

## Justification for Eliminating Part (b) and Amending Part (a) of R.I.G.L. 36-14-7

Even a casual observer of Rhode Island political history will know the state has been rocked by one scandal after another with no apparent end in sight. The state is plagued by a culture of corruption and seems unable to escape it. Some glaring examples in the 1980's are the Senate reapportionment fiasco, the impeachment of Supreme Court Justice Bevilacqua, and the collapse of the RISDIC-insured credit unions. In the 1990's former House Speaker and court administrator Matthew Smith was forced to resign along with Chief Justice Thomas Fay. Senate Majority Leader John Hawkins was fired as Lottery Commission Chairman.

Since the turn of the century we've seen House Speaker John Harwood resign under threat of impeachment, Senate President Irons resign under a cloud of insider dealings, and Senator John Celona and House Majority Leader Gerard Martineau imprisoned for selling their public office and abusing the public trust. There are also, repeated instances of politicians being fined for ethical lapses, including House Majority Leader Gordon Fox, state Representative Raymond Gallison, state Senator Frank Ciccone and Senate President Joseph Montalbano.

These are not isolated incidents, but a continuous trend, accelerating under the scrutiny of federal investigations. A study by the Connecticut Center for Economic Analysis ranks Rhode Island number one for political corruption amongst the six New England states.<sup>1</sup> The study authors measure political corruption using the number of federal misconduct convictions per 100 elected officials, and only covers the time period—1986 to 1996. We doubt Rhode Island's rank in New England has dropped in the past 12 years. What makes Rhode Island such a nurturing environment for political corruption?

The answer to the last question is complex and beyond the present discussion, but one factor seems common to all the scandals and transgressions associated with this lurid history—Rhode Island does not have government of the people, by the people, for the people. All too often state government appears to favor specific individuals and groups rather than the general public. All the examples cited above involve powerful politicians who have put their personal interests and the interests of their friends ahead of the public interests. Even with one arrest after another, there seems to be absolutely no sign that Rhode Island government is reforming. Why?

One plausible answer is this—politicians in Rhode Island simply do not think it is wrong to further their own self-interest or the interests of the organizations they work for or to which they belong. What could lead them to this conclusion? One can argue the class exception clause in Part (b) of R.I.G. L. 36-14-7, certainly offers no deterrent to such behavior. This law was enacted by the Rhode Island General Assembly. It makes it perfectly legal for a state legislator to introduce legislation and vote on legislation that favors his or her employer as long as the

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<sup>1</sup> Lanza, S. P., "The Economics of Ethics: The Cost of Corruption," *The Connecticut Economy Quarterly*, reprinted from the Winter 2004 Issue: February 24, 2004.

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impact of this legislation on him or her is no greater than the impact on a similar group or class of individuals. This law allows politicians to enact self-serving and special interest legislation without even a twinge of conscience. Operation Clean Government (OCG) would argue such a law encourages all sorts of indirect conflicts of interest and worse, and does nothing to prevent such behavior.

Our research reveals twenty-five states have class exception clauses in their conflict of interest laws. They are Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Idaho, Iowa, Kentucky, Maine, Minnesota, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, West Virginia, Wisconsin and Wyoming. Although no specific class exception language could be found in the Florida conflict of interest law, the Florida courts have concluded, “the phrase—special interest—contemplates a benefit to a particular person or group which exceeds that received by the other members of the class (emphasis added) of persons affected.” It should be noted that the Arkansas class exception language seems to only apply to board and commission members. Also, the North Carolina wording—this subsection shall not apply to financial or other benefits derived by a covered person that the covered person would enjoy to an extent no greater than that which other citizens of the State would enjoy or could enjoy or that are so insignificant that reasonable person would conclude that the covered person’s ability to protect the public interest would not be compromised—is in essence not a class exception except that it sounds like the wording used in class exception clauses. In these three cases there may be no class exception clause covering elected state officials.

Of the class exception clauses in these twenty-five states, North Carolina’s stands out as being least likely to allow conflicts of interest. The North Carolina prohibition against knowingly using one’s official public position to one’s own advantage applies whenever the benefit is greater than that of any other citizen of the state—not when the benefit is no greater than that of someone in the class of similarly-situated individuals, but whenever the benefit exceeds what the general public might enjoy!

