

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-8

Approved: February 27, 2024

**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 Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the City Council has appointing authority, in order to request approval of repairs and renovations he has planned for a home that he recently purchased in Newport.

### **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 Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the City Council has appointing authority, in order to request approval of repairs and renovations he has planned for a home that he recently purchased in Newport.

The Petitioner was elected to a two-year term as a member of the Newport City Council ("City Council") on November 8, 2022. He identifies among his City Council duties the participation in the appointments of members to various Newport boards and commissions, including the Newport Historic District Commission ("HDC") and the Newport Zoning Board of Review ("Zoning Board"). The Petitioner states that he and his spouse, who currently reside in Newport with their three young children, would like to expand their family with more children, which will require a home with more bedrooms than are in their current residence. He further states that he has been pursuing a larger primary residence in Newport since 2020 by way of a new construction on a parcel of land that he and his spouse purchased in 2020. The Petitioner represents that he still hopes to construct a new home in Newport on the parcel purchased in 2020, but believes that it will be at least seven years before that new home is available.<sup>1</sup>

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<sup>1</sup> The Petitioner explains that he applied to the HDC to build a new home in March 2021 and that the application was denied in March 2022, at which time he promptly appealed to the Zoning Board. He further explains that the Zoning Board eventually ruled in his favor on the appeal in January 2024. The Petitioner states that, because the Zoning Board's reversal of the HDC denial included a remand to the HDC for further evaluation and there is no longer a quorum of HDC members who originally heard the Petitioner's application, the remand effectively restarts the process before the HDC. He estimates that, given the numerous abutters who have indicated to the Petitioner that they will

The Petitioner states that he and his spouse determined that their best course of action to accommodate their growing family would be to purchase an existing interim home while they pursue construction of a new home on the parcel that they own, which could take years. He Petitioner further states that he and his spouse are currently under contract to purchase an interim home in Newport that is located in a historic district.<sup>2</sup> He explains that, because the interim home is in a historic district, any alterations to the home's exterior will be subject to review and approval by the HDC.

The Petitioner states that the interim home for which he and his spouse are currently under contract is 135 years old and has its original slate roof. He further states that the roof has substantial water leaks which, per the home inspector's report, necessitates a complete roof replacement which will require HDC approval. The Petitioner notes that the remediation of substantial wood rot and water intrusion on various exterior windows and doors will likewise require HDC approval, as will various window and door relocations that are anticipated. The Petitioner next addresses the garage at the interim residence, explaining that it is not connected to the residence and is undersized for the home and the family's needs. He states that he would like to construct a short connector from the garage to the home and expand the garage, adding that these projects will require approval by both the HDC and the Zoning Board.

The Petitioner represents that if he is not granted a hardship exception that will allow him to appear before the HDC and the Zoning Board to address the current state of disrepair to the interim home, he will suffer severe financial harm and an inability for the residence to meet the needs of his family. He further represents that he intends to sell his current personal residence as soon as he and his family are able to move into the interim home that is currently under contract, once necessary repairs and renovations are complete. The Petitioner states that his current personal residence will not become a rental or investment property and that, if and when the new construction home he has been pursuing since 2020 ever becomes completed, he will sell the interim home in favor of the constructed one. 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 the HDC and the Zoning Board.

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) ("Regulation 1.1.4"). Pursuant to Regulation 1.1.4(A)(1)(a) and (b), a person will represent himself before a state or municipal agency if he or, pursuant to his authorization and/or direction, another person "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] favor." 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,

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use all legal means available to them to prevent the Petitioner from constructing the new home, it will be at least seven years, if at all, before a new home is available to him and his family on the parcel that they own.

<sup>2</sup> The Petitioner states that more than 50% of the parcels in Newport are located in historic districts.

the public official must also follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. Section 5(e)(1)(i-iii).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency for which he is the appointing authority. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner justify a finding of hardship to permit him to appear before the HDC and the Zoning Board, whether personally or through an authorized representative.

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 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. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before boards for which they were the appointing authority regarding their personal residences. For example, in Advisory Opinion 2020-34, a hardship exception was granted to a member of the Bristol Town Council that allowed him to represent himself, either personally or through a representative, before the Bristol Historic District Commission, over which that town council had appointing authority, in order to seek review and approval of proposed renovations to his primary residence which he had purchased two years prior to his election to the town council. 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 historic district commission until after the election cycle for the petitioner's town council seat following the complete resolution of the historic district commission's review and approval of his renovation plans, including any appeals. Additionally, the petitioner was required, prior to his appearance before the historic district commission relative to his application, to inform its members of the receipt of the advisory opinion issued to him and that, consistent therewith, he would recuse from their reappointments in the manner set forth therein. See also A.O. 2019-64 (granting a hardship exception to the president of the North Smithfield Town Council that permitted him to appear before that town's Zoning Board of Review to seek a dimensional variance for his personal residence, provided that he recused from the town council's appointment or reappointment of any person to the zoning board until after the election cycle for his town council seat and following the complete resolution of his application before the zoning board, including appeals, and that prior to the zoning board's consideration of his variance application, he inform the zoning board members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

Here, the Petitioner is waiting to close on a home in which he and his family intend to reside. The subject property was not acquired prior to the start of the Petitioner's public service; however, the relief sought involves the Petitioner's anticipated future personal residence and not a new commercial venture. Also, the decision to purchase the interim home was the result of the prolonged time it is taking for the Petitioner to be able to construct his desired new home, the

process for which he started prior to his election to the City Council. Further, the purchase of what the Petitioner hopes will be an interim home necessitates a number of repairs and renovations amounting to a significant economic impact. In consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and prior 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 HDC and the Zoning Board in matters relative to the repairs and renovations associated with the purchase of his interim personal residence. However, in order to avoid even the appearance of impropriety, the Petitioner must recuse from the City Council's discussions and decision-making as relates to the appointment or reappointment of any person to the HDC and/or to the Zoning Board until after the election cycle for his City Council seat following the complete resolution of the HDC and Zoning Board's review and approval of his applications, including any appeals related to them. Notice of recusal shall be filed consistent with the provisions of section 36-14-6. Additionally, the Petitioner shall, prior to his appearance before the HDC and the Zoning Board relative to the repairs and renovations to his interim home, inform the HDC and the Zoning Board of his receipt of the instant advisory opinion and that, consistent herewith, he will recuse from the City Council's discussions and decision-making regarding the appointment of members to both agencies as set forth above.

**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. 2020-34

A.O. 2019-64

Keywords:

Hardship Exception