

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-31

Approved: July 25, 2023

Re: Matthew McGeorge, AIA, LEED AP

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing his client before the Petitioner's own board.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, qualifies for a hardship exception pursuant to General Commission Advisory 2010-1 as more fully set forth below.

The Petitioner is the chairperson of the East Greenwich Historic District Commission ("HDC"), having served continuously as a member of the HDC since his appointment in 2011 by the East Greenwich Town Council. He represents that this is an unpaid, volunteer position. The Petitioner further represents that his term will expire in August of this year, but that he intends to remain on the HDC for an additional month in order to ensure that a quorum is met for the HDC's September meeting. The Petitioner states that in his private capacity he has been a registered architect in Rhode Island since 2007. He represents that he earned a Bachelor of Environmental Design from the University of Tasmania, Tasmania, Australia, and a Master of Architecture from the Illinois Institute of Technology. The Petitioner states that he specializes in historic preservation, adaptive reuse, and the design of new structures with historic character allusions and that, in the past five years, he and his firm have completed more than 15 historic adaptive reuse projects including a 25-million-dollar adaptive reuse of the Elizabeth Mill in Warwick, as well as several historic renovation projects including the Edward Bannister House for Brown University, the Caleb Greene House in Warwick for AAA New England, the Saw Tooth Mill in Warwick, and several other projects on Federal Hill and West Providence with the Omni Group. He further states that over thirty percent (30%) of his work involves historic structures.

The Petitioner represents that he has been advising a client regarding the renovation of a commercial building that is located in the Historic District of the Town of East Greenwich. The Petitioner explains that the scope of the work for the project involves an entire roof replacement, a gut interior renovation, window replacement, and miscellaneous repairs. He states that, because the building is located within the Historic District, it is subject to the jurisdiction of the HDC. The

Petitioner clarifies that when he initially spoke with the client, the scope of work did not appear to involve HDC matters. However, after they came to terms and met on site, it became immediately clear that the project would in fact require HDC submissions. The Petitioner states that due to the nature of the project having been initiated under a demolition contract and the pace of other necessary approvals, he had no choice but to promptly begin providing his professional services. The Petitioner represents that he prepared a conceptual application and its supporting materials for the project, which were submitted to and reviewed by the HDC at its July 12, 2023 meeting. The Petitioner states that at the meeting, upon recusing himself as an HDC member from hearing the matter, he then proceeded to represent his client before the HDC on the conceptual application. The Petitioner further states that the HDC found the design favorable and that he and his client now need to prepare a final application that will be heard by the HDC at its August 9, 2023 meeting. Therefore, the Petitioner requests a hardship exception that will allow him to represent his client before the HDC at its next meeting, pursuant to General Commission Advisory 2010-1 (“GCA 2010-1”).

R.I. Gen. Laws § 36-14-5(e)(1)-(3) (“Section 5(e)”) of the Code of Ethics prohibits a public official from representing himself, representing another person, or acting as an expert witness before a state or municipal agency of which he is a member or by which he is employed. See also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). These prohibitions continue while a public official remains in office and for a period of one (1) year thereafter. Section 5(e)(4). In contrast to most other Code of Ethics provisions, recusing and/or declining to participate in related discussions and votes is insufficient to avoid section 5(e) conflicts, absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists. Upon receipt of a hardship exception, a public official must also advise the state or municipal agency in writing of the existence and the nature of his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency’s consideration and disposition of the matter; and follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. Section 5(e)(1). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review (“BZB”) and permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring him to recuse himself from participating and voting in the BZB’s consideration of his request for relief).