The class exception clauses in the ethics laws of these states are typically justified as follows:

“Members of the Legislature serve as “citizen Legislators” who have other occupations and business interests. Each Legislator has particular philosophies and perspectives that are necessarily influenced by the life experiences of that Legislator, including, without limitation, professional, family, and business experiences. Our system assumes that Legislators will contribute those philosophies and perspectives to the debate over issues with which the Legislature is confronted. The law concerning ethics in government is not intended to require a member of the Legislature to abstain on issues which might affect his interests, provided those

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interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.” Nevada NRS Chapter 281A, Section 20, Subsection 2 (c).

The best protection against conflicts of interest is ethics laws with no class exception language and clear definitions of both direct and indirect conflicts of interest. Twenty-three states have no class exception clause in their ethic laws; at least we have not been able to find class exception language in their ethics laws. These states are: Arizona, Colorado, Georgia, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Tennessee, Utah, Vermont, and Washington.

Massachusetts has a strict reporting requirement for conflicts of interest as follows:

‘Any public official, as defined by section one of chapter two hundred and sixty-eight B, who in the discharge of his official duties would be required knowingly to take an action which would substantially affect such official’s financial interests, unless the effect on such an official is no greater than the effect on the general public, shall file a written description of the required action and the potential conflict of interest with the state ethics commission established by said chapter two hundred and sixty-eight B.’ Title I, Chapter 268A, Section 6A.

Massachusetts ethics law also has a substantial penalty for knowingly committing a conflict of interest:

“Except as permitted by this section, any state employee who participates as such employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.” Title I, Chapter 268A, Section 6, Subsection (a).

Kansas law leaves no doubt as to what is meant by the expression “special interest:”

"Special interest" means an interest of any person as herein defined (1) concerning action or non-action by the legislature on any legislative matter affecting such person as distinct from affect upon the people of the state as a whole, or (2) in the action or non-action of any state agency or state officer or employee upon any matter

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affecting such person as distinct from affect upon the people of the state as a whole.” Chapter 46, Article 2, Section 228.

The above examples show there are states concerned with the abuse exercised by public officials when they engage in conflicts of interest and/or actions aimed at “special interest.” These states have adopted laws to bar conflicts of interest and have reporting requirements for even the appearance of conflicts of interest or potential conflicts of interest.

Although a specific piece of legislation may not directly improve the financial interest or in any other way benefit the legislator who introduces it and votes for it or any person within his or her family or any business associate, if it favors the legislator’s employer, then it favors the interest of that legislator. A conflict of interest is a conflict of interest whether it puts money in the pocket of its sponsor or the sponsor’s employer as there is a quid pro quo relationship between employee and employer. Until this practice is prohibited in Rhode Island, there will be no deterrent against these indirect conflicts of interest which are the breeding ground for self-serving, insider political corruption.

Even the members of both houses of the Rhode Island General assembly realize it is a conflict of interest to introduce legislation impacting their employer or an organization in which they are a member. H-7674 has been introduced in the House, and this bill would “prohibit general assembly members, who are employed by a government employees’ union, from participating or voting on any legislation concerning government employees’ rights or benefits.” A similar bill, S-2871, has been introduced in the Senate, and it would “prohibit general assembly members from introducing, voting on or participating in floor or committee debate on any proposed matters concerning, directly or indirectly, a business corporation, company, or profession if said member is employed by, is a shareholder of, or has a family member employed by, or owns and/or holds a blind trust, or receives income from said business, corporation, company or profession.”

OCG would rather see conflict of interest rules and law emanate from the Ethics Commission than from the Rhode Island General Assembly. The General Assembly members are simply too concerned with currying favor with special interests groups and may be disinclined to enact any ethics legislation which will curb their ability to continue to enact special and self-interest legislation. Further, General Assembly approval of ethics laws adopted by the Ethics Commission is not needed per Article III, Section 8 of the Rhode Island Constitution. In fact the Rhode Island Supreme Court in an opinion, filed on June 10, 1992, affirms the Ethics Commission has the power to adopt a code of ethics independent of the General Assembly, stating “The people have simply vested in the commission a limited share of legislative power to make law in the area of ethics.”<sup>2</sup> This same opinion did not say the General Assembly could not enact ethics laws, but it does

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<sup>2</sup> Opinion No. 91-577-M.P.

