

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**February 7, 2005**

**The Rhode Island Ethics Commission held its 3rd meeting of 2005 at 9:00 a.m. at the Rhode Island Ethics Commission Conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Monday, February 7th, 2005, pursuant to the notice published at the Commission Headquarters and on the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair                      James C. Segovis  
George E. Weavill, Jr., Secretary      Barbara R. Binder  
Richard E. Kirby      Ross E. Cheit**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson, and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.**

**At approximately 9:09 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on January 25, 2005.**

**Commissioner Segovis noted corrections to be made on pages 6 and 7. Upon motion made by James C. Segovis and Richard E. Kirby, it was unanimously**

**VOTED: To approve the minutes of the Open Session held on January 25, 2005, as corrected.**

**The next order of business was discussion regarding proposed regulations, specifically consideration of final proposals involving gifts. Commissioner Segovis questioned whether the annual Chamber of Commerce dinner attended by legislators would constitute a program under the old regulation, drafted as Option #1. Chair Lynch opined that it would. Commissioner Kirby recalled that he disagreed with an advisory opinion issued under the old regulation that concluded that legislators attending a seminar at Brown University could not accept a brown bag lunch unless they paid for it, given that the University receives grant funds from the legislature. He noted that the old regulation provided no exception for a tuna sandwich and indicated his support for Option #2. Commissioner Segovis inquired whether the sandwich would be allowable under #2 and indicated that is what Commissioner Butler had wanted. Ms. D'Arezzo explained that the definition of insignificant value included in #2 relates only to services and informational materials, not meals or other gifts.**

**Commissioner Segovis expressed that having a tuna sandwich lunch**

when given as part of a program would not be a big issue. Commissioner Binder stated that she is comfortable with the concept of Option #4, but is not sure that \$20 and \$40 are appropriate numbers. In response to Commissioner Kirby, Mr. Gramitt clarified that the proposals do not allow the receipt of cash or debt forgiveness. Commissioner Binder questioned how to deal with a situation like the Governor speaking to a children's group and being given a t-shirt, where he would not want to have to give it back to them. Chair Lynch voiced his belief that there is nothing wrong with having to tell the person you are meeting with that the Code of Ethics prohibits you from accepting anything. He suggested that people have become too used to receiving free lunches and tickets to sports games and that a bright line must be drawn. He stated that zero tolerance makes it clearest, although he believes any of the four options would be a step in the right direction.

In response to Commissioner Kirby, Chair Lynch indicated the Commission may select as many options as they wish to notice for rule-making, but he would like to limit it to one. Commissioner Kirby noted that, while he had voted in favor of repealing zero tolerance, he is in favor of trimming back the current rule. He expressed that he is not in favor of draconian rules but would support something reasonable. In response to Commissioner Segovis, Chair Lynch stated that there is a consensus among the Commissioners that the current gift regulation does not work. Commissioner Kirby asked if there is any real evidence of people violating the rule. Commissioner

**Binder suggested that it is not a matter of having evidence, but that it feels unseemly. Commissioner Segovis pointed to a recent Providence Journal article reporting the receipt of gifts and questioned what the true value of a ticket to the World Series would be. He noted that only certain individuals received them and, although they paid the donors back, the issue is whether the ticket really was worth only \$150. He indicated that there is an ongoing pattern of individuals going on trips to Disney World for drug seminars, which tends to show a general disrespect for the gift rule.**

**Chair Lynch advised that he has heard the public state that public officials and employees should not receive anything other than their salaries. Commissioner Segovis inquired how the proposals would apply to the receipt of wedding gifts, noting the prior advisory opinion issued to the Secretary of State. Ms. D'Arezzo explained that none of the proposals contain exceptions for weddings, births, adoptions or funeral flowers. She advised that the \$20/\$40 rule would allow an interested person to give a gift worth no more than \$20, whether for a wedding or other occasion. Chair Lynch recalled that the Commission has only dealt with two advisory opinion requests relating to the receipt of wedding gifts. Commissioner Kirby expressed that it seems ridiculous to prohibit friends who are interested persons from giving wedding gifts, but suggested that the Commission would only have to address the issue if a Complaint were filed.**

**Commissioner Cheit stated that all four proposals have potential as a meaningful gift rule. He voiced his belief that if zero tolerance were adopted the Commission would spend time on Complaints alleging the receipt of gifts of very little value. He suggested moving forward with Option #4, but indicated he would be willing to consider others for the purpose of a public hearing. Commissioner Kirby concurred. Chair Lynch stated that they must decide on an amount in order to notice #4 for public hearing. Commissioner Kirby advised that pursuant to Loudermill the amount does not have to be etched in stone and may change. Ms. D'Arezzo represented that during the prior gift hearings the Commission had noticed one amount as a cap and later adopted a lower amount. She recalled that the Commission determined that there would be no violation of the APA given that it adopted a lower amount.**

