

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-6

Approved: February 14, 2023

**Re: The Honorable George Nardone**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from submitting, discussing, and voting on legislation that would relieve members of Homeowner Associations from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on Homeowner Association property, given that the Petitioner belongs to a Homeowner Association, the members of which would be impacted by such legislation.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Rhode Island House of Representatives, a state elected position, is not prohibited by the Code of Ethics from submitting, discussing, and voting on legislation that would relieve members of Homeowner Associations from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on Homeowner Association property, notwithstanding that the Petitioner belongs to a Homeowner Association, the members of which would be impacted by such legislation, given that the circumstances herein justify the application of the class exception as set forth in Rhode Island General Laws § 36-14-7(b).

The Petitioner is a member of the Rhode Island House of Representatives and has served continuously in that capacity since his initial election in November 2018. He represents District 28 in Coventry and serves on the Finance Committee, the Labor Committee, and the Oversight Committee. The Petitioner states that he would like to draft and submit legislation that, if passed, would require the Kent County Water Authority (“KCWA”) to assume financial responsibility for the upkeep and maintenance of certain water pumping stations and infrastructure (collectively, “pumping stations”) in the Kent County Water District for which the members of two local Homeowner Associations are currently financially responsible. The Petitioner further states that the subject pumping stations, while owned by the HOA, are physically located on town property and not Homeowner Association (“HOA”) property.<sup>1</sup>

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<sup>1</sup> The Petitioner adds that there is also a water pumping station which services the Washington Oak School in Coventry, the upkeep and maintenance for which the residents of Coventry are currently financially responsible, notwithstanding that the pumping station is not physically located on the school property. The Petitioner informs that, were the proposed legislation to pass, the KCWA would also assume financial responsibility for the upkeep and maintenance of that particular water pumping station.

The Petitioner states that he presently resides in the Walker Ridge Neighborhood (“Walker Ridge”) located in Coventry and that he is a member of the Walker Ridge HOA, which is one of the two HOAs of which he is aware that receive water from the KCWA and that would be impacted by the proposed legislation. He further states that there are 65 homeowners in Walker Ridge, all of whom are the Petitioner’s constituents, and many of whom have approached the Petitioner to request that he submit legislation to address this issue. The Petitioner represents that the second HOA (“Eagle Glen”) is located in the Town of Scituate, and that there are approximately 65 homeowners there who would be similarly impacted by the proposed legislation.

The Petitioner states that, in addition to the water usage fees that they pay to the KCWA, the members of both the Walker Ridge and Eagle Glen HOAs also pay fees to an outside source for costs associated with the electricity, insurance, and maintenance of the pumping stations that provide water to both HOAs.<sup>2</sup> The Petitioner represents that the passage of the proposed legislation would relieve all members of both the Walker Ridge and Eagle Glen HOAs from financial responsibility for the upkeep and maintenance of the water pumping stations. He explains that the KCWA would be responsible for the maintenance and upkeep of the pumping stations. The Petitioner affirmatively represents that, because all Walker Ridge and Eagle Glen HOA members pay the same annual membership fee to each of their respective organizations, and those fees would be reduced by the same amount for the members of each organization were the legislation to pass, all Walker Ridge and Eagle Glen HOA members would be impacted in the same way.<sup>3</sup>

It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from submitting, discussing, and voting on legislation that would relieve members of the Walker Ridge HOA, of which he is a member, and the Eagle Glen HOA, from the financial responsibility for the upkeep and maintenance of water pumping stations that are not physically located on HOA property.<sup>4</sup>

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<sup>2</sup> The Petitioner explains that, during the construction of Walker Ridge approximately 20 years ago, there was an understanding between representatives of Walker Ridge and the builder that the Walker Ridge HOA would temporarily contribute to the upkeep and maintenance of the water pumping station used to provide water to its residents pending the construction of a water tower that would eventually serve as the water supply source for Walker Ridge. The Petitioner states that, after the water tower was built, it was realized that a pumping station would still need to be utilized to provide water to Walker Ridge, as the tower itself would be insufficient to do so.

<sup>3</sup> The Petitioner states that all Walker Ridge residents currently pay an annual HOA fee of \$500, regardless of the location or value of their homes or how long they have owned those homes. He further states that, because approximately 70% of the annual HOA fee is used to pay for the electricity, insurance, and maintenance of the HOA’s pumping station, all Walker Ridge residents would save approximately \$300 annually in HOA fees should the proposed legislation pass. The Petitioner represents that, while he does not know the amount that Eagle Glen residents are required to pay annually in HOA fees, or by how much that amount would decrease if the proposed legislation were to pass, all Eagle Glen residents currently pay the same amount in annual HOA fees and would benefit equally by a reduction of those fees as a result of the proposed legislation.

