

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-7

Approved: February 14, 2023

**Re: The Honorable Tina Spears**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding what restrictions the Code of Ethics places on her ability to participate in matters before the Rhode Island General Assembly given that she is employed as the Executive Director of the Community Provider Network of Rhode Island, a non-profit trade association of private providers of services and supports to people with developmental and intellectual disabilities.

### **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, must recuse from participation in matters before the Rhode Island General Assembly that will have a direct financial impact upon her employer, the Community Provider Network of Rhode Island, and/or its membership of private providers of services and supports to people with developmental and intellectual disabilities. However, consistent with the guidance set forth herein, the Petitioner may participate in such matters, pursuant to application of the class exception of R.I. Gen. Laws § 36-14-7(b), provided that the Community Provider Network of Rhode Island and/or its member providers would be directly financially impacted to no greater extent than similarly situated providers of such supports and services.

The Petitioner was elected to the Rhode Island House of Representatives, representing District 36, in November 2022. In her private capacity, the Petitioner has been employed since April 2019 as the Executive Director of the Community Provider Network of Rhode Island (CPNRI), a non-profit trade association of private providers of services and supports to individuals with developmental and intellectual disabilities. The private providers receive funding from the State of Rhode Island from direct billing through Medicaid and from specific programs utilizing state and federal funds. CPNRI's membership consists of twenty-four (24) providers, each of which has a seat on CPNRI's Board of Directors. Additionally, CPNRI has nine (9) associate members that provide services for children.<sup>1</sup> As stated on its website, "CPNRI offers organizations the opportunity to join a collective voice that consistently advances the interests of disability providers and the system that serves children and Rhode Islanders with disabilities."<sup>2</sup> CPNRI describes the

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<sup>1</sup> Associate membership is offered to organizations that provide services for children with disabilities, although such providers may also seek full membership.

<sup>2</sup> See <https://www.cpnri.org/member-benefits> (last accessed February 7, 2023).

benefits of membership to include: participation in statewide systems transformation policy conversation; state level advocacy and lobbying for member organization's policy needs; management of statewide grassroots activities and communications; information sharing and best practices; group purchasing; regular member communication; and networking with other member agencies.<sup>3</sup>

In her capacity as Executive Director, the Petitioner advocates for provider entities that are members of CPNRI. CPNRI advocates for legislation to empower people with disabilities to have active lives in the community. The Petitioner advises that CPNRI has previously supported and/or will provide future support for policies and legislation that advance the rights of people with disabilities, such as the following: expansion of public transit access for people with disabilities; inclusion of accessible homes in affordable housing; and workforce issues to attract and retain service workers within the developmental and intellectual disability sector, such as reimbursement rate review, tuition reimbursement, and establishing a base minimum wage.

Prior to her recent election to office, the Petitioner lobbied the executive branch, as well as both the Rhode Island Senate and House of Representatives, on behalf of CPNRI's members. This prior lobbying activity included testifying at legislative hearings as well as writing to and meeting with the Governor and members of the General Assembly. The Petitioner informs that she has never advocated for benefits or funding that would be exclusive to CPNRI member providers or that would specifically financially impact CPNRI. Cognizant that since her election R.I. Gen. Laws § 36-14-5(e) prohibits her from representing CPNRI and its member providers before the General Assembly, the Petitioner represents that going forward another individual will be handling those duties on behalf of CPNRI and its members.

The Petitioner states that there are 38 agencies licensed by the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals to provide support and services to people with developmental and intellectual disabilities, of which 24 (approximately 63%) are represented by CPNRI. In light of her private employment as CPNRI's Executive Director, the Petitioner seeks guidance from the Ethics Commission as to what limitations the Code of Ethics places upon her ability to sponsor, support, discuss, and vote on legislation before the General Assembly that may impact CPNRI members and other providers of services and supports to people with developmental and intellectual disabilities.