**Commissioner Cheit proposed a \$25 limit with a \$150 aggregate amount. Commissioner Binder opined that they would not need an aggregate if they adopted a \$10 amount, which is the cost of a tuna sandwich and a soda. However, she would be willing to consider a \$20 aggregate. Commissioner Weavill expressed his wish that the Commission would start out with a higher amount, recognizing that meals provided at seminars and group meetings run in the \$15 to \$20 range. He also cautioned that the amount would not account for inflation. He suggested starting out on the higher side and hear public comment. Chair Lynch asked whether they would have to re-notice the hearing if they decided to consider a lower amount after**

hearing testimony on the higher amount. In response to Commissioners Binder and Cheit, Ms. D'Arezzo stated that she would research the current requirements under the APA and review what the Commission did during the last hearings and report back at the next meeting.

In response to Commissioner Segovis, Mr. Gramitt stated that Option # 4 eliminates all reporting requirements. Commissioner Kirby represented that discussion regarding the amounts is helpful, noting that when the Commission repealed zero tolerance it did not discuss the issue of the amounts beforehand. He asked if Commissioner Cheit's proposed \$150 cap would be a limit per interested person or from all interested persons. He indicated that an interested person could buy an official lunch twenty times per year, but stated he does not believe that buying a sandwich would buy someone's vote. Commissioner Binder suggested an upper limit on how many \$10 lunches one could accept. Commissioner Segovis stated that he could live with not worrying about upper limits because he does not believe currying favor works that way. He opined that if you have a low amount, you do not need to have an aggregate limit. He also suggested that the Commission could deal with situations like weddings on a case by case basis.

Chair Lynch advised that he is hearing support for Options #2 and #4, noting that #2 is closer to what he wants. Commissioner Binder stated that they need to make sure they may notice more than one

option for hearing. Ms. D'Arezzo represented that the Commission previously noticed three options for hearing. The only requirement is that all options are made available to the public. Chair Lynch expressed his desire to notice only two choices. Commissioner Cheit stated that he liked not getting into aggregate amounts and setting a low amount such as \$20 or \$25 in Option #4. Commissioner Kirby indicated that \$25 is just a lunch, not a theater or a sports ticket. Commissioner Binder stated that she would be comfortable with \$25 in Option #4, but perhaps an aggregate of \$40 or \$50 would be a good idea. In response to Commissioners Kirby and Binder, Mr. Gramitt stated that the aggregate would apply to gifts from one interested person. In response to Commissioner Segovis, Ms. D'Arezzo explained that a lobbying firm would be considered a single interested person for purposes of the regulation, otherwise each lobbyist or employee of the firm could give an official gifts worth up to the aggregate limit.

Commissioner Segovis advised that Commissioner Butler had favored a \$20/\$40 rule. Commissioner Kirby asked if there were a consensus for gifts of \$25 up to two times per year, but stated that he would consider a \$75 aggregate. In response to Commissioner Segovis, Mr. Gramitt advised that the Executive Director would favor Option #4, which provides for a smooth transition between regulations. In further response, Ms. D'Arezzo informed that she has prior experience under the old zero tolerance regulation. Commissioner Cheit expressed his desire to argue for a slightly

higher aggregate and hear comment from the public. Commissioner Kirby proposed amounts of \$75 and \$100. Commissioner Cheit stated that likes a \$25 amount but wants to hear from the public. Commissioner Kirby indicated he is not married to any number.

Chair Lynch suggested that no public official would come before the Commission to argue to lower the aggregate. Commissioner Binder stated that, based upon her state government experience, she cannot imagine needing to go above a \$50 aggregate. Commissioner Segovis cautioned about embarking upon a slippery slope that would include golf outings. Commissioner Cheit stated that golf could not come in if they adopt a \$25 amount. Upon motion made by Barbara Binder and duly seconded by James C. Segovis, it was

**VOTED:** To notice Option #4, with a \$25 limit and a \$50 aggregate limit, for public hearing

**AYES:** James C. Segovis, Barbara R. Binder and James Lynch, Sr.

**NOES:** George E. Weavill, Jr., Richard E. Kirby and Ross E. Cheit.

The motion failed on a 3-3 vote.

