

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-37

Approved: December 10, 2024

Re: David Sisson

QUESTION PRESENTED:

The Petitioner, a member of the Pawtucket 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 board in order to allow him to seek a certificate of appropriateness for maintenance and repair to his residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Pawtucket Historic District Commission, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board in order to allow him to seek a certificate of appropriateness for maintenance and repair to his residence.

The Petitioner is a member of the Pawtucket Historic District Commission (HDC), having served in that position since his appointment by the Pawtucket City Council in June 2023. The Petitioner represents that he resides in a historic home that he purchased in April 2022. The Petitioner states that he would like to conduct some maintenance and repair to his home including replacement of windows, gutters, and walkway bricks, and repair of wood railings. The Petitioner further states that prior to altering any part of the exterior of his historic home, he is required to seek and receive a certificate of appropriateness from the HDC. He informs that he is an architect and that he has prepared and submitted to the HDC an application seeking a certificate of appropriateness for the planned repairs pending the receipt of the instant advisory opinion. The Petitioner would like to represent himself personally relative to the application. He represents that he would recuse from the HDC's discussions and decision-making relative to his application. 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 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 was 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. For example, in Advisory Opinion 2024-24, the Ethics Commission granted a hardship exception to a member of the East Greenwich Historic District Commission (EGHDC), allowing him to represent himself before his own commission in order to seek a certificate of appropriateness to add a window and replace most of the existing windows on his historic home, the ownership of which predated his appointment to the EGHDC. The Ethics Commission required that petitioner to recuse from participation and voting when the EGHDC considered his application and, prior to or at the time of his appearance before the EGHDC, to inform the other EGHDC members of his receipt of the advisory opinion and of his recusal in accordance therewith. 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 the historic district 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 conduct maintenance and repair to his residence which he purchased approximately a year prior to his appointment to the HDC. Further, the relief sought involves maintenance and repair to the Petitioner's principal residence and not a new commercial venture. Based upon the Petitioner's representations, and a 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, either personally or through a representative, before the HDC in order to seek a certificate of appropriateness for the planned maintenance and repair to 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 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. 2024-24

A.O. 2020-26

A.O. 2020-15

Keywords:

Hardship Exception