

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-19

Approved: April 4, 2023

Re: Mark Aramli

QUESTION PRESENTED:

The Petitioner, a member of the Newport City Council, a municipal elected position, asks whether an advisory opinion issued to him last year restricted his ability to participate in the City Council's appointment of persons to the Newport Historic District Commission.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the advisory opinion issued last year to the Petitioner did not restrict, or address, the Petitioner's participation in the City Council's appointment of persons to the Newport Historic District Commission. However, based on additional facts provided by the Petitioner, this advisory opinion provides further guidance and conditions relative to the Petitioner's pending appeal from a decision of the Historic District Commission.

The Petitioner was elected to serve a two-year term as a member of the Newport City Council ("City Council") on November 8, 2022. As part of his City Council duties, the Petitioner participates in the appointment of members to various boards and commissions in the City of Newport, including the Newport Zoning Board of Review ("ZBR") and the Newport Historic District Commission ("HDC"). Prior to becoming a candidate for public office, the Petitioner filed with the ZBR an appeal from a decision of the HDC denying his application to construct a home within a Newport Historic District. That appeal was the subject of Advisory Opinion 2022-36, which was issued to the Petitioner after his election to the City Council. Therein, the Ethics Commission granted the Petitioner's request for a hardship exception, allowing him to appear before the ZBR relative to his appeal from the HDC's decision. However, pursuant to R.I. Gen. Laws § 36-14-5(e) ("section 5(e)")(1)(iii), the Petitioner was required to recuse from the City Council's appointment or reappointment of any persons to the ZBR until after the election cycle for his City Council seat following the complete resolution of his appeal before the ZBR, including any further appeals of the ZBR's decision, if applicable. Additionally, the Ethics Commission required that, prior to the ZBR's consideration of his appeal, the Petitioner inform the ZBR members of his receipt of the advisory opinion and that, consistent therewith, he would recuse from their reappointments as set forth within that advisory opinion.¹

¹ The Petitioner informs that, due to ongoing delays in the transmittal of the full record of the HDC proceedings at which his application was heard and ultimately denied, his appeal to the ZBR has yet to be scheduled.

Currently, the Petitioner informs that the ZBR could grant his appeal, deny his appeal, or remand the matter to the HDC. He explains that remands occur infrequently, when the ZBR is unable to adjudicate an appeal because of an error made by the HDC. The Petitioner further explains that a remand to the HDC will usually concern a deficiency in the record, such as a lack of findings of fact and/or conclusions of law.² The Petitioner states that the ZBR's remand of a matter to the HDC generally does not cause the HDC to reconsider an application or its decision to deny it. The Petitioner adds that it is unlikely that he would be required to represent himself before the HDC in the event of a remand. The Petitioner explains that, if the ZBR remands his matter to the HDC, he has several options. The Petitioner represents that he may continue pursuing the appeal following the HDC's activity on remand; appeal the matter directly to the Superior Court; withdraw his appeal and file a new application before the HDC; or simply abandon the project. The potential remand of the Petitioner's appeal to the HDC was neither anticipated nor addressed by the Ethics Commission when it considered and issued Advisory Opinion 2022-36. Therefore, the Petitioner seeks clarification as to whether, and at what point, he should recuse from the City Council's appointment or reappointment of any persons to the HDC under the circumstances.

In Advisory Opinion 2022-36, the Ethics Commission's analysis included the relevant provisions of the Code of Ethics that prohibit a public official from representing himself or authorizing another person to appear on his behalf before a municipal agency for which he is the appointing authority. 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 to support allowing the official to appear or be represented before a subsidiary agency, this prohibition continues 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 in Advisory Opinion 2022-36 fell squarely within the Code of Ethics' prohibition against representing himself before the ZBR over which he has appointing authority. Having determined that section 5(e)'s prohibitions applied to the Petitioner, the Ethics Commission then determined that the unique circumstances represented by the Petitioner justified a finding of hardship to permit him to appear before the ZBR, subject to the condition that he recuse from the City Council's appointment or reappointment of any persons to the ZBR until after the election cycle for his City Council seat following the complete resolution of his appeal before the ZBR, including any further appeals of the ZBR's decision.

² The Petitioner represents that the remand of his appeal to the HDC based on a deficiency of the record is highly unlikely, given the details contained within the HDC's Decision Letter. He explains that his attorney and opposing counsel reviewed the Decision Letter thoroughly in anticipation of the Petitioner's appeal.

Consistent with prior advisory opinions in which questions of hardship were reviewed, the Ethics Commission considered that the subject property of the Petitioner's appeal was that on which the Petitioner intended to construct the principal residence in which he planned to reside with his family. Also, the Petitioner's interest in that property was pre-existing to his public office. Having 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, the Ethics Commission relied in part upon Advisory Opinion 2021-42. Therein, a hardship exception was granted to a member of the North Kingstown Town Council, permitting him to represent himself before the North Kingstown Historic District Commission ("NKHDC"), and/or potentially the North Kingstown Zoning Board of Review ("NKZBR"), 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 that petitioner to his home's exterior were subject to the jurisdiction of the NKHDC, denials by which were appealable to the NKZBR. The Ethics Commission allowed that petitioner to represent himself, either personally or through a representative, before the NKHDC and, in the event of an appeal, the NKZBR. However, in order to avoid even the appearance of impropriety, that petitioner was required to recuse from the Town Council's appointment or reappointment of any persons to the NKHDC and, in the event of an appeal, the NKZBR, until after the election cycle for his Town Council seat following the complete resolution of the NKHDC's review of his application and the NKZBR's potential consideration of an appeal of the NKHDC's decision.

When the instant Petitioner submitted his request for an advisory opinion last year, he did not ask for a hardship exception allowing him to appear before the HDC in the event of the ZBR's remand of the matter to the HDC. The Ethics Commission has since been informed by the Petitioner that his appeal to the ZBR could result in a remand to the HDC, though such remands are infrequent, and it is unlikely that he would be required to appear before the HDC in the event of a remand.

Based upon the Petitioner's representation that his appeal to the ZBR could conceivably result in a remand to the HDC, and in the event that the Petitioner or his legal counsel is then required to appear before the HDC on remand, the hardship exception previously granted to the Petitioner in Advisory Opinion 2022-36 shall extend to allow the Petitioner to represent himself, either personally or through his legal counsel, before the HDC for the sole purpose of that remand. The hardship exception would likewise be extended if the remand requires the HDC to reconsider the Petitioner's application or its decision to deny it.³ As a condition of the extension of that hardship exception, and to avoid even an appearance of impropriety, if and when the ZBR issues a remand under these circumstances, the Petitioner must at that point recuse from the City Council's appointment or reappointment of any persons to the HDC until after the election cycle for his City

³ The extension of the hardship exception granted to the Petitioner allowing him to appear before the HDC in the event of a remand does not allow the Petitioner to appear before the HDC for any other reason. This would include, but not be limited to, pursuing a new application to construct a home within a Newport Historic District. While the Petitioner is a member of the City Council, and for a period of one year following the termination of his service on the City Council, if the Petitioner wishes to appear before the HDC for any reason other than the remand of the subject appeal to the ZBR, he must seek a separate hardship exception from the Ethics Commission.

Council seat following the complete resolution of the remand before the HDC. Notice of recusal shall be filed consistent 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. 2022-36

A.O. 2021-42

A.O. 2014-4

Keywords:

Hardship Exception