

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-17

Approved: June 4, 2024

**Re: The Honorable Valarie J. Lawson**

### **QUESTION PRESENTED:**

The Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from participating in the Senate's floor votes on legislation relating to the Rhode Island Pension System, given that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as president of the National Education Association of Rhode Island.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island Senate, a state elected position, is not prohibited by the Code of Ethics from participating in the Senate's floor votes on legislation relating to the Rhode Island Pension System, notwithstanding that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as president of the National Education Association of Rhode Island, given that the circumstances herein justify the application of the class exception as set forth in R.I. Gen. Laws § 36-14-7(b).

The Petitioner is a legislator serving as a member of the Rhode Island Senate. She has served continuously in that capacity since 2019 and represents District 14 in East Providence. The Petitioner states that she was employed as a teacher by the East Providence School Department for 32 years, but left that position on December 31, 2022. She adds that, although she is no longer employed by the school department, she is not formally retired and is currently in deferred status relative to her participation in the Rhode Island State Pension Plan administered by the Employees' Retirement System of Rhode Island (pension system). The Petitioner states that, in her private capacity, she currently serves as president of the National Education Association of Rhode Island (NEARI), a full-time position which she has held since January 1, 2023.<sup>1</sup>

The Petitioner describes NEARI as a registered nonprofit labor organization, the primary purpose of which is to provide collective bargaining representation, grievance and arbitration

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<sup>1</sup> The Petitioner states that on January 1, 2023, when NEARI's former president left the position, the Petitioner, who was then serving as NEARI's vice-president, automatically became president for the remainder of her predecessor's term. She explains that this was the reason she left her employment as a teacher with the East Providence School Department on December 31, 2022. The Petitioner states that she was later elected president by NEARI's delegate assembly in May 2023.

representation, and professional development opportunities, among other benefits, to its members. She represents that NEARI is the Rhode Island affiliate of the National Education Association and consists of a diverse membership numbering approximately 11,000 to 12,000 people. She further represents that, in addition to herself, there are approximately 400 other NEARI officers and leaders who are positioned to direct and affect the financial objectives of that organization. The Petitioner states that NEARI members include public and private sector employees organized in approximately 75 local bargaining units. She further states that NEARI members include public sector teachers; public and private sector education support professionals; public and private sector higher education faculty, graduate students, and staff; and state and municipal employees and retirees. The Petitioner informs that approximately 78% of NEARI members are, by virtue of their employment, members of the pension system which also includes as members other state and municipal employees. She adds that members of the pension system include both active and former employees, numbering approximately 40,000, and retirees and their beneficiaries, numbering approximately 28,000.

The Petitioner states that there are presently five pieces of proposed legislation (“bills”) in particular pending before the Senate for which voting is imminent. She explains that all substantive discussions and testimony regarding each of the bills have already taken place before a subcommittee on which the Petitioner did not participate. The Petitioner further explains that while, theoretically, some discussion could occur prior to the Senate vote on each of the bills, that discussion would likely relate to technical issues such as the correction of typographical errors. The Petitioner represents that she will recuse from any discussion that may precede the vote on each bill, regardless of the topic. The bills, as described by the Petitioner, are summarized below:

**S2979**, if passed, would modify the retirement allowance calculation to define “average compensation” as the average of the highest three consecutive years of compensation for all teachers, state, and municipal employees who are eligible to retire on or after July 1, 2024. The Petitioner represents that there are approximately 30,000 pension system members who are eligible to retire on or after July 1, 2024, including herself, and that the benefit conferred by the passage of S2979 would apply equally to, and convey the same benefit upon, all members of this class.

**S2308**, if passed, would modify the retirement eligibility requirement for all teachers and all other state and municipal employees in active service, by reducing the retirement eligibility age to 60 years old, provided that the teacher or employee has completed at least 30 years of service, effective July 1, 2024. As with S2979 above, the Petitioner represents that there are approximately 30,000 members who are eligible to retire on or after July 1, 2024, and that the benefit conferred by the passage of S2308 would apply equally to, and convey the same benefit upon, all members of the impacted class. However, the Petitioner states that the passage of S2038 would not impact her because she is already eligible to retire at age 59 pursuant to the provisions of R.I. Gen. Laws § 16-16-12(c)(iv).

**S2312**, if passed, would require additional state budget appropriations to the pension system based upon excess vacancies for full-time appropriated positions. More specifically, the state would be required to make contributions to the pension fund that would otherwise have been made by employees serving in positions which are instead vacant. The Petitioner states that the passage of

this bill would impact all members of the pension system, including herself, of which there are an estimated 40,000 active or former employees and 28,000 retirees.

**S2580**, if passed, would provide a one-time annual benefit adjustment of 2% for plan year 2025 for all retirees, and their beneficiaries, in the pension system, of which there are an estimated 28,000. The Petitioner states that she will become a member of this class once she retires,<sup>2</sup> and that the benefit conferred by the passage of S2580 would apply equally to, and convey the same benefit upon, all class members.

