

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

April 5, 2005

The Rhode Island Ethics Commission held its 7th 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 Tuesday, April 5th, 2005, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

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

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason M. Gramitt, Staff Attorney/Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson; and Commission Investigators Steven T. Cross, Peter Mancini, and Michael Douglas.

At approximately 9:05 a.m., Chair Lynch opened the meeting. The first order of business was to extend time to approve the minutes of the Open Session held on March 8, 2005. Upon motion made by Commissioner Weavill, and duly seconded by Commissioner Murray,

it was unanimously

VOTED: To extend time to approve the minutes of the Open Session held on March 8, 2005.

The next order of business was to approve the minutes of the Open Session held on March 22, 2005. Upon motion by Commissioner Weavill, and duly seconded by Commissioner Segovis, it was unanimously:

VOTED: To approve the minutes of the Open Session held on March 22, 2005.

ABSTENTION: James V. Murray

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of James A. Seveney, a member of the Portsmouth Town Council. The petitioner was present. After the Commission Staff recommendation was presented, Mr. Seveney appeared to seek advice on an unrelated issue concerning the Portsmouth Town Charter. Chair Lynch responded that this was not the time to address a new issue. Commissioner Cheit asked Mr. Seveney whether he had spoken to the Commission Staff about his

request as it presented a straightforward issue. Mr. Seveney replied that he had spoken to the Commission Staff and wanted an advisory opinion “out of an abundance of caution.” Upon motion made by Commissioner Binder, and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to James A. Seveney, a member of the Portsmouth Town Council.

The next advisory opinion was that of James D. McGinn, a Principal Civil Engineer employed by the Rhode Island Department of Environmental Management (DEM). The petitioner was present. After the Commission Staff recommendation was presented, Commissioner Segovis inquired about past cases heard before the Commission where the DEM frowned upon its employees accepting outside consulting work and asked why this request was different from them. Staff Attorney Robertson advised that the distinction in this request is that the petitioner would not be appearing before any division of the DEM, and that the petitioner represented that he would essentially be anonymous from his work as the firm would be submitting it to the DEM. Staff Attorney Robertson noted that in the past that the DEM employees were actually representing their clients before the DEM. She also noted that this draft advisory opinion cited Advisory Opinion 2003-51, which addressed these previous concerns raised by the DEM. Mr. McGinn pointed out that, in the past, employees of DEM were personally submitting work to the DEM that

bore their professional engineer's stamp on it and were appearing before the DEM regarding such outside work. Commissioner Weavill asked the petitioner whether or not the DEM was aware that he was seeking an opinion from the Ethics Commission. Mr. McGinn stated that he spoke to the Ethics Officer at the DEM and he was following the suggested course.

In response to Commissioner Weavill, Mr. McGinn stated that he obtained the employment offer from an acquaintance who asked him to do work for a private firm that had a heavy workload. Commissioner Binder asked Mr. McGinn how he would maintain his anonymity. Mr. McGinn explained that his work would be anonymous because his division of the DEM is completely separate from those to which such work may be submitted, and he described the difference between the work handled by his division and those divisions that could receive his outside work. Mr. McGinn also stated that the firm has no involvement with his division. Chair Lynch thanked the petitioner for appearing before the Commission today and stated that such appearance helped to persuade the Commission to make a favorable ruling. Upon motion by Commissioner Murray, and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto,
to James D. McGinn, a Principal Civil Engineer employed
by the DEM.

The next advisory opinion was that of Col. Stephen McGrath, Chief of Police for the City of Cranston. The petitioner and Cranston City Solicitor Michael Glucksman were present. After the Commission Staff recommendation was presented, Col. McGrath stated that the top positions are dependent upon position openings. In response to Commissioner Binder, Staff Attorney Leyden explained that the petitioner would not be involved in his brother's promotion, including any interviewing or the application process, and pointed out that the Major would assume such responsibilities. In response to Commissioner Binder, Col. McGrath stated that the Major reports to him on a day-to-day basis. Commissioner Binder expressed her concern that the plan provided that a subordinate of the petitioner would be making promotional recommendations regarding the petitioner's sibling.

