

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-20

Approved: May 16, 2023

**Re: James M. Callaghan, Esq.**

### **QUESTION PRESENTED:**

The Petitioner, the former Solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing private clients before the Narragansett Zoning Board of Review and the Narragansett Planning Board within one year following the end of his tenure with the Town of Narragansett.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the former Solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, is prohibited by the Code of Ethics from representing private clients before the Narragansett Zoning Board of Review until the expiration of one year following his last appearance before that board. However, the Code of Ethics does not prohibit the Petitioner from representing private clients before the Narragansett Planning Board, given that he did not provide legal counsel to that board during his tenure as Solicitor.

The Petitioner represents that he served as the Solicitor for the Town of Narragansett (“Town”) from August 2, 2021, through February 24, 2023. He informs that his responsibilities as Solicitor involved advising the Town Council and the Town’s staff on legal issues. The Petitioner states that his official duties as Solicitor did not include advising or working on behalf of the Narragansett Zoning Board of Review (“Zoning Board”) or the Narragansett Planning Board (“Planning Board”). He informs that his employment agreement with the Town specifically excluded planning and zoning matters from those in which he would provide legal advice or representation. The Petitioner represents that the Town Council retains a separate Assistant Town Solicitor to represent the Town before the Zoning Board and the Planning Board in such matters. He explains that the Assistant Town Solicitor is charged with providing legal services to the Zoning Board and the Planning Board relating to planning, zoning, sub-divisions, and developments. The Petitioner represents that he and the Assistant Solicitor do not work for the same law firm and have no professional connection aside from their separate duties to the Town. The Petitioner states that during his tenure as Solicitor, he served on one occasion, on May 19, 2022, as substitute counsel at a Zoning Board meeting at the request of the Assistant Solicitor who could not attend. He further states that he did not provide any advice to the Zoning Board in any matters at that meeting.

Given his prior service as Solicitor, the Petitioner seeks advice as to whether the Code of Ethics' revolving door restrictions prohibit him from representing clients before the Zoning Board and the Planning Board within one year following the end of his tenure with the Town.

The Code of Ethics strictly prohibits public officials and employees from representing themselves or another person before a state or municipal agency of which they are a member or by which they are employed. R.I. Gen. Laws § 36-14-5(e) ("section 5(e)")(1) & (2); Commission Regulation 520-RICR-00-00-1.1.4(A)(2)(a) Representing Oneself or Others, Defined (36-14-5016) ("Regulation 1.1.4").<sup>1</sup> These prohibitions continue while the official remains in office and for a period of one year thereafter. Section 5(e)(4).

The Ethics Commission has consistently concluded that solicitors may represent private clients before municipal boards, courts, or other entities before which they do not represent their municipality or over which they do not have any official duties. For example, in Advisory Opinion 2015-23, a former Assistant Solicitor for the Town of Burrillville, whose duties consisted of prosecuting criminal complaints in the Providence County District Court and the Town of Burrillville's Municipal Court, was not prohibited from representing clients before the Burrillville Planning Board and Burrillville Zoning Board within one year following the end of his tenure as Assistant Solicitor. The Ethics Commission opined that, based upon the petitioner's representations that he had no duties to any Burrillville agency outside of the Municipal Court, he was not prohibited from representing clients before the Burrillville Planning Board and Burrillville Zoning Board before which he did not represent the Town as Assistant Solicitor and over which he did not exercise any authority or control. See also A.O. 2013-24 (opining that a Providence Assistant City Solicitor, whose duties were limited to acting as legal counsel for the Providence School Board, was not prohibited from representing private clients before other Providence boards, courts, commissions or entities before which he did not represent the City as Assistant City Solicitor and over which he exercised no authority or control, such as the City Council, Zoning Board, Planning Board, Probate Court, Municipal Court and Board of Tax Appeal); see A.O. 2008-66 (opining that the Newport Assistant City Solicitor, whose duties included representing the City in Municipal Court, was prohibited from representing private clients before the Newport Municipal Court but could represent clients before other Newport boards and agencies before which he did not represent the City as Assistant Solicitor and over which he did not exercise authority or control); contra A.O. 99-68 (opining that the Johnston Town Solicitor could not continue to represent an individual in a criminal matter brought by the Johnston Police Department, given that his duties as Town Solicitor included providing legal counsel to the Johnston Police Department and acting as the prosecutor for misdemeanor violations brought by that Department).

Further, in other advisory opinions the Ethics Commission considered circumstances in which municipal solicitors sought guidance on the propriety of serving as substitute legal counsel for other solicitors. In Advisory Opinion 97-71, the Solicitor for the Town of New Shoreham, who also served as legal advisor once or twice a year when the Foster Solicitor had a conflict of interest

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<sup>1</sup> Commission Regulation 1.1.4(A)(2)(a) provides that a person represent[s] any other person before a state or municipal agency if: "(2) he or she is authorized by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person."

in a matter, sought guidance as to whether he could represent private clients before the Foster Zoning Board. The Ethics Commission opined that if the petitioner had an ongoing relationship with the Foster Zoning Board, he was prohibited from representing private clients before that board until one year following the severance of his relationship with the Foster Zoning Board. The Ethics Commission concluded that an ongoing relationship could include one in which an attorney represents a board once or twice per year, particularly if it is reasonably foreseeable that future representation will occur. See A.O. 89-36.

Here, the Petitioner's service as Town Solicitor ended on February 24, 2023. During his tenure with the Town, he appeared on one occasion, on May 19, 2022, to provide legal counsel to the Zoning Board at the request of the Assistant Solicitor who could not attend. The Petitioner did not provide any other representation to the Zoning Board, nor did he ever represent the Planning Board during his tenure as Solicitor. Moreover, given that his service to the Town as Solicitor has ended, he will not have any future occasion to represent it or any of its municipal boards.

Accordingly, based upon the facts as represented, the applicable provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing private clients before the Zoning Board until the expiration of one year following his last appearance before it on May 19, 2022. However, the one-year revolving door restriction does not apply to the Petitioner's representation of private clients before the Planning Board, given that he did not represent the Town in any matters before that board while he was Town Solicitor.

**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)

520-RICR-00-00-1.1.4(A)(2)(a) Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

A.O. 2015-23

A.O. 2013-24

A.O. 2008-66

A.O. 99-68

A.O. 97-71

A.O. 89-36

Keywords:

Private Employment

Revolving Door