

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-33

Approved: October 29, 2024

Re: Gregory Mark Dantas

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity owns and operates a real estate brokerage firm, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself, either personally or through a representative, before his own board, in order to allow him to seek a certificate of appropriateness for the installation of solar panels on a building that houses the headquarters of his firm and is located in the East Greenwich historic district.

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 owns and operates a real estate brokerage firm, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself, either personally or through a representative, before his own board, in order to allow him to seek a certificate of appropriateness for the installation of solar panels on a building that houses the headquarters of his firm and is located in the East Greenwich historic district.

The Petitioner is a member of the East Greenwich Historic District Commission (HDC), having served in that position since his appointment by the East Greenwich Town Council in December 2023. The Petitioner represents that in his private capacity he owns and operates Rhode Island Real Estate Services, a private real estate brokerage firm that he established in July 2012 and that specializes in the buying, selling, and leasing of real estate. The Petitioner states that he has been in the real estate business as a real estate licensee for the past 27 years. He further states that in March of 2023 he purchased a building, located in the East Greenwich historic district, that houses the headquarters of his real estate firm. The Petitioner describes the building as an 8,000-square-foot, two-story structure, 70 percent of which is occupied by his firm. He informs that the remaining 30 percent of the building is occupied by a tenant who has been operating a clothing store for the past 10 years out of that location. The Petitioner notes that he does not intend to sell the building. He represents that his business also has satellite offices in Jamestown, Narragansett, and North Kingstown. The Petitioner states that the real estate firm is his primary and only business, and his primary source of income. He further states that he would like to install solar panels on the building to make it more efficient and to be able to benefit from the many tax credit incentives associated with the installation of solar panels. The Petitioner explains that, given that

the building is located in a historic district, he is required prior to altering its exterior to seek and receive a certificate of appropriateness from the HDC. He represents that he would recuse from the HDC's discussions and decision-making relative to his application. The Petitioner states that he plans to hire a firm called Summit Energy to handle the whole process associated with the installation of the solar panels, including obtaining the certificate of appropriateness from the HDC.

The Petitioner explains that the town welcomes the use of solar energy. He notes that since his appointment to the HDC, the HDC has reviewed three applications relative to the installation of solar panels on properties located in the East Greenwich historic district. The Petitioner further notes that all three applications were approved without any changes, recommendations, or objections. The Petitioner represents that the HDC is considering simplifying the approval process for the installation of solar panels by delegating such approval to town employees within the Building Inspector's Office and removing it from the review by the HDC. The Petitioner explains that solar panels are not considered permanent structures and the solar project proposals reviewed by the HDC are ordinarily prepared by electrical engineers and not the homeowners. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception that will allow him to represent himself, or to be represented by another person, before the HDC relative to the aforementioned application.

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). These prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5(e)(1) & (4). While many conflicts under the Code of Ethics can be avoided 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 in the form of an advisory opinion 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 that will 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.

In past advisory opinions, the Ethics Commission has applied the hardship exception where the matter involved a modification to the official's principal place of business. In Advisory Opinion 2023-5, for example, the Ethics Commission granted a hardship exception to a member of the East Providence Development Commission in order to appear before his own agency to seek a federal grant funding administered by that agency. In his private capacity, that petitioner owned and operated the Indoor Tennis Court located in East Providence. He wished to avail himself of the federal funds in order to restore and renovate the front of the commercial property from which he had been operating the business. The Indoor Tennis Court had been that petitioner's only employment for approximately two decades prior to his appointment to the East Providence Development Commission. Similarly, in Advisory Opinion 2011-33, the Ethics Commission granted a hardship exception to a former Westerly Planning Board member, allowing him to seek a permit from his former board to install an additional sign at his ice cream shop. The additional sign allowed him to take advantage of the newly cleared line of sight to a busy street, hoping to increase his ice cream sales during the busy summer season rather than waiting until the following December when the one-year revolving door prohibition would have expired. That petitioner's request for a hardship exception involved the petitioner's principal place of business, his ownership of which predated his appointment to the planning board by six years, and the relief sought was not a new commercial venture but rather a minor improvement to his principal place of business and primary source of income. See also A.O. 2001-29 (granting a hardship exception to a member of the Narragansett Town Council, allowing him to appear before the Narragansett Zoning Board, over which he had appointing authority, in order to apply for an alteration to the condominium site plan to enclose the outdoor sitting areas that were used during the summer season, based on the fact that the petitioner had owned and operated the restaurant for eight years prior to his election to the town council).

In contrast, the Ethics Commission has previously declined to grant a hardship exception for matters involving new commercial ventures. In Advisory Opinion 2003-49, for example, the assistant solicitor for the Town of Lincoln wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board regarding the development of two parcels of real estate that he owned in the town. The hardship exception was not granted because the petitioner's ownership of the lots did not predate his appointment as assistant solicitor and it was uncertain as to whether either lot would be used as the petitioner's primary residence or simply resold in commercial transactions after development. The Ethics Commission also declined to grant a hardship exception in Advisory Opinion 2000-41, where an Exeter Zoning Board member sought to generate additional income by entering into a contract with Sprint Cellular Communications to locate a cellular communications tower on his residential property. Although the subject property involved the petitioner's principal residence, the proposed commercial venture served only to generate additional income for the petitioner.

In the present matter, the Petitioner would like to install solar panels on the building that houses the headquarters of his real estate firm which is his primary source of income, and which he has owned and operated for the last 12 years. The Petitioner is hoping that the installation of the solar panels will make the building more efficient and that he would also be able to benefit from the many tax credit incentives associated with the solar program. He represents that he purchased the building approximately nine months prior to his appointment to the HDC and that he does not

intend to sell it. Further, the relief sought involves an alteration to the Petitioner's principal place of business and not a new commercial venture.

Based upon the Petitioner's representations, and the 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 the circumstances justifies making an exception to § 36-14-5(e)'s prohibitions against representing oneself before one's own board. Accordingly, the Petitioner may appear before the HDC, either personally or through a representative, in order to seek a certificate of appropriateness for the installation of solar panels on the building which is his primary place of business. 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 accordance 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. 2023-5

A.O. 2011-33

A.O. 2003-49

A.O. 2001-29

A.O. 2000-41

Keywords:

Hardship Exception