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say the laws enacted by the General Assembly must not conflict with those enacted by the Ethics Commission.

The framers of the Rhode Island Constitution recognized political power could be used by the few to abuse the many. In Article 1, Section 2 it says, “Laws for the good of the whole (emphasis added).” It goes on to say, “All laws, therefore, should be made for the good of the whole.” The whole is the general public. Therefore, the state’s laws must be aimed at the general public and not some subset of the general public. In Article 3, Section 3 the framers ask all general officers of the state to swear “to be true and faithful unto this state,” and that they “faithfully and impartially discharge all the duties (emphasis added)” of their office to the best of their abilities. Could there be any clearer admonition against conflicts of interest? In section 7 of the same article, it says public officials “must adhere to the highest standards of ethical conduct (emphasis added)” and “respect the public trust” (emphasis added). The same section continues, saying “avoid the appearance of impropriety and not use their position for private gain or advantage (emphasis added).” Sponsoring legislation favorable to one’s employer, even when that employer is part of a larger group of similar employers, is a conflict of interest even when the sponsor appears to gain no substantial benefit because it has the appearance of a conflict of interest. The state constitution says to avoid even the appearance of such actions.

Again, in the same article 3, Section 8, the constitution gives the Ethics Commission the power to “adopt a code of ethics including, but not limited to, provisions on conflicts of interest (emphasis added),...” Conflicts of interest are the very first item mentioned on the list of provisions to be addressed by the state’s code of ethics. Finally, in section 1 of Article 6 of the state constitution, it says the Constitution is the supreme law of the state and law inconsistent with it “shall be voided.” It should also be noted that nowhere in the language of the Rhode Island State Constitution does it discuss any significant and definable class of persons within a business, profession, occupation or group like the class exception clause language in Part (b) of R.I.G.L. 36-14-7. Part (b) of 36-14-7 says a conflict of interest is allowable under certain conditions, but the constitution does not. Part (b) is inconsistent with more than one part of the state constitution, and it should be eliminated.

This is not to say that legislation which impacts a particular legislator’s employer can not be enacted by the other members of the legislature who are not employed by the same employer. Let a legislator convince the other members of the assembly of the value of a bill that benefits his or her employer, but prevent him or her from creating even the appearance of a conflict of interest by sponsoring and voting for such a bill. And is not this the reason for an assembly in the first place?

Some will argue that elimination of part (b) of 36-14-7 places an undue restriction on the legislator’s vote and is a disenfranchisement of his or her vote or the votes

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of their constituents, but it is not. He or she can still vote on any number of issues as long as they do not involve his employer or other groups similar to his employer, with its inherent conflict of interest. This is a small price to pay to avoid the appearance of a conflict of interest. In these instances the overriding consideration must be the interest of the general public and not the interest of some subsection of the general public. This is clearly the intent of the language in the state constitution.

Legislators must be made to realize it is against the ethics rules to continue sponsoring and voting for bills that impact their employer or benefit their friends and family. Therefore, OCG suggests strengthening part (a) of 36-14-7 by amending it as follows:

(a) A person subject to this Code of Ethics has an interest which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, if he or she has reason to believe or expect that he or she or any person within his or her family or any business associate, or any business, or any organization, either for profit or not for profit, or any state agency or municipal agency by which the person is employed or which the person represents will derive any benefit, financial or otherwise, by reason of his or her official activity.

Until the self and special interests behavior, allowed via the conflict-of-interest class exception clause of part (b) of 36-14-7 is prohibited, the state will be plagued by political abuse and corruption. The Ethics Commission has the power to define conflicts of interest and enact provisions against all such direct and indirect conflicts. We beg you to break the grip of corruption on the government of Rhode Island by defining ethical standards above reproach and eliminating any conflict of interest exceptions, like the class exception now allowed under Part (b) of R.I.G.L. 36-14-7.