

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-27

Approved: July 23, 2024

Re: William Nash

QUESTION PRESENTED:

The Petitioner, a member of the Middletown Planning Board, a municipal appointed position, who is also a member of the Middletown Public Schools Building Committee, 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 on matters in which he has participated and voted on as a member of the building committee.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, a member of the Middletown Planning Board, a municipal appointed position, who is also a member of the Middletown Public Schools Building Committee, a municipal appointed position, is not prohibited by the Code of Ethics from participating in planning board discussions and decision-making on matters in which he has participated and voted on as a member of the building committee.

The Petitioner is a member of the Middletown Planning Board. He was initially appointed to that position by the Middletown Town Council in January 2016, and has served continuously since. The Petitioner, who is currently the planning board's chair, identifies among his duties the following: facilitating all board meetings for specific land development projects and voting on matters related to Middletown's land development regulations. The Petitioner is also a member of the Middletown Public Schools Building Committee, for which he currently serves as vice-chair. He states that he volunteered to serve on the building committee three years ago and, as a result, was appointed by the Middletown School Committee to the building committee as a community member.¹ The Petitioner further states that his role as vice-chair of the building committee is to assist the chair with all of the issues related to the building committee's work as Middletown plans to design and construct a new joint middle school and high school (project) by using funds from a \$190 million bond that was approved by a majority of Middletown voters in November 2023.

The Petitioner represents that Middletown's land development regulations require that the project receive approval from the planning board. He explains that the building committee's applications to the planning board relative to the project will be limited to those for master plan, preliminary, and final approval. The Petitioner states that the application for master plan approval will go

¹ The Petitioner explains that the Rhode Island Department of Education School Construction Regulations require that the building committee include a minimum of three community members.

before the planning board in September 2024. He adds that the master plan application will be presented to the planning board on behalf of the building committee by the building committee's architect, the project manager, and the town solicitor. The Petitioner represents that later this year, or perhaps early next year, the building committee will seek preliminary and final approval of the project. The Petitioner explains that he will not personally appear before the planning board relative to any of the building committee's applications.

The Petitioner states that his membership on the building committee does not impair his independence of judgment with regard to his planning board duties. He further states that neither he, nor any of his family members, business associates, or his employer will be directly financially impacted by any of the planning board's voting regarding the project. 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 on matters relating to projects in which he has participated and voted on as a member of the building committee.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that 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 his employer 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). Additionally, the Code of Ethics prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). 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). A business is defined as "a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted." § 36-14-2(2).

The Ethics Commission has indicated that the Code of Ethics does not consider a public body to be a "business" or the relationship between a public official and a public body to be that of "business associates." See, e.g., A.O. 2011-29 (opining that a member of the Portsmouth Planning Board, who was also a civil engineer for the Rhode Island Department of Transportation (RIDOT), could participate and vote on a development proposal pending before the planning board, notwithstanding that in her capacity as a RIDOT civil engineer she had been reviewing the same property to ensure that the state's property interests were protected); A.O. 2007-14 (opining that a member of the North Kingstown Town Council, who was also a member of the Quonset Development Corporation (QDC), both public bodies, could participate in and vote on a development proposal pending before the QDC, even though he had previously considered and voted on the same matter when it was before the town council). Here, neither the planning board nor the building committee is a business; thus, the Petitioner is not a business associate of either of those public entities.

The Ethics Commission has also consistently opined that a public official is not prohibited by the Code of Ethics from voting on a matter as a member of one public agency and then voting on the

same matter as a member of another public agency, provided that the above-cited provisions of the Code of Ethics were not otherwise implicated. In Advisory Opinion 2021-37, for example, a member of the Smithfield Town Council, who was also a former member of the Smithfield Land Trust, questioned whether she was required to recuse from participating in town council discussions and voting on property matters in which she had previously participated and voted as a member of the land trust. That petitioner had been appointed by the town council to the land trust, and served on the land trust until her election to the town council. The Ethics Commission determined that both the town council and the land trust were public entities, and acknowledged the petitioner's representations that neither she nor her family members, business associates, or employer stood to be directly financially impacted by any of the town council's decisions relative to the subject property. The Ethics Commission opined that the petitioner was not prohibited from participating in town council matters related to the subject property, notwithstanding that she had previously participated and voted on those matters as a member of the land trust. See also A.O. 2003-39 (opining that a member of the Glocester Town Council could participate and vote on the town's funding of the purchase of a parcel of land from the Glocester Housing Authority, notwithstanding his prior status as a member of the housing authority at the time it purchased the lot and decided to offer it for sale to the town).

Here, the Petitioner is not a business associate of either the planning board or the building committee. Additionally, the Petitioner represents that neither he nor any of his family members, business associates, or his employer stand to be directly financially impacted by any planning board decisions relative to the design and construction of the new joint middle school and high school in Middletown. Finally, the Petitioner states that he will not personally appear before the planning board relative to any of the building committee's applications. Accordingly, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior advisory opinion issued, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from participating in planning board discussion and decision-making on matters in which he participated and voted on as a member of the building committee.

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(2)

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2021-37

A.O. 2011-29
A.O. 2007-14
A.O. 2003-39

Keywords:
Dual Public Roles