

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-24

Approved: July 23, 2024

Re: Adam M. Millard, Esq.

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own agency, in order to seek a certificate of appropriateness for planned renovations to his home.

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, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own agency, in order to seek a certificate of appropriateness for planned renovations to his home.

The Petitioner is a member of the East Greenwich Historic District Commission (HDC), having been appointed by the East Greenwich Town Council in February of 2024 to a three-year term. The Petitioner represents that his personal residence, which he has owned since October of 2022, is located within the East Greenwich Historic District and, thus, subject to the jurisdiction of the HDC. He states that he would like to both add a window to the south-facing side of his home and replace most of the home's existing windows which he describes as old and having fallen into a state of disrepair. The Petitioner further states that, in order to do these things, he must receive a certificate of appropriateness from the HDC prior to any exterior alterations to his historic property. He represents that he has applied for a certificate of appropriateness; however, the review by the HDC of his application is pending until he receives guidance from the Ethics Commission through the instant advisory opinion regarding whether he qualifies for a hardship exception that will allow him to represent himself before the HDC. The Petitioner explains that he plans to personally appear before the HDC, that he intends to recuse from the HDC's discussions and decision-making relative to his application, and that he has already filed a statement of conflict of interest regarding this matter. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to represent himself before the HDC.

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); 520-RICR-00-00-1.1.4(A)(1) 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. § 36-14-5(e)(1) & (4). Moreover, while many conflicts can be avoided under the Code of Ethics by recusing from participation, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions against self-representation absent an express finding by the Ethics Commission that a hardship exists. Upon receiving a hardship exception, the public official is required to recuse from participating in his agency's consideration and disposition of the matter at issue. § 36-14-5(e)(1)(ii). The public official must also "follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter." § 36-14-5(e)(1)(iii).

Here, the Petitioner's proposed conduct falls squarely within § 36-14-5(e)(1)'s prohibition on representing himself before an agency of which he is a member. Thus, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear, either personally or through a representative, before the HDC. 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.

Under similar circumstances in Advisory Opinion 2020-28, the Ethics Commission granted a hardship exception to a member of the East Greenwich Historic District Commission, allowing him to represent himself before that commission in order to seek a certificate of appropriateness for the replacement of the windows at his personal residence, the ownership interest in which predated his appointment to the commission. See also A.O. 2020-26 (granting a hardship exception to an East Greenwich Historic Commission 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 that commission); A.O. 2020-15 (granting a hardship exception to an Exeter Zoning Board of Review member, allowing him to represent himself before his own board in order to seek a dimensional variance to construct a shed at his personal residence that he acquired prior to his appointment to the zoning board, but requiring him to recuse from participation and voting during the zoning board's consideration of his request for relief).

In the present matter, the Petitioner seeks to add a window and replace most of the existing windows on his historic home, the ownership of which predates his appointment to the HDC. Further, the relief sought is related to his personal residence rather than a commercial venture. Based upon the Petitioner's representations, and our review of the relevant provisions of the Code of Ethics and prior advisory opinions, it is the opinion of the Ethics Commission that the totality of these particular circumstances justifies making an exception to § 36-14-5(e)'s prohibitions against representing oneself before one's own agency. Accordingly, the Petitioner may appear, either personally or through a representative, before the HDC to seek a certificate of appropriateness for the addition and replacement of windows at his personal residence. However, as the Petitioner correctly anticipated, he must recuse from participation and voting when the HDC

considers his application. Pursuant to § 36-14-5(e)(1), the Petitioner shall, prior to or at the time of his appearance before the HDC, inform the other HDC members of his receipt of the instant advisory opinion and of his recusal in accord therewith. Notice of recusal must be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 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. 2020-28

A.O. 2020-26

A.O. 2020-15

Keywords:

Hardship Exception