

Citizen Alert

A report on the state of Rhode Island government

October/November 2008

Volume 16, Number 2

Can 'class exception' kill ethics law?

Why is this issue so critical to Rhode Island's ethical future?

In May of this year two CVS executives, John Kramer and Carlos Ortiz, were acquitted of buying the services of RI Senator John Celona who is now serving time in Federal prison.

The judge explained that due to the 'class exception' provision of RI Ethics Law, Senator Celona's actions favoring CVS (his employer) at the state house, were perfectly legal. That's because CVS is in a class of other pharmacies affected to the same degree.

As we go to print, two Roger Williams Hospital executives, Robert Urciuoli and Frances Driscoll, are being retried on similar charges, after the U.S. 1st Circuit Court of Appeals overturned their original convictions. The defense is using 'class exception' as one of its arguments for acquittal. If acquitted, the RI ethics law will be seriously neutered.

BY ROBERT A. BENSON, JR.

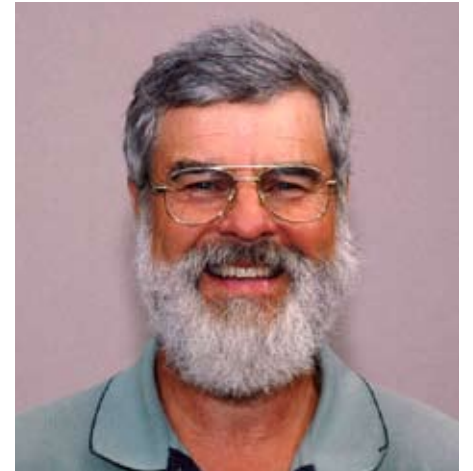
On June 3rd of this year the Rhode Island Ethics Commission (RIEC) held an open hearing on the so-called "class exception" clause in part (b) of Rhode Island General Law (RIGL) 36-14-7.

Why is this of any interest to Rhode Islanders?

Part (a) of this law states that it is a substantial conflict of interest if a state official uses his/her position or vote to derive a financial gain in the course of fulfilling his/her duties as a state official.

It goes on to say it is also a conflict of interest if the official's actions benefit his/her family, business or employer. The need for such a strong conflict of interest clause is reinforced by looking at how often state officials are dragged into court or called before the Ethics Commission because they have compromised the public trust.

Ah, but wait, part (b) says it is OK if a lawmaker, his/her family, business or employer realizes a financial gain as a result of his efforts to introduce, support or vote for a law as long as the law benefits a class or group of other similarly situated people, families, businesses or employers.



Robert A. Benson, Jr

This is the so-called 'class exception' to the state's conflict of interest law. It allows a legislator who is a member of any group or an employee of a group to use his/her vote to enact laws that favor that group and by extension favor the legislator. In essence, the state's conflict of interest law as described in part (a) is substantially negated by the class exception clause in part (b).

Why does RI have this class exception clause in its conflict of interest law?

see **Class Exception**, page 4

OCG's 15th Annual Meeting

Thursday, November 6 at 6:30 PM
Shriners Imperial Room in Pawtuxet Village
One Rhodes Place, Cranston
All OCG members and the public are invited
Light refreshments - no admission charge

Guest Speaker: Jim Hummel, investigative reporter, who has uncovered government waste and irregularities throughout Rhode Island

Golden Broom Awards to be presented to:

James Lynch Sr., former Chairperson of the Rhode Island Ethics Commission

and

Jim Hummel, guest speaker for this event

Forty-four General Assembly candidates have answered OCG's survey on five good government issues - see pages 2 & 3

The General Assembly: 'Private deals and public corruption'

Operation Clean Government held it's second annual corruption forum in May. This highly informative 90 minute program was edited down to 60 minutes for broadcast on RIPBS three times in June. More broadcasts are planned for 2009.

DVDs have been made available to the 42 public library systems and to area high schools.



Dave Layman, former award-winning Providence news anchor and political commentator, moderated this event.



