

**CONFIDENTIAL ATTORNEY WORK PRODUCT
MEMORANDUM**

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From: David V. Igliazzi

Re: Section 14.01

Date: 11/18/2011

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Facts:

The Electrical Inspector was appointed by the Town Council pursuant to Article II, Section 17 of the Town Charter. Pursuant to the Foster Personnel Rules and Regulations, the Electrical Inspector is designated as an Employee, Non-Standard Paid, No Benefits. In addition to his official duties as an appointed official, the Electrical Inspector owns and operates a sole proprietorship that has responded to requests for bids solicited by the Director of Public Works for the Town of Foster.

Questions Presented:

Does Section 14.01 of the Foster Town Charter prohibit the Electrical Inspector's sole proprietorship from receiving a bid award because of his position as the Town's Electrical Inspector?

Relevant Law and Discussion:

Section 14.01 of the Foster Town Charter provides that an officer or employee who has a substantial financial interest, direct or indirect or by reason of ownership of stock in the any corporation, in any contract with the Town or in the sale of land, supplies or services to the Town or to a contractor supplying the town shall make known that interest and shall refrain from voting upon or otherwise participating in his/her capacity a Town officer or employee in the making of such sale or in the making or performance of such contract. Any Town officer or employee who willfully conceals such a substantial financial interest or willfully violates the requirements of this Section shall forfeit his/her office or position. Violation of this Section with the knowledge, express or implied, of the person or corporation contracting with or making a sale to the Town shall render the contract or sale voidable by the Town Council.

Section 14.01 only applies to an officer or employee who has an interest in a **corporation** by reason of ownership of stock in a corporation. Pursuant to the facts reported, the entity in question is a **sole proprietorship** and not a corporation. Therefore, Section 14.01 does not apply to sole proprietorships and does not apply to these facts.

However, the Rhode Island Code of Ethics¹ governs the conduct of state or municipal appointed officials² and provides rules for sole proprietorships³.

RIGL 36-14-5(h) provides that: No person subject to this code of ethics, or any person within his or her family or business associate of the person, or **any business entity** in which the person or any person within his or her family or business associate of the person has a ten percent (10%) or greater equity interest or five thousand dollars (\$5,000) or greater cash value interest, shall enter into any contract with any state or municipal agency unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded; provided, however, that contracts for professional services which have been customarily awarded without competitive bidding shall not be subject to competitive bidding if awarded through a process of public notice and disclosure of financial details.

Therefore, RIGL 36-14-5(h) does not prohibit an owner of sole proprietorship (where a Town officer or employee has a financial interest) from receiving Town contracts provided the requirements of Section RIGL 36-14-5(h) are met.

¹ Section 203 of the Foster Personnel Rules and Regulations reaffirms Town compliance with the Rhode Island Code of Ethics for Public Officers and Employees.

² See RIGL 36-14-2(9) "State or municipal appointed official" means any officer or member of a state or municipal agency as defined herein who is appointed for a term of office specified by the constitution or a statute of this state or a charter or ordinance of any city or town or who is appointed by or through the governing body or highest official of state or municipal government.

³ Section 36-14-2(2) "Business" means 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.