



DAVID M. MOORE
CITY SOLICITOR

CITY OF WORCESTER
LAW DEPARTMENT
CITY HALL, ROOM 301
WORCESTER, MASSACHUSETTS 01608

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(508) 799-1163

September 13, 2012

David J. Rushford, City Clerk
City of Worcester, Massachusetts

Re: Conflict of Interest Opinion – Councilor Sarai Rivera

Dear Mr. Rushford:

Enclosed for filing with the city's official records please find a Conflict of Interest Opinion for Councilor Rivera along with the written response from the State Ethics Commission.

Very truly yours,

David M. Moore
City Solicitor

DMM/das
Encs.



Commonwealth of Massachusetts
STATE ETHICS COMMISSION

John W. M^cCormack Office Building - One Ashburton Place - Room 619
Boston, Massachusetts 02108-1501

September 5, 2012

David M. Moore, Esq.
City of Worcester Law Department
City Hall, Room 301
Worcester, MA 01608

RE: The Honorable Rev. Dr. Sarai Rivera

Dear Atty. Moore:

On August 6, 2012, we received an opinion which you sent on August 3, 2012 to The Honorable Rev. Dr. Sarai Rivera, who is a City Councilor. The opinion was about whether Dr. Rivera could participate as a City Councilor with regard to designating an area of Worcester as an official historic district under G.L. c. 40C when she serves as a co-senior pastor for a church located within the proposed boundaries of the district. We have reviewed the opinion pursuant to the Commission's municipal advisory opinion regulation, 930 CMR 1.03(3).

We concur with the conclusions contained in your opinion that (1) under § 17(c), Dr. Rivera may not act as agent for the church in relation to the creation of the proposed Crown Hill historic district; and (2) she may perform her official duties as a City Councilor with regard to the creation of the historic district, provided that, before doing so, she files a § 23(b)(3) disclosure with the City Clerk explaining that the church is located in the proposed district and that she is co-senior pastor of the church.

As you point out in your letter, Ms. Rivera does not receive compensation from the church, so § 17(a) will not be an issue for her. For purposes of clarity, however, I provide the following advice about a statement in your letter about § 17(a).

You state that § 17(a) "prohibits municipal employees *from both participating as a city employee* and receiving compensation from anyone outside of the city in matters in which the city has a direct and substantial interest." In fact, under § 17(a), whether a city employee participates in a particular matter is not relevant. A municipal employee may not receive compensation from someone other than the City in relation to a particular matter if *any* City agency is a party or has a direct and substantial interest in the matter, whether or not he has participated in the matter as a municipal employee.




David M. Moore, Esq.

September 5, 2012

Page 2

Please let us know if you have any questions.

Very truly yours,



Amy Bressler Nee

Amy Bressler Nee
Staff Counsel

cc: The Honorable Rev. Dr. Sarai Rivera
Worcester City Clerk



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STATE ETHICS COMMISSION

John W. McCormack Office Building - One Ashburton Place - Room 619
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September 5, 2012

David M. Moore, Esq.
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City Hall, Room 301
Worcester, MA 01608

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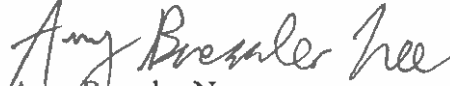
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David M. Moore, Esq.
September 5, 2012
Page 2

Please let us know if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Amy Bressler Nee". The signature is written in black ink and is positioned above the printed name and title.

Amy Bressler Nee
Staff Counsel

cc: The Honorable Rev. Dr. Sarai Rivera
Worcester City Clerk



DAVID M. MOORE
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WORCESTER, MASSACHUSETTS 01608

TELEPHONE
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August 3, 2012

The Honorable Rev. Dr. Sarai Rivera
City Councilor – District Four
Worcester, Massachusetts

Re: Conflict of Interest Opinion

Dear Councilor Rivera:

You requested an opinion as to the applicability of the Conflict of Interest Law in connection with the formation of a new historic district which includes property owned by a church in which you serve as a co-senior pastor. You also serve in the elected position of city councilor, one of eleven that constitutes the legislative body of the city of Worcester.

The church property is located at 89 Austin Street, Worcester, and is owned by Iglesia Cristiana De La Comunidad, a chapter 180 (religious) corporation organized (according to documents filed with the secretary of state) on September 25, 1996. Iglesia Cristiana De La Comunidad acquired the property from La Iglesia De Dios, Inc., in 1998 (Worcester District Registry of Deeds Book 19669, Page 287). La Iglesia De Dios, Inc., acquired the property in 1978 from the city of Worcester (Book 6526, Page 90) who acquired it in a tax taking in 1972.

