

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-9

Approved March 8, 2022

Re: The Honorable James A. Seveney

QUESTION PRESENTED:

The Petitioner, a legislator serving in the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether he may participate in the Senate's discussions and decision-making relative to an article in the State's operating budget proposal for Fiscal Year 2023 submitted by the Governor to the Rhode Island General Assembly that recommends the phase-out of state income taxation on military service pensions, given that the Petitioner is a retired naval officer receiving a military service pension.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving in the Rhode Island Senate, a state elected position, may participate in the Senate's discussions and decision-making relative to an article in the State's operating budget proposal for Fiscal Year 2023 submitted by the Governor to the Rhode Island General Assembly that recommends the phase-out of state income taxation on military service pensions, notwithstanding that the Petitioner is a retired naval officer receiving a military service pension, given that the circumstances herein justify the application of the class exception as set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner is a member of the Rhode Island Senate, having been elected to that position in 2016. He states that the Governor has submitted the State's operating budget proposal for Fiscal Year 2023 ("proposed budget")¹ to the Rhode Island General Assembly for consideration. The Petitioner explains that the proposed budget is to be reviewed and voted upon individually by both the Senate and the House of Representatives. He explains that, in the Senate, the proposed budget will be initially reviewed by the Senate Finance Committee, of which the Petitioner is a member, and it will then ultimately be presented for consideration and vote by the full Senate. The Petitioner states that one of the articles in the proposed budget amends state law to allow for the phase-out of the military service pension from inclusion in taxable income ("budget article"). The budget article provides that for tax year 2023 military service retirees may subtract from their taxable income up to 20% of their military service pension benefits. Each subsequent tax year that percentage would be increased by 20% until it reaches 100% in tax year 2027, at which time the state tax on military service pensions would be eliminated completely.

¹ The Governor's budget recommendations traditionally are incorporated in one consolidated Appropriations Act, which also includes articles containing any statutory changes which would be required to implement the Governor's budget. http://www.omb.ri.gov/documents/Prior%20Year%20Budgets/Operating%20Budget%202023/ExecutiveSummary/0_Complete%20FY%202023%20Executive%20Summary.pdf (last accessed on February 24, 2022).

The Petitioner represents that he is a retired naval officer with 21.5 years active-duty service between August of 1976 and January of 1998. He states that he has been receiving a Navy pension since February of 1998 and, if the budget article is approved, he will qualify for the new state income tax exemption relative to military service pensions. The Petitioner represents that he is one of 4,861 retirees currently receiving military service pensions in Rhode Island who will be impacted by the proposed phased out of state income taxes on military service pensions. The Petitioner states that all military service retirees will be impacted the same by the proposed budget article. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits his participation in the Senate's discussions and decision-making relative to the proposed budget article.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that he, or any person within his family, or 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. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d).

However, section 36-14-7(b) of the Code of Ethics, sometimes referred to as the "class exception," states that a public official will not have an interest which is in substantial conflict with his official duties if any benefit or detriment accrues to him, any person within his family, his business associate, or any business by which he is employed or which he represents "as a member of a business, profession, occupation or group, or of any significant and definable class of persons within the business, profession, occupation or group, to no greater extent than any other similarly situated member of the business, profession, occupation or group, or of the significant and definable class of persons within the business, profession, occupation or group."

When determining whether a particular fact pattern supports and justifies the application of the class exception, the Ethics Commission considers the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class; 3) the function or official action being contemplated by the public official; and 4) the nature and degree of foreseeable impact upon the class and its individual members as a result of the official action.

The Ethics Commission has previously applied the class exception under similar circumstances in Advisory Opinion 2018-36, wherein a state senator was allowed to participate in the Senate's discussions and voting relative to legislation that would provide for a stipend paid to all retired teachers or their beneficiaries during years where no cost of living adjustments were applied to teachers' retirement benefits, notwithstanding that the petitioner was a public school teacher who was vested in the Employees' Retirement System of Rhode Island. The circumstances were such that the size of the class was estimated to be in the tens-of-thousands and that the petitioner, upon his retirement, would have been eligible for the stipend to the same extent as every other similarly situated member of the class. See also A.O. 2008-16 (opining that the Director of Administration for the City of Providence, who had a vested interest in the municipal employees' pension plan administered by the state, could serve on a special House Commission to study the state retirement

system, given that the petitioner would be financially impacted to the same extent as any other similarly situated participants in the state and municipal employees' pension plan); A.O. 2003-57 (opining that a state senator, who was a public school teacher in Rhode Island and a member of the state retirement system, could participate in and vote on legislation that proposed a freeze/ceiling in the cost of living adjustment for the state pension plan because his personal interests would be affected to the same extent as the approximately 30,000 other state employees and teachers who were also members of the plan).

In the instant matter, the class of persons affected by the proposed budget article includes all Rhode Island retirees receiving a military service pension, the total number of which is currently 4,861. The state taxation on the military service pension benefits for all members of the class, including the Petitioner, will be reduced by 20% each year from 2023 until 2027, at which time the state tax will be completely eliminated. The Petitioner will be impacted by the proposed budget article to the same extent as every other similarly situated member of the class. It is therefore the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception set forth in section 36-14-7(b) of the Code of Ethics and that the Petitioner may participate in Senate discussions and decision-making relative to the proposed budget article. However, in the event that the Senate's discussions veer into amending the proposed article in ways that impact the Petitioner individually, or as a member of a much smaller class or subclass of retirees, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. Upon such recusal, a statement of conflict of interest must 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(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2018-36

A.O. 2008-16

A.O. 2003-57

Keywords:

Class Exception