



From: Hodge, Elisha Diane
To: Mayor
Subject: Conflict of Interest for mayor

Via Email

March 2022

Dear Mayor,

You have asked whether, as the mayor of the town, you are now precluded from doing landscaping work for private property owners on private property located within the Town, as part of your outside employment. You indicated in your original email that “[a] couple of people have told me that I can’t do this because it would be benefiting from being the mayor.”

In my opinion, whether you can continue doing landscaping work on private property located within the town for private property owners, depends upon the facts and circumstances of each potential employment situation. I can only opine on the situations that you outlined in our email communication and this opinion is based solely on the facts provided. According to your emails, there are 4 properties located within the town in which you have an employment interest. Only one of those property owners will be coming before the Board of Mayor and Alderman (hereinafter “BOMA”) to request that that BOMA take action related to the property. It is my understanding that the property owner will be requesting approval of a final subdivision plat. Below, I have included several provisions within State law and the Town’s municipal code that need to be examined in order to address your question.

Tennessee Code Annotated § 12-4-101 addresses conflicts of interests by municipal officials. The relevant part of that provision reads:

(a)(1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. “Directly interested” means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. “Controlling interest” includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation. This subdivision (a)(1) shall not be construed to prohibit any officer, committee person, director, or any person, other than a member of a local governing body of a county or municipality, from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested. . .

(b) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any



contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county. (emphasis mine)

Tenn. Code Ann. § 12-4-101 (West).

Direct conflicts of interest are addressed in subsection (a)(1) and indirect conflicts are addressed in subsection (b). Given the fact that the Town is not entering into a contract related to the property that will come before the BOMA or any of the other properties, it does not appear that you have a direct or indirect conflict related to any of the properties. It also does not appear that you are precluded from doing the work described in your emails due to the aforementioned statutory language. However, I do want to bring to your attention the attached opinion from the Tennessee Attorney General's office, Tenn. Op. Atty. Gen. No. 12-09, that examines conflicts of interest. Note specifically the language highlighted in green.

Title 1, Chapter 4, Section 1-403 of the Town's municipal code addresses disclosure of personal interest and reads:

An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's vote on the measure. In addition, the official may recuse himself from voting on the measure.

Personal interest is defined in Title 1, Chapter 4, Section 1-402 of the town's municipal code as a "financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests." Employment interest is defined to include "a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised."

It does appear from the information that you provided, that you have a personal interest in the form of an employment interest that needs to be disclosed on the record before any discussion occurs on whether to approval a final subdivision plat for the property that you acknowledge will come be before the BOMA. Whether you participate in the deliberations and vote is left to your discretion. However, you may consider recusing yourself from both the deliberations and vote so neither are challenged. You will also need to make sure that the disclosure is included in the minutes of the meeting.

Title 1, Chapter 4, Sections 1-407 through 1-409 of the Town's municipal code address "use of municipal time, facilities, etc.," "use of position and authority" and "outside employment" and read:



1-407. Use of municipal time, facilities, etc. (1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself. (2) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

1-408. Use of position or authority. (1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality. (2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

1-409. Outside employment. An official or employee may not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy.

While none of these provisions appear applicable based upon the facts provided, I do want to bring them to your attention.

Based upon the facts that you provided, there does not appear to be any provision within state law or the town's municipal code that prevents you from doing landscaping work for private property owners on private property located within the town, as part of your outside employment.

Please let me know if you have questions.

Elisha Hodge
MTAS Legal Consultant