Upon motion made by Ross E. Cheit and duly seconded by Richard E. Kirby, it was

**VOTED: To notice Option #4, with a \$25 limit and a \$75 aggregate limit, for public hearing.**

**AYES: George E. Weavill, Jr., Richard E. Kirby, Ross E. Cheit, Barbara R. Binder and James Lynch, Sr.**

**NOES: James C. Segovis.**

**Upon motion made by George E. Weavill, Jr. and duly seconded by Richard E. Kirby, it was unanimously**

**VOTED: To notice Option #2 for public hearing.**

**Commissioner Weavill stated that although the Commission said it would review the wedding situation on a case by case basis, it still has to fit within the rule. Commissioner Cheit suggested that if you are an interested person you should not be giving a large gift. Commissioner Kirby expressed that the problem is that people do not understand what an interested person is. He stated that their emphasis should be on educating the public as to what constitutes an interested person. Chair Lynch indicated they could address it at the public hearing. Commissioner Binder noted that the issue of fair market value remains to be addressed. She asked how they capture the fact that the face value of a World Series ticket may be \$75, but in the real world that is not its cost.**

**Commissioner Segovis indicated that Option #2 eliminates that problem.**

**Commissioner Binder replied that officials simply pay the donor the \$75 face value cost. Commissioner Kirby noted that Option #2 identifies fair market value. Mr. Gramitt explained that Commissioner Binder's concern relates to the official paying the interested person the \$75 face value, so the ticket is no longer a gift under the regulation, but the value of the ticket greatly exceeds the face value. Commissioner Segovis suggested that if the fair market value language is not in both options it must be added. Commissioner Kirby questioned whether they should add language relating to entertainment. Legal Counsel suggested adding language relating to cost or fair market value, whichever is greater. She also noted that they would need to add language to Option #2 if they wished to expand the definition of insignificant value beyond informational material and services. Upon motion made by James C. Segovis and duly seconded by Richard E. Kirby, it was unanimously**

**VOTED: To adopt language added to Options #2 and #4 to capture the Commission's concerns regarding fair market value.**

**Ms. D'Arezzo advised of recent amendments to the APA and indicated that the Commission must provide 30 days notice of the public hearing.**

**The next order of business was discussion of the sealing of**

**Executive Session minutes and reporting individual Executive Session votes. At Commissioner Cheit's request, Ms. D'Arezzo advised that in 2003 she consulted with Special Assistant Attorney Generals Michael Field and Joseph Gaeta about the Commission's practice of reporting in Open Session only the votes taken in Executive Session, not the individual votes of each member. They opined that, although the Open Meetings Act requires disclosure of Executive Session votes when the body reconvenes in Open Session, it does not require disclosure with specificity at that time. The Act does require the body to have a public record of the individual votes cast in Executive Session within two weeks of the meeting. She explained that it is the Commission's practice to produce bare bones minutes for each Executive Session line item to comply with the requirement. If such individual minutes have not been approved within the two weeks, she indicated that her unofficial notes would suffice to provide that information, if requested. In response to Commissioner Cheit, she stated that these individual minutes are not sealed, but noted they would nonetheless be subject to disclosure under the Open Meetings Act.**

**Ms. D'Arezzo informed that the Commission began its practice of sealing Executive Session minutes in December 2001. She advised that there had been concern regarding the disclosure of sensitive information during litigation discussions. She represented that, regardless of the act of sealing the Executive Session minutes, most Executive Session material would be statutorily exempt from**

disclosure under the Access to Public Records Act. Commissioner Cheit stated he is now clear that the information regarding Executive Session votes does become public, but he does not see any reason to delay doing so. Commissioner Segovis reported that Commissioner Butler had expressed concern about disclosing who voted for or against probable cause and initial determination because the member would be asked why he or she voted that way at a time when he or she cannot respond. Commissioner Cheit noted that they still would be unable to discuss the matters, even after the minutes publicly disclosed the individual votes.

Commissioner Cheit questioned what purpose delayed disclosure serves. Commissioner Kirby recalled that the Chair previously would report out that the vote had been, for example, 4 to 1. Chair Lynch said he had no problem doing that. Commissioner Kirby expressed that reporting individual votes would isolate individual members for lobbying, inquiries and criticism. Commissioner Cheit inquired if he may direct a question to the Providence Journal. Chair Lynch replied that he would rather he did not. Commissioner Cheit expressed that as long as he knows the votes are being reported out he does not need a vote on the issue. Commissioner Kirby suggested that the Commission should review the issue of allowing a Complainant to be present during the probable cause hearing and Chair Lynch agreed. Commissioner Cheit indicated that they should consider a regulatory change if it is an issue.