Panelists: l. to r.; Arthur "Chuck" Barton, President of Operation Clean Government; Kenneth Payne, former Senior Policy Advisor to the Rhode Island State Senate and former director of the League of Cities and Towns; Edward Achorn, The Providence Journal's deputy editorial page editor; Bill Rappleye, NBC10 News legislative and political reporter; Arlene Violet, veteran radio talk show host, political columnist, TV commentator, and former R.I. Attorney General; Ross Cheit, Associate Professor of Political Science at Brown University and a member of the Rhode Island Ethics Commission; John DePetro, Talk Show Host, WPRO 630 Morning News

President's Corner...

Over the last several months, the OCG board has been discussing how to advance our agenda during the election process. The challenge we have is retaining OCG's non-partisan stance while advancing our positions.



Arthur "Chuck" Barton
OCG President

I think we have struck the balance we need to maintain our independence of any candidate or office holder, while advocating for our positions. In this newsletter, on our web site and through press releases OCG will publicize the positions of candidates on issues OCG feels are important for improving our state government.

Just after the September primary, we sent every General Assembly candidate a questionnaire listing five positions that OCG supports to improve the openness and accountability of government and asked for the candidate's position on these issues. Those who responded by September 27 are included in this newsletter. When and if other responses come in they will be included on the OCG website and in press releases.

OCG is not endorsing candidates. These five issues are not the only criteria on which to evaluate a candidate, but they are an indication of the candidate's willingness to make our state government more open, responsive and accountable. We have told candidates who support our positions that they are free to use their support of the OCG agenda as part of their campaign.

If you would like more information on the issues and OCG's position, please visit the OCG website, www.ocgri.org.

I encourage all of you to vote for good government this November. This election cycle and in the future, OCG will be identifying those candidates who support the issues we think are important for improving the way Rhode Island is governed.

OCG "fed up" as incumbents decline TV interviews

As producer of OCG's weekly television show, State of the State, John Carlevale sees firsthand how politicians react to public scrutiny.

"It's very clear," John says. "As candidates for public office, they are willing and anxious to appear on our programs. As incumbents, most play dodge-ball with us."

Carlevale is distressed at this pattern of behavior. He sees OCG's responsibility to the public very clearly, "It is our civic duty to sponsor this important political series."

Political challengers are also frustrated by the refusal of incumbent opponents to appear with them before the public, Carlevale explains. "This is a fair and non-partisan venue for political personalities to make their case for election."

So, what does Carlevale plan to do about this? "We plan to notify media," he says, "of refusals to participate in our TV forums with

the hope that public awareness of refusals — with names — will send a message to our elected officials that we expect more from them. And," he adds, "during broadcasts we will mention any who have declined our invitation to appear or our offer to reschedule."

Incumbents who have declined to debate as of September 25 are:

Senator Stephen Alves
Senator Mary Ellen Goodwin
Senate Majority Leader Teresa Paiva Weed
Senator Frank Ciccone
Senator Leo Blais
Representative Ray Sullivan

See page 4 for the schedule of candidate interviews on OCG's State of the State

RI school and town budgets now on new website

Getting information on your government in Rhode Island has been more painful than having a root canal. But that has come to an end. Finally, there is a new user friendly website, The Transparency Train, developed by the Ocean State Policy Research Institute (OSPRI) that provides budgets, contracts, payrolls and more for cities, towns and school committees throughout Rhode Island.

Also included are brief contract analyses, school test scores, and even the check register - every check or bank transfer sent out each month. You can search the entire site

for a topic or search the database by community. This information has never been available in one place, with one-stop-shopping.

Give it a try. Visit the site and type "Blue Cross" into the search window. This will provide you with a list of nearly 200 employee contracts that specifically identify this insurance carrier. Just having those documents at hand will empower taxpayers with the knowledge needed to fight for change.

Visit the OSPRI website
www.oceanstatepolicy.org
and click on "The Transparency Train"

Five survey questions for General Assembly candidates

Voter Initiative – This legislation would allow citizens to place legislation on the ballot for approval or rejection by voters in a general election. This vehicle would provide a check on special interests blocking legislation that the general public believes would benefit the state.

Inspector General – This legislation would create an independent office that would have the ability to review the operations of any and all state offices and agencies to look for inefficiency, waste and mismanagement, as well as corruption. The current auditor general serves the General Assembly and responds to its requests. The Inspector General would be able to initiate reviews independently.