<sup>4</sup> The Petitioner represents that the subject legislation would affect not only the KCWA, but all Rhode Island Water Suppliers. He adds that, because he does not possess the resources to attempt to identify the entire class of citizens who would be impacted in the event that the legislation passes, he seeks the advice of the Ethics Commission relative only to the significant and definable class of the approximately 130 homeowners from Walker Ridge and Eagle Glen.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that 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 exists if a public official has reason to believe or expect that he, his family member, 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). Additionally, the Code of Ethics 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, pursuant to section 36-14-7(b), often referred to as the “class exception,” a public official will not have an interest that is in substantial conflict with his public duties if any benefit or detriment accrues to him, his family member, his business associate, or any business by which he is employed or which he represents “as a member of a . . . group, or of any significant and definable class of persons within the . . . group, to no greater extent than any other similarly situated member of the . . . group, or the significant and definable class of persons within the . . . group.” Section 36-14-7(b).

When determining whether any particular circumstances support and justify the application of the class exception, the Ethics Commission will consider the totality of the circumstances. Among the important factors considered are: 1) the description of the class; 2) the size of the class;<sup>5</sup> 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 in a variety of circumstances involving proposed legislation. For example, in Advisory Opinion 2020-12, the Ethics Commission applied the class exception when opining that a member of the Rhode Island Senate was not prohibited from submitting a bill which would allow volunteer firefighters who met certain requirements to utilize the State’s vehicle bid list to purchase discounted personal vehicles, notwithstanding that the petitioner was a volunteer firefighter. The Ethics Commission reasoned that, given that the proposed legislation would impact equally all volunteer firefighters in Rhode Island who met the requisite requirements, the petitioner would not be impacted to any greater or lesser extent than any other similarly situated firefighter in the subclass. See also A.O. 2019-56 (applying the class exception to allow a member of the Providence City Council to participate in City Council discussions and decision-making relative to the reaffirmation of an existing Zoning Overlay, and its proposed expansion to an additional 90 properties, notwithstanding that the petitioner owned one of the additional properties, because the official action being contemplated by the petitioner would result in subjecting all of the properties in the Zoning Overlay, including those in the proposed expansion, to the same obligations and/or requirements); A.O. 2014-12 (applying the class exception to allow a member of the North Kingstown Town Council to participate in the Town Council’s consideration of certain proposed Comprehensive Plan and Zoning Ordinance amendments relative to the Preserve at Rolling Greens development plan, notwithstanding that the petitioner’s primary residence was one of 124 residences located in an abutting subdivision given that, among other things, there would likely be a common financial impact upon all of the property owners in the abutting subdivision); A.O. 2005-22 (applying the

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<sup>5</sup> While the Ethics Commission has generally found larger classes to be more favorable to the application of the class exception, it has never imposed a minimum class number.

class exception to allow an Exeter Town Council member to participate in a proposed tax freeze ordinance for all property owners aged 65 and older, notwithstanding that his spouse was over 65 and could benefit from the tax freeze, because 250-300 other property owners would be similarly impacted by the ordinance).

Here, the circumstances are such that the official action contemplated by the Petitioner is the direct result of requests by a number of his constituents to act on their behalf. Further, the proposed legislation would similarly impact all 130 of the members of the Walker Ridge and Eagle Glen HOAs by relieving them of their current financial responsibility for the upkeep and maintenance of water pumping stations that not physically located on HOA property. Accordingly, it is the opinion of the Ethics Commission that the specific facts of this case justify the application of the class exception as set forth in section 36-14-7(b), and that the Petitioner may introduce and participate in the General Assembly's consideration of the proposed legislation. However, should the proposed legislation impact a smaller class or subclass of HOA members, or impact the Petitioner individually or differently than the other HOA members to which the legislation would apply, the Petitioner should either refrain from submitting the bill and/or recuse from participating in its consideration, or seek further guidance from the Ethics Commission. Notice of recusal, when necessary, shall be in accordance 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  
§ 36-15-7(a)  
§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2020-12  
A.O. 2019-56  
A.O. 2014-12  
A.O. 2005-22

Keywords:

Class Exception