

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2023-26

Approved: June 27, 2023

Re: The Honorable Michelle McGaw

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 her from participating in General Assembly discussions and voting on proposed legislation that would limit the renewal fee for a pharmacist license to \$250 biennially, given that the Petitioner is a pharmacist who would be impacted by the 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, may participate in General Assembly discussions and voting on proposed legislation that would limit the renewal fee for a pharmacist license to \$250 biennially, notwithstanding that the Petitioner is a pharmacist who would be impacted by the legislation, 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 is a member of the Rhode Island House of Representatives (“House”) and has served continuously in that capacity since her initial election in 2020. She represents the people of District 71 in Portsmouth, Tiverton, and Little Compton. In her private capacity, the Petitioner is a licensed pharmacist in the State of Rhode Island. She states that one of her House colleagues introduced legislation earlier this year which provides, in pertinent part, that beginning on December 1, 2024, the renewal fee for a pharmacist license shall not be more than \$250 biennially.¹ The Petitioner represents that the legislation, if passed, would directly impact the amount that she and all other Rhode Island pharmacists would pay to renew their pharmacist license. She estimates that there are between 1,000 and 2,000 pharmacists licensed in Rhode Island. The Petitioner states that she would like to participate in General Assembly discussions and voting on the legislation, provided that her doing so would not violate the Code of Ethics.

A person subject to the Code of Ethics may not participate in any matter in which she has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of her 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 she, or any person within her family, or her

¹ The Petitioner informs that the current renewal fee for a pharmacist license is \$280 annually.

business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. 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 a business by which she is employed or which she represents.

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 the proper discharge of her official duties if any benefit or detriment accrues to her ... “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 considers 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 determined that legislation that impacts all pharmacists equally would fall within the class exception. See A.O. 2004-27 (concluding that a legislator serving in the Rhode Island Senate, who in his private capacity was a pharmacist and pharmacy owner, could participate and vote on legislation that would not impact him or his business to any greater extent than any other pharmacist or pharmacy). The Ethics Commission has also previously applied the class exception in a variety of circumstances involving proposed legislation. For example, in Advisory Opinion 2023-9, the Ethics Commission concluded that a member of the Rhode Island House of Representatives could participate in the House Municipal Government and Housing Committee’s discussions and votes on proposed legislation addressing, among other things, in-the-line-of-duty disabilities and injured-on-duty benefits that would impact firefighters, notwithstanding the petitioner’s employment as a full-time firefighter in Woonsocket. The Ethics Commission based its application of the class exception on the petitioner’s representation that he would be impacted to no greater extent than any other similarly situated firefighter. See also A.O. 2022-9 (concluding that a legislator serving in the Rhode Island Senate could 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, notwithstanding that the petitioner was a retired naval officer receiving a military service pension); A.O. 2018-36 (concluding that a State Senator who was also a public school teacher vested in the Employees’ Retirement System of Rhode Island could 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. 98-40 (concluding that a legislator serving in the Rhode Island House of Representatives, whose spouse was a dentist, could participate in proposed legislation to establish

an Oral Health Advocate and regulate the practice of dentistry that would impact all dentists and dental hygienists equally).

Here, the class of persons who would be affected by the proposed legislation includes all pharmacists seeking renewal of their Rhode Island license, the total number of which is estimated to be between 1,000 and 2,000. The license renewal fee would be limited to \$250 biennially for all members of the class, including the Petitioner. The Petitioner would be impacted by the legislation to no greater extent than any other individual 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 General Assembly discussions and voting relative to the proposed legislation. However, in the event that the discussions veer into amending the proposed legislation in ways that would impact the Petitioner individually, or as a member of a much smaller class or subclass of pharmacists, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. In the event of a recusal, the Petitioner shall file a statement of conflict of interest consistent with the provisions of 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. 2023-9

A.O. 2022-9

A.O. 2018-36

A.O. 2004-27

A.O. 98-40

Keywords:

Class Exception