The city is in the early stages of designating the area in which the church property is located (known as "Crown Hill") as an official historic district under G.L. c. 40C. This statute establishes a process for establishing municipal historic districts, a process involving a report from the historical commission, review by the planning board and which culminates in final adoption of the district by a two-thirds vote of the city council. G.L. c. 40C § 3. The church property is not, itself, an historic structure, but it is located within the proposed boundaries of this district.

You have raised the question whether your relationship to the church might prohibit you from participating as a city councilor in the establishment of this district.

As a city councilor you are included in the definition of "municipal employee" in the conflict of interest law. Your request requires analysis under various provisions of the Conflict of Interest Law, which is codified as G.L. c.268A, §§ 1 - 3 & 17 - 29.

OUTSIDE ACTS INVOLVING CITY MATTERS

Section 17(a) prohibits municipal employees from both participating as a city employee and receiving compensation from anyone outside of the city in matters in which the city has a direct and substantial interest.

Section 17(c) prohibits municipal employees, whether compensated or not, from acting as agent or attorney for anyone in connection with any particular matter in which the city is a party or has a direct and substantial interest.

The term "particular matter" is defined by section 1(k) as any "proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding."

A violation of this section carries a maximum civil penalty of \$10,000, and/or imprisonment in the state prison for not more than 5 years or a jail or house of correction for not more than 2 ½ years.

The eventual city council vote on the creation of the Crown Hill historic district would be a "particular matter" in which the city would have a direct and substantial interest. Because the process for establishing a historic district involves the historical commission and the planning board, there are several "particular matters" (proceedings, determinations, findings, etc.) that will occur as the process unfolds. You are not compensated by the church for your services as co-senior pastor, or otherwise.¹ You do not live at the church or receive any special privileges from it, except to minister to its parishioners. Even so, you could act as an unpaid agent for the church. The "agent" of an organization is someone acting on its behalf as a spokesperson, liaison, negotiator, signatory for its documents or by submitting applications on its behalf. See In re Sullivan, 1987 SEC 312. The Conflict Law allows participation in an organization's internal discussions concerning issues involving the city without violating this provision.

Therefore, you would violate the conflict of interest law if you acted as an agent of the church in relation to the creation of the proposed Crown Hill historic district.

FINANCIAL INTEREST

¹ The other co-senior pastor is your husband, Rev. Jose Encarnacion, and he is not compensated by the church for his services. (He is reimbursed for the use of his personal vehicle for church purposes).

Section 19 of the Conflict of Interest Law prohibits you from participating (as a city councilor) in any particular matter in which you, your immediate family, your employer or any business organization in which you serve as an officer, director, trustee or partner, or any person or organization with which you have any arrangement regarding future employment has a financial interest.

The conflict of interest law presumes that the church, as a property owner within the proposed historic district, has a financial interest in the creation of the district. This is based on the assumption that the creation of the district is likely to have an affect, either positive or negative, on the value of the church property. However, you do not have a financial interest in the church. While you were listed as the clerk of the chapter 180 corporation when it was formed in 1996, you left that position in 2001. Likewise, your husband does not have a financial interest in the church. The church, as a charitable organization, does not qualify as a "business organization" under section 19.

Therefore, your participation in this matter as a city councilor would not violate the financial interests section of the conflict of interest law.

APPEARANCE OF CONFLICT

Subsection (b)(3) of section 23 makes it unlawful to act in a manner which would cause a reasonable person to conclude that any person, by virtue of their kinship, rank, position or undue influence, could improperly influence you or obtain improper special treatment from you in the performance of your official duties. This section also provides that, if the municipal employee makes a disclosure of the facts which might lead to such a conclusion, the employee may continue to participate in the matter. This disclosure must be made to the appointing authority or, if none exists, in a manner which is public in nature. As a city councilor you have no appointing authority and you may make a public disclosure using the disclosure forms supplied by the Ethics Commission and by making an announcement when this item first appears before the city council. I have attached a copy of the form to this letter for your consideration.

CONCLUSION

It is my opinion that, provided that you make a disclosure as discussed herein, you may lawfully participate as a city councilor in matters arising out of the attempt to designate the Crown Hill area as a municipal historic district. However, you would violate the law if you acted as an agent of the church with respect to the creation of this historic district.

NOTICE OF FILING WITH COMMISSION

In accordance with the regulations of the State Ethics Commission, I am required to forward this opinion to the commission for review. The commission will advise us whether or not it concurs with the conclusions stated in this opinion and the letter, together with the response of the Ethics Commission, will be placed on file with the city clerk as a public record. Only after the State Ethics Commission notifies us of its concurrence, may you rely upon the conclusions stated herein.

Very truly yours,

David M. Moore
City Solicitor

cc: State Ethics Commission