



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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May 18, 2021

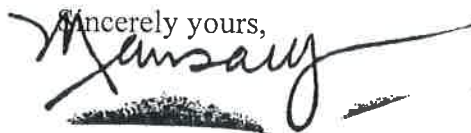
Matthew McGeorge, AIA, LEED AP
McGeorge Architecture Interiors
18 Fifth Avenue
East Greenwich, RI 02818

Re: Advisory Opinion No. 2021-39

Dear Mr. McGeorge:

The Ethics Commission rendered Advisory Opinion No. 2021-39 at its meeting on May 18, 2021. A copy is enclosed.

If you have any questions, please contact this office.

Sincerely yours,


Marisa A. Quinn

Chair 

MQ:srg

Enclosure

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2021-39

Approved: May 18, 2021

Re: Matthew McGeorge, AIA, LEED AP

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, 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.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board.

The Petitioner is the chairperson of the East Greenwich Historic District Commission ("HDC"), having served continuously since his appointment in 2011 by the East Greenwich Town Council. He represents that this is an unpaid, volunteer position. The Petitioner states that in his private capacity he has been a registered architect in Rhode Island since 2007 and is presently also registered in Massachusetts, Connecticut, Pennsylvania, Maine, and New Hampshire. He represents that he earned a Bachelor of Environmental Design from the University of Tasmania, Tasmania, Australia, and a Master of Architecture from the Illinois Institute of Technology. The Petitioner states that he specializes in historic preservation, adaptive reuse, and the design of new structures with historic character allusions and, in the past five years, his firm and he have completed more than fifteen historic adaptive reuse projects, including a 25-million-dollar adaptive reuse of the Elizabeth Mill in Warwick, and several historic renovation projects, including the Edward Bannister House for Brown University, the Caleb Greene House in Warwick for AAA New England, and the Saw Tooth Mill in Warwick. He further states that over thirty percent (30%) of his work involves historic structures.

The Petitioner represents that he has been advising a client regarding a possible addition, new garage with deed-restricted affordable housing, and renovation of the client's late 19th century Victorian home located in the Historic District of the Town of East Greenwich. The Petitioner explains that given the home's location within the Historic District, the home is subject to the jurisdiction of the HDC. The Petitioner states that, because the project includes deed-restricted affordable housing and will require dimensional and lot coverage relief, the client must seek approval from the East Greenwich Planning Board ("Planning Board") through a Master Plan

Approval process. The Petitioner further states that under these circumstances the HDC is not required to vote to approve or deny a Certificate of Appropriateness. However, it is required to provide an advisory opinion to the Planning Board regarding the appropriateness of the project. The Petitioner represents that he has, thus far, consulted the client on the local design and permitting procedures, including possible zoning relief, and the HDC conceptual and final approval process. The Petitioner adds that he has informed the client of his service as the chairperson of the HDC and the requirement that he receive permission from the Ethics Commission to represent the client before the HDC. Although the Petitioner does not expect to represent the client personally before the Planning Board, over which he does not have appointing authority, he does expect to prepare and sign the required documents. The Petitioner hopes to have a conceptual design ready to submit to the HDC for its June hearing. He states that he will recuse from HDC discussions and voting relative to this matter. At this time, the Petitioner requests a hardship exception to represent the home owner before the HDC, pursuant to General Commission Advisory (“GCA”) 2010-1.

Section 36-14-5(e) (“Section 5(e)”) of the Code of Ethics prohibits public officials and employees from representing themselves, representing another person, or acting as an expert witness before a state or municipal agency of which they are a member or by which they are employed. Section 5(e)(1)-(3); see also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). Section 5(e)’s prohibitions continue while the official remains in office and for a period of one (1) year thereafter. Section 5(e)(4). In contrast to most other Code of Ethics provisions, declining to participate in related discussions and votes is insufficient to avoid section 5(e) conflicts, absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists. 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 his interest in the matter at issue; recuse himself from voting on or otherwise participating in the agency’s consideration and disposition of the matter at issue; and follow any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter. Section 5(e)(1). See, e.g., A.O. 2014-26 (granting a hardship exception to a member of the Barrington Zoning Board of Review (“BZB”) and permitting him to appear before the BZB to request a dimensional variance for his personal residence, but requiring that he recuse himself from participating and voting in the BZB’s consideration of his request for relief).

