

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-61

Approved: November 18, 2025

Re: Raymond Taylor

QUESTION PRESENTED:

The Petitioner, the supervisor of the Onsite Wastewater Treatment Systems (OWTS) program within the Rhode Island Department of Environmental Management (RIDEM), a state employee position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the RIDEM's Freshwater Wetlands program in order to seek approval of site plan application relative to the construction of a detached, two-car garage structure and a small dock at his personal residence, and whether he may engage the services of a land surveyor who is licensed by the OWTS program as a septic designer and, if so, what restrictions, if any, the Code of Ethics imposes upon the Petitioner.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the supervisor of the Onsite Wastewater Treatment Systems (OWTS) program within the Rhode Island Department of Environmental Management (RIDEM), a state employee position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the RIDEM's Freshwater Wetlands program in order to seek approval of site plan application relative to the construction of a detached, two-car garage structure and a small dock at his personal residence, and may engage the services of a land surveyor who is licensed by the OWTS program as a septic designer, provided that the Petitioner adheres to the restrictions as outlined by the Ethics Commission herein.

The Petitioner is employed as an environmental engineer at the Rhode Island Department of Environmental Management (RIDEM). As such, he serves as the supervisor of the Onsite Wastewater Treatment System (OWTS) program within the RIDEM's Office of Water Resources. He represents that he has been employed by the RIDEM for the past 18 months.¹ The Petitioner would like to construct a detached, two-car garage with a storage space above it and a small dock at his personal residence, which he has owned for the past

¹ The Petitioner explains that he was previously employed by the RIDEM for 4.5 years, a service that was interrupted by his 18-month employment in the private sector.

three years. He represents that because his property is located on a river/pond, it falls within the jurisdiction of the Groundwater and Freshwater Wetlands (Wetlands) program, and he would likely need to receive a site plan approval from the Wetlands program. The Petitioner explains that the Wetlands program, like the OWTS program, is part of the RIDEM's Office of Water Resources. He states that the two programs are separate and independent from each other and that he has no supervisory duties over the Wetlands program.

The Petitioner represents that to prepare a site plan, he would have to engage the services of a land surveyor or an engineer, the majority of whom are licensed as septic designers by the OWTS program. He further represents that, as the OWTS program supervisor, he issues each septic design license. The Petitioner adds that septic design licenses must be renewed every three years. The Petitioner would like to hire for his project a land surveyor who holds a septic design license and whose work he is familiar with through the work the land surveyor has performed for the Petitioner's family members. The Petitioner explains that if this specific land surveyor is unavailable, it is likely that the next land surveyor available, who the Petitioner may decide to hire, would also hold a septic design license. The Petitioner explains that septic design license renewal applications are reviewed by his subordinates and signed by the Petitioner. He notes that if he is required to recuse from the issuance of a septic design license to the person he hires for the project, the Petitioner's superior could issue or renew such a license. Furthermore, the Petitioner states that land surveyors may occasionally represent clients before the Petitioner's program and that, although the Petitioner's subordinates ordinarily review such applications, he is the one who assigns the projects to a specific subordinate based on experience, project difficulty, and a subordinate's availability.

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 RIDEM's Wetlands program in order to seek site plan approval of his project, and whether he may engage the services of a land surveyor who is also licensed by the OWTS program as a septic designer and, if so, what restrictions, if any, the Code of Ethics imposes upon the Petitioner.

Hardship Exception

The Code of Ethics prohibits a public employee from representing himself, or authorizing another person to represent him, before any state agency by which he is employed. R.I. Gen. Laws § 36-14-5(e)(1); 520-RICR-00-00-1.1.4(A)(1)(b) Representing Oneself or Others, Defined (36-14-5016). The "revolving door" language of § 36-14-5(e) is designed to prevent any undue influence that a current employee may have over his agency and colleagues by reason of his employment there. Under the Code of Ethics, a person represents himself before a state agency if he participates in, or authorizes another person on his behalf to participate in, the presentation of evidence or arguments before that agency

for the purpose of influencing the judgment of the agency in his own favor. R.I. Gen. Laws § 36-14-2(12); 520-RICR-00-00-1.1.4. These prohibitions apply to the entire agency, including all of its offices, sections, programs, or divisions, and are stricter than virtually any other provisions in the Code of Ethics. In most instances, public officials and employees may address potential conflicts of interest by declining to participate in related discussions and votes. Such is not the case with § 36-14-5(e). Absent an express finding by the Ethics Commission that a hardship exists, the prohibitions in § 36-14-5(e) are absolute, and continue while the public official or employee remains in office and for a period of one year thereafter. § 36-14-5(e)(1) & (4). Upon receiving a hardship exception, the public official or employee 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).²

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 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. When deciding whether to apply the hardship exception, the Ethics Commission considers the totality of the circumstances, and no single factor is determinative.