The Petitioner’s proposed conduct falls squarely within section 5(e)’s prohibition on representing his client before a board of which the Petitioner is a member. However, the Ethics Commission has carved out a specific hardship exception outlined in GCA 2010-1 for “Historic Architects Who Are Members of Historic District Commissions.”¹ This exception is based upon the Ethics Commission’s finding that “municipal historic district commissions within the state of Rhode Island are best served if they are able to have a sitting member who specializes in historic architecture and preservation.” GCA 2010-1. The Ethics Commission has concluded that, given

¹ On November 30, 1989, the Ethics Commission issued GCA No. 8, “Architect Members of State and Local Historic Preservation Commissions Appearing Before Their Respective Agencies,” allowing architects who specialize in historic preservation and who serve on historic district commissions to represent clients before their respective commissions without violating the Code of Ethics. In 2010, after considering public comment, and in response to overwhelming support for continuing the use of the exception, the Ethics Commission replaced GCA No. 8 with GCA 2010-1 entitled “Historic Architects Who Are Members of Historic District Commissions.”

the limited number of historic architects in the state, recruiting qualified persons to serve on historic district commissions would be difficult and would reduce the ability of historic district commissions to effectively function if those architects were thereafter prohibited from representing private clients before the commissions on which they serve.

However, pursuant to GCA 2010-1, members of historic district commissions may not presume that the exception is applicable to their specific set of circumstances, and are required to seek an advisory opinion each time they consider accepting a client whose project would require them to appear before their own boards. Additionally, GCA 2010-1's narrow exception applies only to historic architects and does not apply to other architectural specialties. See A.O. 99-120 (declining to grant a hardship exception to a member of the New Shoreham Historic District Commission, who was a landscape architect and the owner of a landscape architecture business on the island, because his qualifications did not meet the standards of those of a historic architect).

For GCA 2010-1 to apply, the Petitioner must make representations to establish that he is a qualified historic architect. In the present matter, the Petitioner is an architect who specializes in historic preservation and represents that his work experience and education exceed the United States Secretary of the Interior's minimum professional qualifications for a historic architect.² It is significant to note that the Ethics Commission has previously issued five similar advisory opinions to this Petitioner in which hardship exceptions were granted based on Petitioner's status as a historic architect. See A.O. 2021-47; A.O. 2021-39; A.O. 2021-35; A.O. 2019-43; A.O. 2017-27.

Considering all of the above, it is the opinion of the Ethics Commission that the Petitioner qualifies for a hardship exception to the Code of Ethics' prohibition on representing his client before his own board, in accordance with GCA 2010-1, provided that he recuses from participating in all HDC matters involving his client. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the HDC and its members of his receipt of the instant advisory opinion and of his recusal in accordance therewith. Notice of recusal shall be filed with the Ethics Commission consistent with section 36-14-6.

This hardship exception applies beginning on July 25, 2023, the date of this opinion, which will allow the Petitioner to represent his client before the HDC at its August 9, 2023 meeting. Specifically, this hardship exception is not retroactive and does not extend to the Petitioner's prior

² In order to ascertain whether someone is a historic architect, GCA 2010-1 incorporated the minimum professional qualifications for historic architecture set forth by the U.S. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The minimum professional qualifications are:

A professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects. Such study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects. <https://www.nps.gov/articles/sec-standards-prof-quals.htm> (last visited on July 26, 2023).

representations of this client before the HDC on this matter. Finally, the Ethics Commission reminds the Petitioner that the prohibitions set forth in section 5(e) continue while he is in office and for a period of one year after leaving office. During that time, the Petitioner will be required to seek hardship exceptions from the Ethics Commission each time he plans to represent himself or another person before the HDC. The Petitioner is reminded and cautioned that the proper time to seek a hardship exception from the Ethics Commission is before he commences any representation of himself or others before the HDC on a particular matter.

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 Representing Oneself or Others, Defined (36-14-5016)

Related Advisory Opinions:

G.C.A. 2010-1

A.O. 2021-47

A.O. 2021-39

A.O. 2021-35

A.O. 2019-43

A.O. 2017-27

A.O. 2014-26

A.O. 99-120

Keywords:

Hardship Exception

Historic Architect