The Petitioner’s proposed conduct falls within section 5(e)’s prohibition on representing his client before a board of which the Petitioner is a member. However, the Ethics Commission has carved out a specific hardship exception outlined in GCA 2010-1 for “Historic Architects Who Are Members of Historic District Commissions.”¹ This exception is based upon the Ethics Commission’s finding that “municipal historic district commissions within the state of Rhode Island are best served if they are able to have a sitting member who specializes in historic architecture and preservation.” GCA 2010-1. The Ethics Commission has concluded that, given

¹ On November 30, 1989, the Ethics Commission issued GCA No. 8, “Architect Members of State and Local Historic Preservation Commissions Appearing Before Their Respective Agencies,” allowing architects who specialize in historic preservation and who serve on historic district commissions to represent clients before their respective commissions without violating the Code of Ethics. In 2010, after considering public comment, and in response to overwhelming support for continuing the use of the exception, the Ethics Commission replaced GCA No. 8 with GCA 2010-1 entitled “Historic Architects Who Are Members of Historic District Commissions.”

the limited number of historic architects in the state, recruiting qualified persons to serve on historic district commissions would be difficult and would reduce the ability of historic district commissions to effectively function if those architects were thereafter prohibited from representing private clients before the commissions on which they serve.

However, pursuant to GCA 2010-1, members of historic district commissions may not presume that the exception is applicable to their specific set of circumstances, but are required to seek an advisory opinion each time they consider accepting a client whose project would require them to appear before their own board. Additionally, GCA 2010-1's narrow exception only applies to historic architects and does not apply to other architectural specialties. See A.O. 99-120 (declining to grant a hardship exception to a member of the New Shoreham Historic District Commission, who was a landscape architect and the owner of a landscape architecture business on the island, because his qualifications did not fall within the guidelines of a historic architect).

For GCA 2010-1 to apply to his particular situation, the Petitioner must make representations to establish that he is a qualified historic architect. For example, the Commission granted six GCA 2010-1 hardship exceptions to an architect on Block Island, one for each client, after concluding that it was satisfied that his representations regarding his extensive education and work experience in historic preservation established that he was a qualified historic architect. See A.O. 2017-38; A.O. 2015-44; A.O. 2014-15; A.O. 2013-42; A.O. 2013-29; and A.O.2010-7.

In the present matter, the Petitioner is an architect who specializes in historic preservation. He represents that his work experience and education exceed the United States Secretary of the Interior's minimum professional qualifications for a historic architect.² It is significant to note that the Ethics Commission has previously issued three similar advisory opinions to this Petitioner in which hardship exceptions were granted based upon the Petitioner's status as a historic architect. See A.O. 2021-35; A.O. 2019-43; A.O. 2017-27.

Accordingly, it is the opinion of the Ethics Commission that the Petitioner qualifies for a hardship exception to the Code of Ethics' prohibition on representing his client before his own board, in accordance with GCA 2010-1, provided that he recuses from participating in all HDC matters

² In order to ascertain whether someone is a historic architect, GCA 2010-1 incorporated the minimum professional qualifications for historic architecture set forth by the U.S. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. The minimum professional qualifications are:

A professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

involving his client. Pursuant to section 5(e)(1), and concurrent with his recusal, the Petitioner must inform the HDC and its members of his receipt of the instant advisory opinion and of his recusal in accord therewith. Notice of recusal shall be filed with the Ethics Commission consistent with section 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:

G.C.A. 2010-1

A.O. 2021-35

A.O. 2019-43

A.O. 2017-38

A.O. 2017-27

A.O. 2015-44

A.O. 2014-26

A.O. 2014-15

A.O. 2013-42

A.O. 2013-29

A.O. 2010-7

A.O. 99-120

Keywords:

Hardship Exception

Historic Architect