

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2024-12

Approved: March 12, 2024

Re: The Honorable Teresa Tanzi

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 submitting, discussing, and voting on legislation that would establish a regional parity floor whereby all Rhode Island hospitals, physicians, and advanced practice providers would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut, given that her spouse is a practicing physician in Rhode Island who would be directly financially impacted by the passage of that 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 establish a regional parity floor whereby all Rhode Island hospitals, physicians, and advanced practice providers would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut, notwithstanding that her spouse is a practicing physician in Rhode Island who would be directly financially impacted by the passage of that 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, representing District 34 in Narragansett and South Kingstown, and has served continuously in that capacity since her initial election in November 2010. She serves on the House Finance Committee; the State Government and Elections Committee; the Internet and Technology Committee; and chairs the Subcommittee on Human Services which oversees the budget for all human service related budget items and departments. The Petitioner states that she has been asked by the hospital in her district to submit legislation that, if passed, would address the disparity between payments made by insurance companies to Rhode Island hospitals, physicians, and advanced practice providers and the payments made to their regional counterparts in Massachusetts and Connecticut.¹ A copy of the proposed legislation was submitted by the Petitioner with her request for this advisory opinion.

¹ The Petitioner explains that she has submitted legislation for several years on behalf of behavioral health providers and, due to her knowledge of the issue, was regarded by the hospital as someone with particular expertise on the issue.

The Petitioner represents that her spouse is a podiatrist at Ortho Rhode Island and the medical director of the wound care center at South County Hospital. She further represents that, in addition to his compensation by the hospital for his work as the director of wound care there, her spouse also bills for that work as an individual physician. The Petitioner states that, of the three categories of hospitals, physicians, and advanced practice providers who would be impacted by the introduction and passage of the subject legislation, her spouse would fall only into the category of physicians, of which there are 7,532 in Rhode Island.² She further states that, if passed, the legislation would establish a regional parity floor, to be achieved over a three-year period, whereby all Rhode Island hospitals, physicians, and advanced practice providers ultimately would be paid materially equivalent rates to the average payment rates in Massachusetts and Connecticut. The Petitioner explains that this would be accomplished through the adjustment of billing codes used to invoice for provider services, to which all Rhode Island hospitals, physicians, and advanced practice providers would be subject and by which all members of each of those three groups would be impacted in the same way. It is under this set of facts that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from submitting, discussing, and voting on the subject legislation.

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, any person within her family, her 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 any person within her family “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 particular circumstances justify the application of the class exception, the Ethics Commission considers the totality of those 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.

² The Petitioner provided this number to Ethics Commission staff following her visit to the Rhode Island Department of Health website. She was also able to ascertain at that time that there her spouse is currently one of 102 podiatrists in Rhode Island.

The Ethics Commission has previously concluded that the class exception was justified in a number of matters involving proposed legislation that would impact members of the medical field in the same way. For example, in Advisory Opinion 2023-26, the Ethics Commission concluded that a member of the Rhode Island House of Representatives could participate in General Assembly discussions and voting on proposed legislation that would limit the license renewal fee for Rhode Island pharmacists, notwithstanding that the petitioner was a pharmacist who would be impacted by the legislation. See also A.O. 2004-27 (concluding that a state senator, 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); 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 prohibiting any non-licensed person from directing the practice of dentistry that would impact all dentists and dental hygienists equally and concluding that the contemplated legislative activity, which involved broad-based issues of public policy, was precisely the type of legislative activity contemplated by the section 36-14-7(b) exception).

Here, there are 7,532 members of the class of Rhode Island licensed physicians who would be impacted by the passage of the legislation. If passed, the legislation would establish a regional parity floor whereby three classes, namely all Rhode Island hospitals, physicians, and advanced practice providers, would be paid materially equivalent rates to those paid to their counterparts in Massachusetts and Connecticut. Further, everyone in each of the three classes would be subject to the same adjustment in billing codes used to bill for their services and, therefore, impacted in the same way. Therefore, the Petitioner's spouse would be impacted by the legislation to no greater extent than any other individual member of the class 7,532 physicians to which he belongs. 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 submit, discuss, and vote on the proposed legislation. However, in the event that her participation at any point veers into amending the proposed legislation in ways that would impact her spouse individually, or as a member of a much smaller class or subclass of physicians, the Petitioner must either recuse from participation or seek additional guidance from the Ethics Commission. Recusals are to be filed 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. 2023-26

A.O. 2004-27

A.O. 98-40

Keywords:

Class Exception