amendments, and later to participate in discussions and decision-making, relative to a potential amendment of the Exeter Rural Residential Compound ordinance, notwithstanding that the ordinance applied to the petitioner’s property. There, the petitioner represented that amendments to the compound ordinance would have no direct financial impact upon his property, explaining that an existing conservation development ordinance allowed him to maximize the development of his property, if he so chose, but that he and his spouse had no intention to sell or subdivide their property. See also A.O. 2024-15 (opining that a legislator serving in the Rhode Island House of Representatives could participate in discussions and decision-making relative to proposed legislation that, if passed, would prohibit certain commercial motor trucks from traveling on parts of Route 114A,

² The Petitioner’s advisory opinion request letter contained the following sentence: “I have also attached a document that the council will be discussing soon.” That sentence referenced a petition submitted by the Short Term Rental Organization of Middletown (STROM) to the State Fire Safety Board of Appeal and Review. During a subsequent telephone conversation with a member of the Ethics Commission staff, the Petitioner stated that he no longer wished to participate in the town council’s consideration of the STROM petition and would be recusing. For that reason, the twenty-two page petition enclosed with the Petitioner’s request was rendered moot and has been excluded from review.

notwithstanding that her mother owned and resided in a home along the relevant portion of 114A, because the petitioner represented that the proposed legislation, if passed, would not directly financially impact her mother or her mother's property); A.O. 2019-25 (opining that a member of the Cranston City Council could participate in city council discussions 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 he currently owns a residential STR property that is, and will remain, subject to the existing ordinance, even if the revised ordinance passes. Additionally, the Petitioner states that he has no plans to purchase and/or operate any additional residential STR property which would be subject to a revised ordinance; nor is he aware of any member of his family, any business associate, or his private employer having such plans. Accordingly, 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 future town council discussions and decision-making concerning potential revisions to an ordinance that, if passed, would regulate new residential short-term rental properties but not existing ones. The Petitioner is advised, however, that should the circumstances change such that it does become reasonably foreseeable that he, or a member of his family, his business associate, or any business by which he is employed or which he represents would be directly financially impacted by his participation in the aforementioned town council activities, he must recuse from further participation consistent with the provisions of R.I. Gen. Laws § 36-14-6, or seek further 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)

§ 36-14-6

§ 36-14-7(a)

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

Related Advisory Opinions:

A.O. 2024-22

A.O. 2024-15

A.O. 2019-25

Keywords:

Financial Interest