Notwithstanding that the OWTS and Wetlands programs operate separate and apart from each other, because they are within the same agency, the Petitioner’s proposed conduct falls squarely within the Code of Ethics’ prohibition against representing oneself before an agency by which he is employed. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship to permit him to appear before the Wetlands program to seek site plan approval for his project.

Here, the Petitioner would like to construct a detached, two-car garage with a storage space above it and a small dock at his personal residence, which he purchased prior to his current employment with the RIDEM. The application is to be submitted to a program over which

² See, e.g., A.O. 2019-64 (granting a hardship exception to the president of the North Smithfield Town Council and permitting him to appear before the North Smithfield Zoning Board of Review to seek a dimensional variance for his personal residence, provided that he recused from the town council’s appointment or reappointment of any person to the zoning board until after the election cycle for his town council seat and following the complete resolution of his application before the zoning board, including appeals, and that, prior to the zoning board’s consideration of his variance application, he informed the zoning board members of his receipt of an advisory opinion and that, consistent therewith, he would recuse from their reappointments).

the Petitioner has no supervisory authority. The application to the RIDEM does not involve a new commercial venture but, rather, involves the improvement of the Petitioner's personal residence. Accordingly, based upon the specific facts as represented herein, it is the opinion of the Ethics Commission that the Petitioner qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the state agency by which he is currently employed for purposes of seeking a site plan approval, provided that he does not use or attempt to use his official position to influence the decision of the Wetlands program.

Engagement of a Land Surveyor

The Code of Ethics prohibits a public employee from engaging in any business, employment, transaction, or professional activity that is in substantial conflict with the proper discharge of his duties or employment in the public interest. § 36-14-5(a). A substantial conflict of interest exists if a public employee has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, the Code of Ethics prohibits a public employee from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). A business associate is defined as "a person joined together with another person to achieve a common financial objective." § 36-14-2(3). Under the Code of Ethics, a public employee must also recuse from participation in any matter in which his business associate appears or presents evidence or arguments before his state agency. 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002).

The Ethics Commission has consistently required public officials and employees to recuse themselves from consideration of matters under circumstances where the public official or employee had an ongoing business associate relationship with an individual or entity that was appearing before his or her public body. See, e.g., A.O. 2016-45 (opining that a member of the Tiverton Planning Board was prohibited from participating in planning board discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects, often referred work and clients to each other, and would continue to refer work and clients to each other); A.O. 2005-64 (opining that a member of the Burrillville Redevelopment Agency was prohibited from participating in discussions or votes on matters coming before the agency regarding a non-profit developer's request for approval of a project, given that the petitioner was a partner in an accounting firm that provided accounting services to that developer on a continuing basis).

In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, and/or whether there exists an anticipated future relationship between the parties. See, e.g., A.O. 2015-49 (opining that a zoning official who had performed private electrical work for the Fort Adams Trust in the past, and who planned to bid on future work, was a business associate of the Trust under the Code of Ethics); A.O. 2004-11 (opining that a Town of Lincoln School Building Commission member, who also owned a carpentry business, was a business associate of any person or entity with which he was engaged as a subcontractor and that the business associate relationship existed while the services were provided and until such time as the petitioner was paid and no further subcontracting work was anticipated).

Here, the Petitioner is not prohibited by the Code of Ethics from engaging a land surveyor who also holds a septic design license issued by the Petitioner. However, upon the engagement of the services of such a land surveyor, the Petitioner and the land surveyor will become business associates. Their business associate relationship will continue while they are conducting ongoing business transactions, have outstanding accounts or work to be performed, and/or while there exists an anticipated future relationship between them. Accordingly, during their ongoing business associate relationship, the Petitioner will be required to recuse from the septic design license renewal of the hired land surveyor. In those circumstances, the Petitioner's duties relative to the renewal of the septic design license of his business associate shall be delegated to a colleague in a position that is lateral or higher to that of the Petitioner. The Petitioner is further prohibited from reviewing a septic project in which his current or ongoing business associate appears to represent a client, files a site plan and/or application on behalf of a client, and/or appears as an expert witness. These prohibitions generally include, but are not limited to, the Petitioner's assignment to his subordinates of a project in which his business associate is involved. The Petitioner is advised to seek, if needed, further, more specific guidance relative to his public duties concerning a land surveyor he hires in the future.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. An advisory opinion rendered by the Commission, until amended or revoked by a majority vote of the Commission, is binding on the Commission in any subsequent proceedings concerning the person who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. 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:

§ 36-14-2(3)

§ 36-14-2(12)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-7(a)

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

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2019-64

A.O. 2016-45

A.O. 2015-49

A.O. 2005-64

A.O. 2004-11

Keywords:

Business Associate

Hardship Exception