Publish Legislator Voting Records – Currently it is difficult to determine how an individual legislator votes on issues in general session and in committee. Publishing the voting records of individual legislators both in general session and in committee would go a long way to improving openness and accountability in the General Assembly.

Voter Handbook: Pro and Con – Currently only the arguments supporting passage of referenda questions are published by the Secretary of State. In the interest of open government the arguments against passage should also be included in taxpayer supported information booklets.

End Legislative Grants – These grants can be used by leadership in the General Assembly to reward supporters and punish opponents. The grants can be used by legislators to promote their reelection. The grant process circumvents all normal budget review procedures.

See survey results on page 3

For more detailed information on these five issues and for updates on the OCG candidate survey, go to www.ocgri.org.

Candidates for the General Assembly who have not yet completed the survey can download a survey from the website and send to:

OCG Survey
PO Box 8683
Warwick, RI 02888

Voting records easier to check with new website

Until now, it has been an extremely tedious process to find your legislator's vote on a particular bill.

Visit this new web site:

www.RhodeIslandVotes.org

This site, to be announced in October by the Ocean State Policy Research Institute (OSPRI), makes all floor votes on legislation available and easily accessible.

You can now call up all of the bills your legislator introduced and all of his/her votes on these and other bills. You can see how other members of the house and senate voted on these bills and whether it became law or was vetoed by the governor. Also available is the number of votes your legislator missed, with several missing more than 200 votes.

Rhode Island Votes gives users instant access to concise, plain language and objective descriptions of every single bill, amendment, and vote that takes place in the Rhode Island legislature. Unlike any other bill tracking utility, Rhode Island Votes is unique because

all legislative actions are described - not just those selected by a particular interest group. It is searchable by legislator, keyword, and 50 subject categories, so users can create their own custom 'voting record guide.'

Additionally, you can post a public comment, view others' comments, and participate in citizen surveys on each bill. You can automatically e-mail legislators or others about a bill. You can sign up for e-mail notifications of action on any bill or subject area of interest, including new bill introductions.

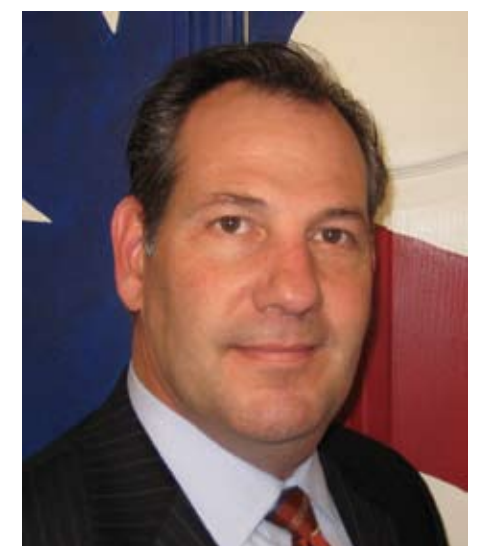
Rhode Island Votes is a free public service of OSPRI. The site empowers citizens to take a more active part in the democratic process, and hold their elected representatives accountable.

With access to this fantastic tool, there is no longer any excuse for the average citizen to plead ignorance to what is going on in Rhode Island government. In a democracy it is up to us, the voters, to be informed when we go to the polls.

Ocean State Policy Research Institute (OSPRI)

The Ocean State Policy Research Institute (OSPRI) was founded by Bill Felkner in July 2007. OSPRI is an independent, nonpartisan, nonprofit research and educational institution. Its purpose is to inform citizens, community leaders, business people, media, and public officials about matters that affect their families, schools, jobs and communities.

Go to www.oceanstatepolicy.com for the best listing in Rhode Island of voting records for your legislators and for budget and contract information for your city or town.



Bill Felkner

OCG General Assembly Candidate Survey – 2008

A survey was sent to all General Assembly candidates for the November general election. Listed below are those who responded by Sept 27. Those responding after Sept 27 will appear on www.ocgri.org. Press releases will be sent to local and statewide media. Candidates can endorse our issues. OCG does not endorse candidates, but lists those who support or oppose our issues. See page 2 for description of issues.