Under the Code of Ethics, a public official may not participate in any matter in which she has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of her public duties if she has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of her official activity, to the official herself, any person within her family, her business associate, her employer, or any business that she represents. Section 36-14-7(a). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using her position or confidential information received through her position to obtain financial gain, other than that provided by law, for herself, any person within her family, her business associate or her employer.

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<sup>3</sup> Id.

Section 36-14-7(b) of the Code of Ethics, referred to as the “class exception,” states that a public official will not have an interest which is in substantial conflict with her official duties if any benefit or detriment accrues to her, any person within her family, her business associate, or any business by which she is employed or which she 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 any particular circumstance justifies the application of the class exception, the Commission will consider the totality of the circumstances. Among the important factors to be 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 Commission has applied the class exception in numerous instances involving legislators and proposed legislation. See, e.g., A.O. 2018-31 (applying the class exception and opining that a legislator serving in the Rhode Island Senate, who in her private capacity was an attorney, could participate in the legislative process regarding proposed legislation to eliminate the statute of limitations applicable to civil actions alleging sexual abuse, given that the legislation would apply equally to all alleged victims of abuse and their attorneys); A.O. 2017-25 & 26 (members of the Rhode Island House of Representatives who are firefighters may participate and vote on legislation that would impact firefighters across the state pursuant to the Code of Ethics’ class exception); A.O. 2004-27 (State Senator who is a pharmacist and pharmacy owner may participate and vote on legislation that generally impacts pharmacies and health care if he is financially impacted to no greater or lesser extent than similarly situated pharmacists or facility owners); A.O. 98-14 (member of the House of Representatives who owns a restaurant which serves alcohol may vote on legislation relating to the legal alcohol limit since the legislation at issue affects all members of the restaurant, bar and hospitality industry to the same extent).

The Code of Ethics requires that the Petitioner recuse from taking any official action, including sponsoring, supporting, discussing, and voting, on legislation that is likely to result in a direct financial impact to CPNRI and/or its provider members unless the individual circumstances justify application of the class exception as set forth in section 36-14-7(b). In the absence of specific proposed legislation to review, the Commission is constrained to provide only general guidance as to *potential* application of the class exception. Consistent therewith, it is the opinion of the Commission that the Petitioner may participate in sponsoring, supporting, discussing, and voting on legislation that would financially impact CPNRI and/or its provider members to no greater extent than similarly situated provider entities. However, should proposed legislation impact a smaller subclass of service providers, or impact CPNRI member providers individually or differently than the other service providers to whom the legislation would apply, the Petitioner should either refrain from submitting the legislation 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 of the Code of Ethics.

Recusal would not be required, however, where the direct financial impact of the proposed legislation would be upon the recipients of developmental and intellectual disability services, rather than the providers. See, e.g., A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the General Assembly’s discussions and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned and/or managed a number of child care centers in Rhode Island and voluntarily reimbursed the applicants she hired for the cost of obtaining a criminal-records check because, notwithstanding the petitioner’s choice to voluntarily reimburse applicants for such fees, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment).

Additionally, section 36-14-5(e) prohibits a public official from representing herself, representing another person, or acting as an expert witness before a state or municipal agency of which she is a member or by which she is 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). Section 5(e)’s prohibitions continue while the official remains in office and for a period of one year thereafter. Section 5(e)(4). A person is defined as “an individual or a business entity.” Section 36-14-2(7). Accordingly, the Petitioner is prohibited from representing CPNRI and/or its members before the General Assembly while serving in the House of Representatives and for a period of one year following her severance from legislative office. See section 5(e)(4).

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is encouraged to seek additional advice from the Ethics Commission in the future as more specific questions regarding potential conflicts of interest arise.

**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:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

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

Related Advisory Opinions:

A.O. 2021-32

A.O. 2021-17

A.O. 2018-31

A.O. 2017-26

A.O. 2017-25

A.O. 2017-23

A.O. 2008-25

A.O. 2004-27

A.O. 2003-2

A.O. 98-14

Keywords:

Class Exception

Private Employer

Recusal

Revolving Door