

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-26

Approved: July 23, 2024

Re: Leon Amarant

QUESTION PRESENTED:

The Petitioner, a member of the Middletown Planning Board, a municipal appointed position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in planning board discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, given that the Petitioner, his parents, and certain of his business associates own such properties 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 Planning Board, a municipal appointed position, is not prohibited by the Code of Ethics from participating in planning board discussions and decision-making regarding the revision of an ordinance regulating residential short-term rental properties, notwithstanding that the Petitioner, his parents, and certain of his business associates own such properties, 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 appointed by the Middletown Town Council to the Middletown Planning Board in February of 2023 and has served continuously in that capacity since. The Petitioner states that there are currently approximately 585 registered short-term rental (STR) properties in Middletown which are regulated by a municipal ordinance that will likely soon be revised. He further states that the town council recently forwarded to the planning board for review and input a series of recommended changes to the existing municipal ordinance regulating residential STR properties. The Petitioner explains that after the planning board has reviewed the draft revised ordinance and provided its opinion regarding it, the matter will once again go before the town council for further discussion and voting.

The Petitioner represents that he currently owns two residential STR properties in Middletown and that his parents own three. He further represents that there are also several individuals for whom he provides paid services in his capacity as a self-employed contractor who own STR properties in Middletown. The Petitioner states that he is the treasurer and a board member of the Short Term Rental Organization of Middletown (STROM), which he describes as a non-profit organization that supports the operation of STR properties in Middletown in a reasonable manner. He further

states that there are other STROM officers and board members who own residential STR properties in Middletown.

The Petitioner represents that, should the draft revised ordinance ultimately be passed by the town council following input from the planning board, the new ordinance will apply prospectively only. He emphasizes that he, his parents, his clients, and his fellow STROM officers and board members will all remain subject to the existing ordinance and be exempt from the revised ordinance if it passes. The Petitioner 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 client, or any fellow STROM officer or board member 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 planning board discussions and decision-making regarding the potential revision of the existing residential STR ordinance.

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 any business by which he is employed or which he represents. A business associate is defined as “a person joined together with another person to achieve a common financial objective.” R.I. Gen. Laws § 36-14-2(3). A person is defined as “an individual or a business entity.” § 36-14-2(7).

Applying these provisions of the Code of Ethics, it is clear that that Petitioner must recuse from participating in any matters before the planning board that not only involve or financially impact himself or his family members, but that involve or financially impact his business associates. Here, that would include the Petitioner’s clients for whom he performs work as a contractor and his fellow STROM officers and board members. See, e.g., A.O. 2020-50 (opining that a North Smithfield Planning Board member, who in his private capacity was the president and a director of the North Smithfield Heritage Association, a non-profit organization, was prohibited from participating in planning board discussions and voting concerning an application filed by a member of the Heritage Association’s board of directors); A.O. 2016-45 (opining that a Tiverton planning board member was prohibited from participating in the planning board’s discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects and often referred work and clients to each other).

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must first ascertain whether the Petitioner, his parents, and/or his business associates 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 planning board 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, 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, his parents, and his business associates currently own residential STR properties that are, 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 or any business associate 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 planning board 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 planning board 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:

§ 36-14-2(3)

§ 36-14-2(7)

§ 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. 2020-50

A.O. 2019-25

A.O. 2016-45

Keywords:

Business Associate

Family Member

Financial Interest