

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-42

Approved: November 14, 2023

**Re: Joseph Lang**

### **QUESTION PRESENTED:**

The Petitioner, a member of the North Scituate Village Overlay Committee, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own agency in order to seek a permit to build an attached addition to his primary residence.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Scituate Village Overlay Committee, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own agency in order to seek a permit to build an attached addition to his primary residence.

The Petitioner is a member of the North Scituate Village Overlay Committee ("Committee"), having been appointed to that position by the North Scituate Town Council in August 2023. He represents that the Committee's duties are to review and vote on any exterior alterations to homes located in the North Scituate Village Overlay District ("Village Overlay District"). The Petitioner states that he lives in a home that is located in the Village Overlay District. He explains that the home is his primary residence, which he and his spouse purchased in 2011 and in which they have since resided. The Petitioner would like to construct an attached addition to his home. He represents that the construction of the addition would not require him to receive any setback variances; however, because the home is located in the Village Overlay District, he is required to receive a permit from the Committee for the desired exterior changes to his home. The Petitioner states that he has submitted his request for a permit to build the addition and has completed and filed his recusal form relative to his request. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before his own agency in order to appear, either personally or through a representative, before the Committee to pursue a permit to build the addition to his home.

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 or by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1) ("section 5(e)"); Commission Regulation 520-RICR-00-00-1.1.4(A)(1)(b) 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 receiving a hardship exception, the public official must also “follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter.” Section 5(e)(1)(iii).

The Petitioner’s proposed conduct falls squarely within the Code of Ethics’ prohibition on representing himself before his own agency. Having determined that section 5(e)’s prohibitions apply to the Petitioner, the Ethics Commission will next consider whether the unique circumstances represented by him herein justify a finding of a hardship to permit him to appear before the Committee.

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

On numerous occasions in the past, the Ethics Commission has considered and granted hardship exceptions for public officials wishing to appear before their own boards. In Advisory Opinion 2020-15, for example, the Ethics Commission opined that a member of the Exeter Zoning Board of Review (“Zoning Board”) qualified for a hardship exception, allowing him to appear before the Zoning Board for purposes of seeking a dimensional variance to construct a shed at his personal residence, the ownership of which predated his appointment to the Zoning Board by at least a decade. That petitioner was required to recuse from participation and voting during the Zoning Board’s consideration of his request for relief. See also A.O. 2020-26 (granting a hardship exception to an East Greenwich Historic District Commission (“HDC”) member, allowing him to represent himself before his own commission in order to seek Certificates of Appropriateness to install a new shed and roof-mounted solar array on his property, the ownership of which predated his appointment to the HDC); A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review (“BZB”), allowing him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB’s consideration of his request for relief).

Here, the Petitioner would like to construct an addition to his home, which he has owned since 2011, which predates his very recent appointment to the Committee by more than ten years. Based on the Petitioner’s representations, and consistent with our past advisory opinions addressing this issue, 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 Committee to seek a permit to construct the addition to his home. However, as the Petitioner has properly anticipated, he must recuse from participating in the Committee’s consideration of, and voting on, any matter relative to the addition to his home. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the other Committee members of his receipt of the instant advisory

opinion and of his recusal in accord therewith. Notice of recusal shall be filed with the Ethics Commission 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. 2020-26

A.O. 2020-15

A.O. 2014-26

Keywords:

Hardship Exception

Cruz, Jessica (Ethics)

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**From:** Joseph Lang <langjoseph99@yahoo.com>  
**Sent:** Tuesday, October 3, 2023 12:58 PM  
**To:** Ethics Email  
**Cc:** david@rubroc.com  
**Subject:** Request for Advisory Opinion

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Dear Sir or Madam:

I am writing this morning to request an advisory opinion from the Ethics Commission at 94 Danielson Pike, North Scituate, RI 02857.

I currently serve as a member of the North Scituate Village Overlay Committee. I have submitted a request for a Permit to build an attached addition on my property. I have already completed the paperwork with the town to recuse myself from a vote to approve or reject. I submitted appropriate site plans as well as a property survey. I do not require any variance with setbacks and as is required by local law, I have recused myself due to my role on the board.

I request that the Commission allow my wife and I the opportunity to pursue our building venture. I can be reached at langjoseph99@yahoo.com and 401-641-6004 if you need any additional information or have any questions. Thank you for your time and consideration.

Sincerely,

Joseph Lang

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