Survey answers from candidates for State Senate

Name	District	Voter Initiative	Inspector General	Publish Legislator Voting Records	Voter Handbook: Pro and Con	End Legislative Grants
CHRISTINE CORENE SPAZIANO	4	support	support	support	support	support
CHARLES J LEVESQUE	11	oppose	oppose	no opinion	oppose	oppose
CHRISTOPHER S. OTTIANO	11	support	support	support	support	support
LOUIS P DIPALMA	12	support	support	support	support	support
JUNE N GIBBS	12	support - see note below	support	support	support	support
DONNA J. PERRY	13	support - see note below	support	support	support	support
EDWARD J ONEILL	17	support	support	support	support	support
KATHLEEN E MCCURDY DENNEN	19	support	support - see note below	support	support	support
LEO R BLAIS	21	oppose	oppose	support	support	oppose
SALVATORE LOMBARDI	21	oppose	support	support	support	support
MARC A COTE	24	support - prime sponsor since 1995	support	support	conceptually support - need more information re: process	support
BEATRICE A LANZI	26	oppose	support	support - the floor votes are already in the Journal	support	see note below
WILLIAM A WALASKA	30	no opinion	support	support	support	oppose
DAVID E BATES	32	support - I have been a sponsor	support	support	support	support if all grants are eliminated
LEONIDAS P RAPTAKIS	33	support	support	support	support	no opinion
JOHN A PAGLIARINI JR	35	support	support	support	support	support
WILLIAM J CONNELLY	36	support	support	support	support	support

notes

Donna Perry - As a candidate, a citizen, a taxpayer, and most importantly a parent concerned for the future, I am deeply grateful for the diligent and extraordinarily important work OCG does in its effort to reform state government in RI. Thank you OCG and don't ever relent from the cause.

June Gibbs - I'm disappointed you did not include removal of the "master lever"

Beatrice A. Lanzi - all the elementary schools in my district use their grant for student services and community organizations need the grant. Would not support eliminating but would support including in the budget and/or changing process

Kathleen E. McCurdy Dennen - stricter laws are needed to punish any public official that defies the public trust

Survey answers from candidates for State Representative

Name	District	Voter Initiative	Inspector General	Publish Legislator Voting Records	Voter Handbook: Pro and Con	End Legislative Grants
EDITH H AJELLO	3	oppose	support	support	support	reform the process
DAVID V ANDERSON	4	support	support	support	support	support
PATRICK M WARD	7	support	support	support	support	support
NOEL O SANCHEZ	9	support	support	support	support	support
DAVID B TALAN	10	support	no opinion - concerned about creating a new state bureaucracy	support	support	support
RENAY OMISORE	11	support	support	support	support	no opinion - see note below
IVAN G MARTE	14	support	no opinion - to whom would the IG report to?	support	support - transparency is a major step forward in government	support - there has to be a way to stop this
CHRISTOPHER E FRAPPIER	15	support	No opinion - see note below	support	support	support
JASPER P BEDROSIAN	17	support	support	support	support	support
JOSEPH A TRILLO	24	support	support	support	support	support
JEAN ANN W GULIANO	30	support - Provided initiatives do not violate civil rights and is an indirect initiative like MA	support	support	support - provided both are objective	support - see note below
LAURENCE W EHRHARDT	32	support	support	support	support	support - see note below
CHRISTOPHER H LITTLE	33	support	support	support	support	support
TONY CIRILLO	33	support	support	support	support	support
MICHAEL A RICE	35	oppose - see note below	support	support	support	oppose - see note below
MATTHEW J MCHUGH	36	support	support	support	support	support
DONNA M WALSH	36	oppose	support	support	support	oppose
GEORGE W MARKHAM	37	support	support	support	support	support
ROD DRIVER	39	support - see note below	support - see note below	support - see note below	support - see note below	support - see note below
MICHAEL J MARCELLO	41	support	no opinion	support	support	support - see note below
WILLIAM J MCMANUS	46	support	support	support	support	support
BRIAN C NEWBERRY	48	support	no opinion - not enough info	support	support	support
JOHN A SAVAGE	65	support - But process must eliminate problems that have surfaced in other states	support	support - in easily readable form	support	support
MARGARET E KANE	66	supports with exceptions	supports - no opinion - needs more information	supports - see note below	supports - see note below	supports - see note below
JOHN G EDWARDS	70	support	support - see note below	support	support	support
DANIEL PATRICK REILLY	72	support	support	support	support	support
AMY G RICE	72	oppose	support	no opinion	no opinion	no opinion

notes

Renay Omisore - change the basis and continuation process - drop the "status quo"

