

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-3

Approved: January 7, 2025

Re: Diane Hayde

QUESTION PRESENTED:

The Petitioner, a member of the New Shoreham Water District Commission and the New Shoreham Sewer District Commission, both municipal appointed positions, requests an advisory opinion regarding whether she qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before an agency of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the New Shoreham Water District Commission and the New Shoreham Sewer District Commission, both municipal appointed positions, qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before an agency of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle.

The Petitioner is a member of the New Shoreham Water District Commission, to which she was appointed by the New Shoreham Town Council in 2018, and for which she currently serves as vice-chairperson. The Petitioner is also a member of the New Shoreham Sewer District Commission, to which she was also appointed by the town council in 2018.¹ The Petitioner states that she and her spouse have owned and operated the Sheffield House (B&B) in New Shoreham since 2005, with the exception of a six-year period between 2009 and 2015, during which they leased the property to an island resident and business owner.

¹ The Petitioner explains that the same people serve on both the water commission and the sewer commission. The two commissions conduct joint meetings to discuss matters of general concern to both commissions, such as rates and contracts; however, each of the commissions also conducts its own separate meetings and reviews agenda items specific to that particular commission.

The Petitioner identifies innkeeping as her main source of income. She explains that in January 2022, she and her spouse purchased the Sheffield Cottage, a two-bedroom dwelling unit located behind the B&B that had previously only contained one bedroom. The Petitioner states that she, her spouse, and their son reside in the cottage on a full-time basis.

The Petitioner represents that when she and her spouse purchased the B&B in 2005, a single water meter was used for both the B&B and the cottage. She adds that, at the time, the cottage was owned by someone else who also lived there. The Petitioner states that a deduction meter located in the B&B determined usage by the cottage so that the cottage owner could then be billed for his portion of the water and sewer fees. She further states that it was eventually decided that the cottage owner would be directly metered and billed for his water and sewer usage, and that separate meters and billing for the B&B and the cottage remain in effect today. The Petitioner explains that, separate meters for the B&B and the cottage notwithstanding, an allocation split is in place for both the B&B and the cottage due to the limitation of resources available in the town for water and sewer usage. The Petitioner represents that the B&B is allocated 68,750 gallons for water usage and 67,500 gallons for sewer usage per three-month period, and the cottage is allocated 10,000 gallons for water usage and 10,000 gallons for sewer usage per three-month period. Because there are now three adults residing in the cottage, the Petitioner would like the allocation for the cottage increased to 16,000 gallons for water usage and 16,000 gallons for sewer usage per three-month period. The Petitioner would like the allocation for the B&B decreased to 62,750 gallons for water usage and 61,500 gallons for sewer usage per three-month period.²

The Petitioner represents that because she and her spouse now own both the B&B and the cottage, and there is still a single water line that provides for both properties, she would like to seek credits from both the water commission and the sewer commission for penalties or overpayments made for their over-usage in the cottage during the previous billing cycle.³ Specifically, the Petitioner would like to seek credits in the amount of \$165 for water over-usage and \$51 for sewer over-usage. The Petitioner explains that the process for seeking the reallocation and credit from both the water commission and the sewer commission

² The Petitioner's proposed reallocations of water usage and sewer usage for both the cottage and the B&B do not change the original combined total allocations, which remain 78,500 for water usage (originally 68,750 + 10,000, sought to be reallocated to 62,750 + 16,000) and 77,500 for sewer usage (originally 67,500 + 10,000, sought to be reallocated to 61,500 + 16,000).

³ The Petitioner notes that, during the time period in which the cottage used *more* than its allotment for water and sewer usage, the inn used *less* than its allotment for water and sewer usage.

involves the submission of a written application to each commission for its consideration. In the event that the water commission and/or the sewer commission has questions for the Petitioner regarding her application, arrangements would be made for the Petitioner to appear before one or both commissions to respond to those questions. It is in the context of these facts that the Petitioner seeks a hardship exception to the Code of Ethics' prohibition against representing herself before the water commission and the sewer commission.

The Code of Ethics prohibits a public official from representing herself, or authorizing another person to appear on her behalf, before a state or municipal agency of which she is a member, by which she is employed, or for which she 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) (Commission Regulation 1.1.4). Pursuant to Commission Regulation 1.1.4(A)(1)(a), a person will "represent [] herself before a state or municipal agency" if she "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in [] her own favor." While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions. 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). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of her interest in the matter at issue; recuse herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations that the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. § 36-14-5(e)(1).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing herself before an agency of which she is a member. Having determined that § 36-14-5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the unique circumstances represented by her herein justify a finding of hardship to permit her to appear before the water and sewer commissions to request from each an amended allocation for water and sewer usage and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle. 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 her public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; whether the matter involved a significant economic impact; and whether the public official's interests were brought before an agency by a third party. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions to members of New Shoreham's sewer commission and water commission who wished to represent themselves before their own agency in order to appeal the amount of sewer assessments made against their personal residences and, in one case, a rental property. For example, in Advisory Opinion 2022-14, the Ethics Commission allowed a sewer commission member to appeal excess sewer charges which had been assessed against his personal residence and a rental property that he owned which was located on a lot adjacent to the one on which his personal residence was located. The charges had been assessed following the completion of a landscaping project involving the irrigation of hydroseeds over a large area that stretched over the lots of both his personal property and his rental property. That petitioner was required to recuse himself from participating in the sewer commission's consideration of the matter. He was further required to inform the other sewer commission members of his receipt of the advisory opinion and of his recusal in accordance therewith. Also, in Advisory Opinion 2021-50, the Ethics Commission granted a hardship exception to another sewer commission member so that he could appear before that agency in order to appeal a sewer assessment against his personal residence following a leak in one of the home's water pipes. That petitioner had resided in his home for nearly a decade prior to his appointment to the sewer commission. He was also required to recuse himself from participating in the sewer commission's consideration and voting on that particular matter and was, concurrent with his recusal, required to inform the other sewer commission members of his receipt of the advisory opinion and his recusal in accordance therewith.

Here, the Petitioner seeks to appear before both the water and sewer commissions of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her primary residence and her primary place of business. She also wishes to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle. The Petitioner has lived in her home since January of 2022 and has owned the rental property adjacent to her home since 2005. The Petitioner's purchase of the B&B in 2005 predates her appointment to the water commission and the sewer commission by thirteen years. Although the cottage was purchased six years after the Petitioner's appointment to the water and sewer commissions, the increased allocations sought for her personal residence are directly connected to the decreased allocations sought for her primary business.

In consideration of the facts as represented above, and consistent with 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 the circumstances justifies making an exception to § 36-14-5(e)'s prohibitions. Accordingly, the Petitioner may appear before the water commission and the sewer commission in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made for her water and sewer usage during the previous billing cycle. However, as properly anticipated, the Petitioner must recuse herself from participation in the consideration of this matter by both the water and sewer commissions.

Notice of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6. Finally, pursuant to § 36-14-5(e)(1), the Petitioner shall, prior to or at the time of her submission of her written applications to the water commission and the sewer commission, inform the other water and sewer commission members of her receipt of this advisory opinion and of her recusal in accordance therewith.

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 (36-14-5006)

Related Advisory Opinions:

A.O. 2022-14

A.O. 2021-50

Keywords:

Hardship Exception