

Formal Advisory Opinion
No. 9 of 2009

December 8, 2009

Dear [name deleted for member confidentiality]:

You have asked the Joint Legislative Committee on Ethical Standards (Joint Committee) for a formal advisory opinion on whether your position as a member of the [House deleted for member confidentiality] disqualifies your parents from selling the development rights to their farm to [county deleted for member confidentiality] County for farmland preservation purposes. Your request was prompted by the attorney for the State Agriculture Development Committee (SADC). The SADC is currently reviewing your parents' application to sell development rights and its attorney has asked that you obtain a formal advisory opinion in this regard and provide it to the SADC.

Your parents started the application process early 2008. Initially, you were assisting them with the application, however, it subsequently became clear to you that things would proceed more smoothly if your parents handled the application process themselves, without you as an intermediary. Your assistance to your parents involving their application ended months prior to your becoming a member of the General Assembly on [date deleted for member confidentiality].

The farm is owned by your parents. You do not have an ownership interest in the farm, nor do you reside at the farm. You do not share in any income from the farm. While it is possible that you may someday inherit an interest in the farm (you have a number of siblings), that possibility is too indefinite for this Joint Committee to deem that possibility an ownership interest in the farm.

The application filed by your parents to include their farm in the [county deleted for member confidentiality] County Farmland Preservation Program seeks to sell an easement for the development rights to their farm to [county deleted for member confidentiality] County. The [county deleted for member confidentiality] County Agriculture Development Board gave preliminary approval to the application on May 20, 2008.

Two appraisals were obtained. One places the value of the development rights at \$231,000 and the other at \$308,000. The SADC now has the application in order to set the value of the development rights and to provide a cost-share grant from the Farmland Preservation Trust to assist [county deleted for member confidentiality] County in the purchase of the development rights easement. While the percentage of the cost-share grant to the total purchase price is not yet set, we were advised by a planner at the [county deleted for member confidentiality] County Department of Planning and Development that the State grant from the Farmland Preservation Trust is usually in the 65-70% range with the county paying the balance. That same planner also advised that the SADC may set the value of the easement at the amount of either appraisal or somewhere in between.

N.J.S.A. 52:13D-15 concerns the sale of real property to the State and read as follows:

No member of the Legislature or State officer or employee shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, whether by himself or by or through any partnership, firm or corporation in which he has an interest or by any partner, officer or employee of any such partnership, firm or corporation any person or party other than the State in any negotiations for the acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court; provided, however, nothing contained in this section shall be deemed to prohibit any person from representing himself in negotiations or proceedings concerning his own interest in real property.

While the law restricts members of the Legislature and firms, corporations and partnerships in which the member has an interest from representing, appearing for or negotiating on behalf of any person or party, other than the State, regarding the acquisition of an interest in real property from the State or sale of real property to the State, this provision does not extend to family members. In fact, when the Conflicts Law uses the term, "member of immediate family," it applies only to certain close relatives "residing in the same household." N.J.S.A. 52:13D-13i. N.J.S.A. 52:13D-15 does not mention family members in its restriction. If you were an owner of the real property at issue, N.J.S.A. 52:13D-15 would allow you to negotiate on your own behalf. However, you would then be subject to the provisions of N.J.S.A. 52:13D-19. Since you are not an owner and are not representing your parents in this matter, nor is an entity in which you

have an interest representing them, neither N.J.S.A. 52:13D-15 nor N.J.S.A. 52:13D -19 apply.¹

The analogous provision (to N.J.S.A. 52:13D-15) of the Legislative Code of Ethics is §2.2 which reads as follows:

2:2. Except as hereinafter provided in sections 2:3 and 2:4, no member of the Legislature nor any partnership or firm of which he is a member or any corporation in which he owns or controls an interest, nor any partner, officer or employee of any such partnership, firm or corporation, shall represent, appear for, or negotiate on behalf of, or agree to represent, appear for, or negotiate on behalf of, any person or party other than the State in connection with:

a. The acquisition or sale by the State or a State agency of any interest in real or tangible or intangible personal property (C.52:13D-15);

b. The acquisition by the State or a State agency of any interest in real property by condemnation proceedings (C.52:13D-15);

c. Any specific cause, proceeding, application or other matter before any State agency (C.52:13D-16).

The analysis under §2:2 is the same as the analysis under N.J.S.A. 52:13D-15.

The general provisions that are sometimes applicable, Code §2:1a concerning employment or actions by a member that violate or appear to violate the public trust and Joint Rule 19 which concerns conduct or activities of members which negatively reflect on the “good name, integrity and reputation of the Legislature” also do not apply under your facts. Except for preliminary assistance with the application, prior to becoming a member of the Legislature, the actions are all by your parents, not you. The farm is owned by your parents, not you. And, payment, if the transaction is completed, will be made to your parents, not you.

Accordingly, it is the opinion of the Joint Committee that nothing in the Conflicts Law, Code of Ethics or the Joint Rules prohibits your parents from making their application for farmland preservation and selling a development rights easement to [county

¹ Executive Order No. 78 of Governor James J. Florio, notwithstanding N.J.S.A. 52:13D-15 *et al*, provides that no State agency shall “. . . lease or purchase real property, title to which is held, in whole or in part, by a member of the Legislature or a member of his or her immediate family. . . .” “Member of the immediate family” is defined in the Executive Order to mean “. . . spouse, child, parent, or sibling residing in the same household.”

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deleted for member confidentiality] County with a portion of the sale price to be paid by the State from the Farmland Preservation Trust.

Very truly yours,
JOINT COMMITTEE ON ETHICAL STANDARDS

Albert Porroni
Counsel

By: _____
James G. Willson
Assistant Counsel

AP:W/fa