Christopher E Frappier - I will support once I learn more about how large the office would be, and how it would be funded

Jean Ann W. Guliano - the process should allow for groups in need to receive grants based on the regular legislative processes and voting - not current system

Laurence Ehrhardt - Supports ending legislative grants - It is the grant process, not the grants themselves that is wrong. I stopped accepting these grants 2 years ago.

Michael A. Rice - Opposes Voter Initiative - I'm from Californis where this started in the 1890s. In electronic age it is a major tool of moneyed special interests. Very corrupt!
Opposes Ending Legislative Grants- These are also used to support small community groups w/ good aims. Characterizing as purely corrupt is unfair.

Rod Driver - I collected more than 1200 signatures on the Voter Initiative petition and have spent long hours at the statehouse testifying for bills on these proposals.

Michael J. Marcello - if grants are included in the normal budget process, then I believe they are acceptable

Margaret E. Kane - Philosophically I support all these issues but reserve judgement on specific legislation until it has been thoroughly reviewed.

John G. Edwards - as long as this office doesn't expand & add costs to overall budget

Class Exception, from page 1

Here are a few answers

First, about half of the fifty states have class exception language similar to Rhode Island's. The primary reason given for the use of this clause follows this line of reasoning: states with part-time legislatures (like ours) need class exception because part-time legislators have other employment and therefore may be employed by or be a member of a group that would be affected by legislation.

At least one Commissioner on the state's Ethic Commission has said, "The solution to this problem may be to have a full time legislature." Ironically, it just so happens that California and Pennsylvania with full time legislatures also have class exception clauses. Conversely, there are other states—Indiana, Mississippi, New Mexico, Vermont, South Dakota and Utah—with part-time legislatures that have no class exception language.

Second, some RI legislators argue a class exception clause is needed to allow legislators who are experts in a particular area to argue for or against a bill that impacts that area. Hence, these subject matter experts in the General Assembly can give their peers in the assembly reliable advice as to whether a particular bill should or should not be approved.

The fallacy of this argument

What guarantee do the non-experts have that the "expert" legislator is not promoting or opposing this particular bill to receive some financial benefit or avoid some financial loss? None.

Finally, another prominent member of the state's Ethics Commission has said, "if the class exception clause in part (b) is eliminated, it would prevent many legislators from voting to raise the state's minimum wage or prevent all legislators from voting on the budget, since the budget affects everyone."

The Ethics Commission needs to work on language that would allow votes on issues that would have a *de minimus* effect on legislators. Also, if the Ethics Commission does not eliminate the class exception, then at least determine the class be the general public.

These changes would go a long way towards eliminating much of the special interests and self-serving legislation that inundates each session of the General Assembly.

Testimony Heard

On June 3rd, the commissioners heard testimony both for and against any change to

part (b) from Operation Clean Government, Common Cause, legislators, lawyers and the Governor's office.

Eight of the eleven persons, testifying at this hearing, asked the Commission to consider a new regulation that either eliminates the class exception clause or revises it. Representatives Joseph Trillo and Douglas Gablinski testified for a change to the class exception clause.

The three people who urged the Commission to make no change were Senator David Bates, former Senator John Roney and Atty Robert Mann, representing the union supported group Working Rhode Island. Roney even suggested that any change to part (b) could result in the General Assembly taking action to reduce the Ethics Commission's already small operating budget, forcing the Ethics Commission to shut down. The ACLU also submitted written testimony urging no change in the class exception language.

Bold action needed

It will take bold action by the state's Ethics Commission to enact a regulation that closes the class exception loophole. However, the Commission was given this power per Section 8 of Article III of the state constitution.

This power of the Ethics Commission to enact ethics law was affirmed by the Rhode Island Supreme Court in Opinion No. 91-577-M.P. This opinion says the General Assembly cannot enact ethics laws that conflict with those enacted by the Ethics Commission.

