

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-50

Approved: August 19, 2025

Re: Mark Schwager

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Town Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the East Greenwich Historic District Commission, a municipal agency over which the town council has appointing authority, in order to request approval of the replacement of three windows and a door at his primary residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Town Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the East Greenwich Historic District Commission, a municipal agency over which the town council has appointing authority, in order to request approval of the replacement of three windows and a door at his primary residence.

The Petitioner is the president of the East Greenwich Town Council. He represents that he has been a member of the town council continuously since his election in 2014 and has served as its president since 2018.¹ The Petitioner states that in August 2024, he and his spouse purchased a home in the historic district of East Greenwich, in which they have resided since. The Petitioner represents that, prior to that time, he resided in his previous home, also in East Greenwich, for approximately 30 years.

The Petitioner would like to replace three windows and a metal door at his home with ones of "like kind." The Petitioner describes the current windows as inoperable, and he believes the door to be from 1984. He states that because the home is located in the East Greenwich historic district, any alterations to the home's exterior will be subject to review and approval by the East Greenwich Historic District Commission (HDC). The Petitioner

¹ The Petitioner explains that he was also elected and served two consecutive two-year town council terms in 2006 and 2008.

further states that he has already submitted an application to the HDC for approval; however, because he has appointing authority over the members of the HDC, the application is currently on hold pending the receipt of the instant advisory opinion. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing 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 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 Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). Pursuant to Regulation 1.1.4(A)(1)(a) and (b), a person will represent himself before a municipal agency if he or, pursuant to his authorization and/or direction, another person "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] favor." 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 follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. § 36-14-5(e)(1)(i-iii).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency for which he is the appointing authority. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner justify a finding of hardship to permit him to appear before the HDC, whether personally or through an authorized representative.

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.

The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before boards for which they were the appointing authority in various circumstances involving their personal residences. For example, in Advisory Opinion 2024-8, the Ethics Commission granted a hardship exception to a member of the Newport City Council that allowed him to represent himself before the Newport Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the city council had appointing authority, in order to request approval of repairs and

renovations he had planned for a home that he had purchased following his election to the city council. In granting that hardship exception, the Ethics Commission considered, *inter alia*, the fact that although the home was not acquired prior to the petitioner's election to the city council, the relief sought involved his anticipated future personal residence and not a new commercial venture. However, in order to avoid even the appearance of impropriety, the petitioner was required to recuse from the city council's discussions and decision-making relative to the appointment or reappointment of any person to the historic district commission and/or to the zoning board until after the election cycle for his city council seat following the complete resolution of the historic district commission's and zoning board's review and approval of his applications, including any appeals related to them. Additionally, that petitioner was required, prior to his appearance before the historic district commission and the zoning board relative to the repairs and renovations to his home, to inform the members of those boards of his receipt of the advisory opinion and that, consistent therewith, he would recuse from the city council's discussions and decision-making regarding the appointment of those members as set forth in the advisory opinion. See also A.O. 2022-10 (granting a hardship exception to a member of the Scituate Town Council allowing him to appear before the Scituate Building and Zoning Official, over whom the town council had appointing authority, in connection with the building of a new home in which the petitioner intended to reside with his family, noting that, although the subject property was not acquired prior to the start of the petitioner's public service, the relief sought involved the petitioner's anticipated future personal residence and not a new commercial venture).

In the instant matter, the Petitioner would like to replace three inoperable windows and an old metal door with ones of "like kind." Further, although the purchase of the home does not predate the Petitioner's election to the town council, the relief sought relates to the Petitioner's personal residence and not a new commercial venture. The Petitioner also represents that prior to the purchase of his current home, he resided in another home in the same town for approximately 30 years. In consideration of the Petitioner's representations, 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 these particular circumstances justifies making an exception to § 36-14-5(e)'s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the HDC relative to the proposed replacement of the windows and the metal door. However, in order to avoid even the appearance of impropriety, the Petitioner must recuse from the town council's discussions and decision-making relative to the appointment and reappointment of members of the HDC until after the election cycle for his town council seat following the complete resolution of the HDC's review and approval of his application, including any appeals. Notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6. Additionally, the Petitioner shall, prior to his appearance before the members of the HDC relative to the application described herein, inform them of his receipt of the instant advisory opinion and that, consistent herewith, he will recuse from any discussions and decision-making regarding their reappointments.

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, agency policy, ordinance, constitutional provision, charter provision, or canon of judicial or 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. 2024-8

A.O. 2022-10

Keywords:

Hardship Exception