**S2987**, if passed, would provide an annual benefit adjustment of \$2,000 each calendar year commencing in plan year 2025 to all retirees, and their beneficiaries, in the pension system, of which there are an estimated 28,000. The Petitioner states that the benefit conferred by the passage of S2987 would apply to her upon her retirement and would apply equally to, and convey the same benefit upon, all class members.

Given her prior and current employment, and her membership in the pension system, the Petitioner seeks advice from the Ethics Commission regarding whether she is prohibited by the Code of Ethics from participating in the Senate floor votes relative to the legislation described above.

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. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) 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. A business associate is defined as “a person joined together with another person to achieve a common financial objective.” R.I. Gen. Laws § 36-14-2(3). A person is defined as an “individual or a business entity.” § 36-14-2(7).

The Ethics Commission has consistently concluded that persons are “business associates” not only of the entities for which they serve as either officers or members of a board of directors, or in some other leadership position that permits them to direct and affect the financial objectives of an organization, but also of the other officers and leaders within the same organization. *See, e.g.*, A.O. 2021-40 (opining, among other things, that a member of the Retirement Board of the Employees’ Retirement System of the State of Rhode Island would be prohibited from participating in disability adjudications and contested administrative hearings which were likely to result in a financial impact upon himself or herself or upon any individual who served in a leadership position within a private organization for which the retirement board member also served in a leadership position, or upon the organization itself).

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

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<sup>2</sup> The Petitioner represents that she will be eligible to retire without a penalty on August 14, 2026.

of her official duties if any benefit or detriment accrues to the public official, 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 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.

The Ethics Commission has previously applied the class exception in a variety of circumstances involving proposed legislation. For example, in Advisory Opinion 2018-36, the Ethics Commission opined that a Rhode Island senator could participate in Senate discussions and voting relative to legislation that would provide a stipend to be paid to all retired teachers or their beneficiaries during years where no cost of living adjustments were applied to teachers’ retirement benefits, notwithstanding that the petitioner was a public school teacher who was vested in the Employees’ Retirement System of Rhode Island. In support of its application of the class exception, the Ethics Commission noted that the class of persons who would be affected by the legislation, if passed, included all teachers who were currently retired and receiving retirement benefits, plus those who would retire and receive retirement benefits following the effective date of the legislation, a class estimated to be in the tens of thousands. That particular petitioner, who upon his retirement would have been eligible for the stipend, would have been impacted by the passage of the legislation to no greater extent than any other member of the class. See also A.O. 2022-09 (applying the class exception to opine that a Rhode Island senator, who was receiving a military pension, could participate in Senate discussions and decision-making relative to a budget article recommending the phase-out of state income taxation on military service pensions, given that the proposed budget article would affect all Rhode Island retirees receiving a military service pension, the total number of which was then 4,861); A.O. 2003-57 (applying the class exception to opine that a Rhode Island senator was permitted to participate in the Senate’s consideration of legislation concerning the state pension plan of which he was a member, given that the legislation would affect all state employees and all teachers in the state); A.O. 93-55 (applying the class exception to opine that a Rhode Island senator who was employed as a public school teacher could participate in discussions and voting on legislation regulating teacher contract disputes and strikes because the subject legislation would affect all teachers in a like manner).

Here, the official action being contemplated by the Petitioner is her participation in the Senate’s floor votes on the five bills discussed above. The passage of all but S2308 would directly financially impact the Petitioner. The passage of all five bills would directly financially impact the 400 other NEARI officers and leaders who are the Petitioner’s business associates. The classes that would be impacted by the passage of one or more of these bills include the following: all active members within the pension system, which is estimated at 40,000; all members of the pension system who are in retirement status and/or their beneficiaries, which is estimated at 28,000; and all teachers and other state and municipal employees who will be eligible to retire on

or after July 1, 2024, which is estimated at 30,000. Based upon the facts as represented, the Petitioner's vote on each of the five bills would impact herself (in all but one case, where she would not be impacted at all) and her business associates (in all cases) to no greater extent than any other similarly situated member of the particular applicable class.

Accordingly, it is the opinion of the Ethics Commission that the circumstances herein justify the application of the class exception, and the Petitioner is not prohibited by the Code of Ethics from participating in the Senate's floor votes on the legislation described above, notwithstanding that she was formerly employed as a teacher by the East Providence School Department and currently serves in her private capacity as the president of NEARI. However, in the event that any discussions that occur prior to the votes on any of the legislation veer into amending any of the bills in ways that would impact the Petitioner and/or her business associates individually, or as a member of a much smaller class or subclass of any of the classes identified above, the Petitioner must either recuse from participation in those discussions and/or the votes which follow, or seek additional guidance from the Ethics Commission. In the event of a recusal, the Petitioner must file a statement of conflict of interest consistent with the provisions of R.I. Gen. Laws § 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:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

§ 36-14-7(b)

Other R.I. Gen. Laws:

§ 16-16-12(c)(iv)

Related Advisory Opinions:

A.O. 2022-9

A.O. 2021-40

A.O. 2018-36

A.O. 2003-57

A.O. 93-55

Keywords:

Class Exception