Further, the RI Constitution in Article 1 Section 2 says all laws "should be made for the good of the whole." Here the word 'whole' can be interpreted as meaning 'the general public,' not some subset of the general public. The class exception clause seems designed to protect those subsets rather than the general public.

Article III Section 7 says elected officials are not to use their position for private gain or advantage. Part (b) of 36-14-7 allows public officials to use their position for private gain as long as that gain accrues to similarly situated individuals, businesses or employers. It condones behavior that borders on outright bribery.

It is time the Rhode Island Ethics Commission revised or eliminated part (b) so that public officials are held to the highest standards of personal conduct and are discouraged from using their positions to advance personal interests over the public good.

OCG's TV show brings issues and players to voters

BY JOHN CARLEVALE

Operation Clean Government's State of the State Public Access TV Program was founded in 1992 as "State of the State Communications" by John Carlevale, Joe Devine, Don Gill and Robert Plante because they were frustrated with television, radio and print media reporting of the credit union crisis.

Media reporting was extremely lopsided and significant pieces of the total story were often missing. The reports relied mostly on

Following the resolution of the credit union crisis, programming content was expanded to focus on current matters, concerns and issues relating to good government and political citizenship.

In 2001, OCG assumed sponsorship of the program as three of the four founding members had moved out of Rhode Island.

State of the State has remained non-partisan and has become an important media tool in promoting good government and citi-



State of the State Production Crew—Seated: l. to r., Barry Schiller, Roy Pruett, John Carlevale. Standing: Frank Lombardo, Norm Grant, Casey Lamont, Jim Hirst, Dan Marso. Missing: Robert Arruda, Paul Auger, Fred Bergemann, Anne Gardner, Bob Haiken, Christian Williams

information from elected officials and banking experts. The credit union depositor side of the story was sorely lacking. Consequently, the aforementioned individuals decided to create a new show in order to present "the rest of the story" like the famous Paul Harvey.

State of the State Communications was established as a private corporation and began to produce two radio shows and one public access television show, named 'State of the State.' The radio shows were eventually terminated in favor of the television venue.

zen involvement while maintaining editorial independence from OCG itself.

During election years, candidate interviews and debates are included in the programming, as well as discussions of election issues and concerns by candidates and non-candidates

The production crew and committee members are volunteers who devote personal time and effort to the show because they believe in the goals of OCG and State of the State.

Each 'State of the State' program is broadcast as follows on three public access channels.

Saturday at 11:00 PM on Cox 13 and Verizon 32 and Full Channel 9

Sunday at 8:00 AM on Cox 13 and Verizon 32 and Full Channel 9

Thursday at 9:00 PM on Cox 18 and Verizon 31 and Full Channel 9

Friday at 3:00 PM on Cox 18 and Verizon 31

Friday at 3:30 PM on Full Channel 9

Cox 18 - broadcast in Providence, N. Prov., Warwick, W. Warwick, Coventry, E. Greenwich

Had enough? You CAN help change Rhode Island – Join OCG

Since 1993, OCG has had a simple straightforward agenda: to promote honest, responsible and responsive state government. By reading the contents of this newspaper you will have learned a little about what this **all-volunteer** organization is doing. Every penny goes to combating and working to reform state government. Please help us to continue the fight for a corruption free Rhode Island state government by joining OCG.

OCG MEMBERSHIP FORM

YES, I want to join other Rhode Island citizens and help to promote Honest, Responsible and Responsive State Government.

New member

Renewal

\$25

\$35

\$50

\$100

\$250

\$____ Other

Individual

Family (list all names to be included)

Name(s) _____

Home Phone _____

Business Phone _____

Street _____

Email Address _____

City/Town _____

State _____

Zip _____

OCG is a non-profit organization, however contributions are not tax deductible because our activities include lobbying.

Yes, I would like to volunteer some time or participate on one or more of the OCG committees. Please call me.

I heard about OCG from _____

October/November 2008

OPERATION CLEAN GOVERNMENT • PO BOX 8683 • WARWICK, RI 02888

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OCG holds public servants to the highest levels of ethical conduct