**The next order of business was a status update on Operation Compliance. Investigator Steven Cross addressed the Commission regarding the history of Operation Compliance, beginning in 2001 with the issuance of reminder letters to non-filers. He advised that the Commission staff has initiated non-filing Complaints each year since, with 21 Complaints most recently filed in January 2005 against state legislators, school committee members and town councilors. He stated that 16 of the Complaints have settled and the \$7,500 in assessed civil penalties will go the State's general fund. \***

**\*Commissioner Kirby left the meeting at 10:40 a.m. and returned at 10:44 a.m.**

**Mr. Cross advised that, prior to the staff's filing of Complaints in January, the compliance rate for state representatives, town councilors and school committee members were 98%, 95% and 97%, respectively. Those rates are now 100%, 98% and 99%. He also reported that both state judges and senators had 100% compliance rates prior to the initiation of Complaints. He indicated that the new hires will assist with the enforcement efforts. Mr. Cross noted that the Acting Director of the Board of Elections has supported providing notice of financial disclosure requirements when candidates file candidacy papers. He stated that the Commission aims to have electronic filing with statements available online in the future. Mr. Cross expressed that there is a constitutional mandate to file disclosure and the staff urges voluntary compliance by public**

**officials.**

**Commissioner Binder complimented the staff for its financial disclosure efforts. Mr. Willever thanked the Commission for their support in this endeavor. In response to Commissioner Kirby, Mr. Cross advised that the non-filing Complaints relate to the 2003 Statement. Commissioner Kirby noted that others who have not filed the 2003 Statement still could be subject to Complaints. In response to Commissioner Segovis, Mr. Cross explained the process by which non-filers receive reminder notices. Commissioner Segovis expressed that the public should know that the staff goes out of its way to obtain voluntary compliance. Ms. D'Arezzo advised that approximately 1,500 reminder notices were sent to officials in July 2004 for failure to file the 2003 Statement. As of the close of December, the total compliance rate was over 90%.**

**At 11:00 a.m., upon motion made by James C. Segovis and duly seconded by Richard E. Kirby, it was unanimously:**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), for the discussion of investigative proceedings regarding allegations of misconduct and/or the discussion of litigation, and approval of minutes relating to such discussions, to wit:**

**a.) Motion to approve minutes of Executive Session held on January**

**25, 2005.**

**At 11:09 a.m. the Commission returned to Open Session. The next order of business was a motion to seal the minutes of the Executive Session held on February 7, 2005. Commissioner Kirby moved to seal the minutes. Commissioner Binder inquired why the minutes should be sealed. Commissioner Cheit noted that the only matter addressed in Executive Session was approval of the minutes. Commissioner Kirby withdrew his motion.**

**The next order of business was the Director's Report. Mr. Willever reported that there are 28 advisory opinions and 13 complaints outstanding.**

**The next order of business was new business. Chair Lynch advised that Commissioner Cheit had raised the issue of having a place for the members to bring up issues for future discussion and expressed his support for the idea. Philip West of Common Cause inquired if it also would be a time for public input. Chair Lynch replied that it would not, noting that the Commission does offer the opportunity for public comment from time to time. Mr. West asked if there would be a way for the public to be able to raise an issue before the Commission for a minute or two. Commissioner Kirby informed that some town councils have an open forum agenda item, but suggested that the Chair limit each speaker to two minutes, for a total of fifteen minutes. Commissioner Segovis indicated that such a forum might be helpful,**

but should be of a limited time and subject to strong checks and balances. Chair Lynch stated that he has no problem with it if that is the consensus. In response to the Chair, Mr. Willever cautioned that the comment period should not become a way for the public to task the staff.

Legal Counsel advised that some town councils require advance notice to the clerk if a member of the public wants to be heard. Commissioner Weavill voiced his concern regarding the Commission's exercise of quasi-judicial functions. Ms. D'Arezzo cautioned that the Commission would need to adopt a clear policy as to what it would take comment on, noting that third parties could ask to speak on pending requests for advisory opinions. Chair Lynch asked Legal Counsel to provide written guidance as to what the Commission may and may not consider as public comment for the next meeting. Commissioner Segovis concurred.

At 11:22 a.m., upon motion made by Richard E. Kirby and duly seconded by James C. Segovis, it was unanimously

**VOTED: To adjourn the meeting.**

**Respectfully submitted,**

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**George E. Weavill, Jr.**

**Secretary**