

RHODE ISLAND ETHICS COMMISSION

Approved Advisory Opinion No. 2022-36

Approved: December 13, 2022

Re: Mark Aramli

QUESTION PRESENTED:

The Petitioner, a member of the Newport City Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Zoning Board of Review, a municipal agency over which the City Council has appointing authority, in order to pursue an appeal that was filed several months before he became a candidate for public office.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Newport City Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the Newport Zoning Board of Review, a municipal agency over which the City Council has appointing authority, in order to pursue an appeal that was filed several months before he became a candidate for public office.

The Petitioner was elected to a two-year term as a member of the Newport City Council ("City Council") on November 8, 2022, and states that this is his first time holding municipal office. He identifies among his City Council duties the participation in the appointments of members to various boards and commissions in the City of Newport, including the Newport Zoning Board of Review ("Zoning Board"). The Petitioner represents that he currently has an appeal pending before the Zoning Board, filed by his attorney on March 25, 2022, prior to the Petitioner becoming a candidate for public office. He describes the events leading to the appeal as follows: In November of 2020, the Petitioner and his spouse purchased a parcel of land located in Newport on which they intend to construct a new home to serve as their primary residence. He states that the land is located within a Newport Historic District, resulting in his application to the Newport Historic District Commission ("HDC") for permission to construct the home at the desired location. The Petitioner states that the application was denied by the HDC at a hearing in March of 2022, and that the Petitioner filed an appeal of the HDC's decision to the Zoning Board later that month. He explains that the appeal has yet to be heard, adding that the holdup is due to delays in obtaining the transcripts of the HDC meetings at which the Petitioner's application was considered and, ultimately, denied. The Petitioner informs that a briefing schedule is to be established by the Zoning Board on November 28, 2022, at which time the Petitioner would like

his attorney to appear on his behalf, and after which it is anticipated that the appeal will be heard and adjudicated within approximately 90 to 120 days.¹

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) (“section 5(e)”); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. Section 5(e)(1) & (4). Upon receipt of a hardship exception, the public official must also “[f]ollow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter.” Section 5(e)(1)(iii). *See, e.g.*, A.O. 2014-4 (granting a hardship exception to a member of the Portsmouth Town Council and permitting him to represent himself before the Portsmouth Zoning Board in order to seek a variance for his personal residence, provided that, in order to avoid any appearance of impropriety, he recused from the Town Council’s appointment or reappointment of any person to the Zoning Board until after the election cycle following the resolution of his applications for zoning relief).

The Petitioner’s proposed conduct falls squarely within the Code of Ethics’ prohibition on representing oneself before an agency over which one has appointing authority. Having determined that section 5(e)’s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the Zoning Board.

The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the public official’s principal residence or principal place of business; whether the public official’s interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved an existing business or a new commercial venture; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions on a number of occasions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences. In Advisory Opinion 2021-42, for example, the Ethics Commission granted a hardship exception to a member of the North Kingstown Town Council, permitting him to represent himself before the North Kingstown Historic District Commission,

¹ The Petitioner’s request for this advisory opinion was received by the Ethics Commission on November 18, 2022. Because it was not feasible to provide the Petitioner with an advisory opinion prior to November 28, 2022, the Petitioner was advised by Ethics Commission Staff that his interests could be represented by his attorney before the Zoning Board on November 28, 2022, for the sole purpose of scheduling the appeal hearing. The Petitioner was further advised by Ethics Commission Staff that, in the event that the Ethics Commission denies the Petitioner’s request for a hardship exception, neither the Petitioner nor anyone authorized and/or directed by the Petitioner to act on his behalf will be allowed to appear before the Zoning Board to pursue the appeal. Finally, the Petitioner was advised to ask his attorney to inform the Zoning Board of the Petitioner’s pending request for an advisory opinion relative to this matter, and that it is expected be issued in advance of the appeal hearing.

and/or potentially the North Kingstown Zoning Board of Review, entities over which the Town Council had appointing authority. That petitioner was seeking to install a small portable shed in the backyard of his home, which was located within the Town of North Kingstown's Historic District. The changes sought by the petitioner to his home's exterior were subject to the jurisdiction of the North Kingstown Historic District Commission, denials by which were appealable to the North Kingstown Zoning Board of Review. The Ethics Commission allowed the petitioner to represent himself, either personally or through a representative, before both the HDC and the Zoning Board (in the event of an appeal). However, in order to avoid even the appearance of impropriety, the petitioner was required to recuse from the Town Council's appointment or reappointment of any persons to the HDC and the Zoning Board (in the event of an appeal) until after the election cycle for his Town Council seat following the complete resolution of the HDC's review of his application and the Zoning Board's potential consideration of an appeal of the HDC's decision. See also A.O. 2020-18 (granting a hardship exception to a member of the Jamestown Town Council, permitting him to appeal the tax assessment of his personal residence before the Jamestown Tax Assessment Board of Review ("Board of Review"), over which the Town Council had appointing authority, provided that he recuse from the Town Council's appointment or reappointment of any persons to the Board of Review until after the election cycle for his Town Council seat following the resolution of his tax appeal); A.O. 2019-64 (granting a hardship exception to the President of the North Smithfield Town Council and permitting him to appear before the North Smithfield Zoning Board of Review ("NSZB") to seek a dimensional variance for his personal residence, which he purchased prior to his election, provided that he recused from the Town Council's appointment or reappointment of any person to the NSZB until after the election cycle for his Town Council seat and following the complete resolution of his application before the NSZB, including appeals, and that, prior to the NSZB's consideration of his variance application, he informed the NSZB members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

Here, the Petitioner would like to authorize and/or direct his attorney to appear on the Petitioner's behalf before the Zoning Board in order to appeal the decision by the HDC denying the Petitioner's application to construct a new single family home on a parcel of land located within the Newport Historic District in which the Petitioner intends to live with his family. The Petitioner purchased the parcel of land in November of 2020, which predates his election to the City Council by two years. In consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with past advisory opinions issued, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to section 5(e)'s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the Zoning Board relative to the appeal described above.

However, section 5(e) authorizes the Ethics Commission to condition such exception upon the Petitioner's agreement to follow certain steps aimed at reducing any appearance of impropriety. Section 5(e)(1)(iii). Pursuant thereto, the Petitioner must recuse from the City Council's appointment or reappointment of any persons to the Zoning Board until after the election cycle for his City Council seat following the complete resolution of his appeal before the Zoning Board, including any further appeals of the Zoning Board's decision, if applicable. Additionally, the Petitioner shall, prior to the Zoning Board's consideration of his appeal, inform the Zoning Board members of his receipt of the instant advisory opinion and that, consistent therewith, he will

recuse from their reappointments as set forth above. Notice of recusal shall be filed with the Ethics Commission in accordance with section 36-14-6.

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:

§ 36-14-5(e)

§ 36-14-6

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2021-42

A.O. 2020-18

A.O. 2019-64

A.O. 2014-4

Keywords:

Hardship Exception