

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-23

Approved: April 8, 2025

Re: Shawn J. Brown

QUESTION PRESENTED:

The Petitioner, the Town Administrator for the Town of Middletown, a municipal appointed position, who in his private capacity is the trustee and sole beneficiary of a trust that owns a piece of property in Middletown, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from appearing, in his private capacity, before the Middletown Zoning Board in response to an application for a special-use permit filed by the owner of a piece of property that abuts the trust property.

RESPONSE:

It is the opinion of the Ethics Commission that the Petitioner, the Town Administrator for the Town of Middletown, a municipal appointed position, who in his private capacity is the trustee and sole beneficiary of a trust that owns a piece of property in Middletown, is not prohibited by the Code of Ethics from appearing, in his private capacity, before the Middletown Zoning Board in response to an application for a special-use permit filed by the owner of a piece of property that abuts the trust property.

The Petitioner is the Town Administrator for the Town of Middletown. He was appointed to that position by the Middletown Town Council. He identifies among his public duties the oversight of municipal operations, the implementation of town council policies, and management of the town's budget, personnel, and public services. The Petitioner states that he is the trustee and sole beneficiary of a trust that was established by his mother, who is recently deceased. He explains that the trust assets include a piece of property located on Green End Avenue in Middletown where his mother previously resided. The Petitioner further states that he recently received notice that the owner of a piece of property located on Harvey Road that abuts the trust property on Green End Avenue has applied for a special use permit for an owner-occupied short-term rental. The Petitioner adds that the hearing on that application is expected to take place before the Middletown Zoning Board in the near future. The Petitioner represents that, because he is the trustee and sole beneficiary of the trust that owns the Green End Avenue property, he would like to participate at that hearing. He explains that, in order to maintain separation between his professional role in the town and this matter which involves him personally, he has retained legal counsel to represent

him before the zoning board. The Petitioner states that the zoning board operates independently of his office as town administrator. He further states that he does not appoint members to the zoning board, that members of the zoning board do not report to him, and that he has no supervisory authority over the zoning board or its members. It is under this set of facts that the Petitioner seeks guidance regarding whether his participation in this matter is prohibited by the Code of Ethics and, if not, whether any additional precautions or disclosures are required.

The Code of Ethics prohibits a public official or employee 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) (Commission Regulation 1.1.4). Pursuant to Commission Regulation 1.1.4(A)(1)(a), a person will “represent himself [] before a state or municipal agency” if he “participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in his []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. These prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5(e)(4).

Here, the Petitioner is not a member of the zoning board, is not employed by the zoning board, and is not the appointing authority for the zoning board. For these reasons, the provisions of the Code of Ethics cited above do not apply. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited from appearing in his private capacity, either personally or through his authorized representative, before the zoning board in response to the application for a special-use permit filed by the owner of a piece of property that abuts the property held by the trust for which the Petitioner is the trustee and sole beneficiary.

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)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

Keywords:

Representing Oneself or Others