

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-9

Approved: March 7, 2023

Re: The Honorable Stephen M. Casey

QUESTION PRESENTED:

The Petitioner, a member of the Rhode Island House of Representatives, a state elected position, requests an advisory opinion regarding his ability to discuss and vote on proposed legislation impacting firefighters that has been assigned for hearing and/or consideration to the House Municipal Government and Housing Committee, of which he is the Chair, given that he is employed as a full-time professional firefighter in the City of Woonsocket.

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, may participate in the House Municipal Government and Housing Committee's discussions and votes on proposed legislation that would impact firefighters, notwithstanding the Petitioner's employment as a full-time professional firefighter in the City of Woonsocket, given that the circumstances herein justify the application of the class exception set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner has continuously served in the Rhode Island House of Representatives since 2013, and he currently serves as Chair of the House Municipal Government and Housing Committee ("Municipal Government & Housing Committee" or "Committee"). The Petitioner has been employed as a full-time professional firefighter in the City of Woonsocket since 2006. He informs that he also has Emergency Medical Technician ("EMT") certification and may perform emergency medical services on rescue calls in his employment as a Woonsocket firefighter. The Petitioner advises that proposed legislation pertaining to firefighters has been assigned to the Municipal Government & Housing Committee for hearing and/or consideration.

The first bill, 2023 – H 5201, would amend Chapter 45-19 of the General Laws entitled "Relief of Injured and Deceased Fire Fighters and Police Officers" to allow a firefighter¹ who is unable to perform duties as a result of heart disease, stroke, or hypertension to be presumed to have suffered an in-the-line-of-duty disability, unless the firefighter was hired after July 1, 2023, and there is clear and convincing evidence that the firefighter suffered the condition at the time of hire or regularly used tobacco products for the five (5) years prior to diagnosis.

¹ As defined in § 45-19-1, a "firefighter" means and includes any chief or other member of the fire department or rescue personnel of any city, town, or fire district, and any person employed as a member of the fire department of the town of North Smithfield, or fire department or district in any city or town.

2023 – H 5373 would further amend Chapter 45-19 to extend injured-on-duty (“IOD”) benefits to police officers and firefighters who suffer from diagnosed post-traumatic stress injuries (“PTSI”), except under certain conditions. It would also provide that municipal police officers and firefighters who are unable to perform their duties due to PTSI would be entitled to receive an accidental disability retirement allowance as well as IOD benefits.

Finally, 2023 – H 5286 would amend Chapter 45-19.1 of the General Laws entitled “Cancer Benefits for Fire Fighters” to expand the definition of firefighter to include a member of a fire department or a city, town, or fire district emergency medical services (“EMS”) unit.

The Petitioner seeks guidance as to whether he may participate in the Municipal Government & Housing Committee’s discussions and votes on the proposed legislation given his employment as a Woonsocket firefighter. He represents that such legislation could be subject to future amendments relative to the parameters under which benefits would be extended but that such amendments would not increase or decrease the class of individuals to which the legislation applies.

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). Additionally, section 36-14-5(d) of the Code of Ethics prohibits a public official from using his position or confidential information received through his position to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or his employer.

Section 36-14-7(b) of the Code of Ethics, often 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 ... “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 Ethics 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 Ethics Commission has previously applied the class exception in a variety of circumstances involving proposed legislation. See, e.g., A.O. 2022-9 (opining that a legislator serving in the Rhode Island Senate may participate in the Senate’s discussions and decision-making relative to a

budget article recommending the phase-out of state income taxation on military service pensions, despite the fact that the petitioner is a retired naval officer receiving a military service pension); A.O. 2018-36 (concluding that a State Senator who is a public school teacher vested in the Employees' Retirement System of Rhode Island may participate in Senate discussions and votes regarding 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 because, upon retirement, he would be eligible for the stipend to the same extent as every other similarly situated member of the class); A.O. 2018-31 (opining that a legislator serving in the Rhode Island Senate, who in her private capacity is an attorney, may 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). See also A.O. 2020-12; A.O. 2004-27; A.O. 98-14.

Notably, in Advisory Opinion 2017-26, the Ethics Commission previously opined that the instant Petitioner could participate and vote on legislation that would impact firefighters across the state pursuant to the Code of Ethics' class exception. There, legislation had been introduced that would impact all Rhode Island firefighters who collectively bargain, either permitting or mandating expired contract terms to continue until a successor agreement is reached. The Ethics Commission concluded that application of the class exception was justified because, as a Woonsocket firefighter who was subject to a collective bargaining agreement, the Petitioner would not be impacted to any greater extent than other similarly situated firefighters. See also A.O. 2017-25.

In the instant matter, passage of the subject legislation would have broad impact on all firefighters, including EMS/rescue personnel, and, with respect to 2023 – H 5373, also all police officers. The Petitioner would be impacted to no greater extent than other similarly situated firefighters. It is therefore the opinion of the Ethics Commission that the specific facts justify the application of the class exception as set forth in section 36-14-7(b) of the Code of Ethics. The Petitioner may participate in discussions and votes regarding the subject legislation, and on any amendments thereto or other legislation having the same broad-based impact on all of the state's firefighters, whether before the Municipal Government & Housing Committee or the full House of Representatives. However, the Petitioner should either recuse or seek further guidance from the Ethics Commission relative to legislation that impacts a smaller subclass of firefighters, or that impacts him individually or differently than other firefighters. Notice of recusal, when required, 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

§ 36-14-7(a)

§ 36-14-7(b)

Related Advisory Opinions:

A.O. 2022-9

A.O. 2020-12

A.O. 2018-36

A.O. 2018-31

A.O. 2017-26

A.O. 2017-25

A.O. 2004-27

A.O. 2003-57

A.O. 98-14

Keywords:

Class exception

Recusal