In response to Commissioner Cheit, Col. McGrath stated that he established the plan for the alternative chain of command for these situations that includes the Major. Commissioner Cheit inquired whether the Mayor of Cranston was involved with this plan and whether the next Mayor of Cranston would be bound by it. Col. McGrath informed that he spoke to the Mayor and that he would have to propose the plan to the next Mayor. In response to Commissioner Cheit, Staff Attorney Leyden explained that another advisory opinion request would be appropriate in the event that the facts change. Commissioner Segovis stated that this request was similar to a recent request by the Director of the Rhode Island Department of

Health who sought to avoid potential conflicts given his spouse's profession. Commissioner Segovis also pointed out that this previous advisory opinion had a plan to avoid potential conflicts that included individuals from outside of the petitioner's department and asked why such individuals were not included in this plan.

Staff Attorney Leyden noted that the Police Department has a narrow area of specialization and a specific chain of command. Commissioner Segovis voiced his concern about an appearance of impropriety and stated that he would be more comfortable with one more check and balance. Commissioner Segovis also opined that police work was not so different and that it would not be an obstacle to involving someone from outside of the department to make recommendations to the Mayor. Staff Attorney Leyden advised that it would be best to ask Col. McGrath's opinion on whom else could be involved in the plan. Commissioner Binder stated that it may be difficult to remove the petitioner from the day-to-day oversight of his brother, but that the petitioner's promotion authority over his brother could be removed. Commissioner Cheit noted that a retired individual from the Police Department could be utilized as this is done in the judiciary. Col. McGrath indicated that the Mayor may want to be involved in such a selection. Commissioner Binder expressed that she would like this information before she makes a decision on the advisory opinion.

Chair Lynch expressed his concern with the Major's involvement in

this plan and recalled similar events in the past that raised such issues. He also opined that the petitioner's effort to build a "Chinese wall" was admirable, but that the wall was not strong enough. He indicated that it was not the petitioner's role to figure out this situation and that it was the city's responsibility. Commissioner Lynch also expressed that it would be impossible for the Major not to respond to the petitioner's direction. Commissioner Binder stated that she would approve the advisory opinion as to the day-to-day operation of the Police Department. Cranston City Solicitor Michael Glucksman stated that the Mayor may want to be personally involved with a new plan. Commissioners Binder, Lynch, and Cheit all expressed that the Mayor's involvement with the plan would make a difference in their view of the advisory opinion. Col. McGrath stated he would share the Commissions recommendations. Chair Lynch indicated the Commissioners' remarks were only comments, not recommendations.

Commissioner Binder made a motion to accept the advisory opinion as to the day-to-day issues and Commissioner Cheit seconded the motion. Commissioner Murray asked whether it would be better to have the request resubmitted rather than do a piecemeal approval. Commission Segovis suggested that a new advisory opinion be requested. Staff Attorney Gramitt advised that the Commission could keep the safe harbor provided in the advisory opinion intact until the Commission's next meeting. Commissioner Binder stated she was not comfortable with the safe harbor provision applying to the

promotion issues. Chair Lynch stated he preferred a vote up or down and not a piecemeal approach. Commissioner Binder indicated that she would like the Commission to give the petitioner some comfort in doing his job. Commissioner Weavill noted there would be no safe harbor if the Commission voted down the draft advisory opinion. Staff Attorney Jason Gramitt advised that the Commission Staff could inquire into the promotion issues between now and the next meeting.

Commissioner Murray asked whether the day-to-day operation issues or upcoming actions would suffer without the advisory opinion. Col. McGrath stated that there are positions that need to be filled that are on a set time frame. Chair Lynch stated he did not want to hold up Police Department proceedings and would support Commissioner Binder's motion. Commissioner Binder inquired whether any promotions were coming up that may impact the petitioner's brother. Commissioner Weavill stated that he was against amending the advisory opinion and suggested leaving the safe harbor intact until the Commission reconsiders the request. Commissioner Murray stated he was comfortable with the present safe harbor if the Commission reconsiders the request later. Chair Lynch stated that the City needs to decide how to address this situation and that it can talk to the Commission's Staff about it. Chair Lynch also expressed concern about the awkward position the petitioner may be put in as a result of the current plan. Commissioner Murray suggested that the burden be placed on the City to work out a plan and made a motion to continue the advisory opinion to the next meeting and to keep the

safe harbor provisions in effect for those two weeks. Col. McGrath stated that he would take no action regarding his brother during the continuance. Commissioner Weavill duly seconded the motion and it was unanimously

VOTED: To continue the advisory opinion and to keep the safe harbor provisions in effect until the next meeting.

The next advisory opinion was that of Christopher M. Reynolds, PE, a Coventry Planning Board member. The petitioner was present. After the Commission Staff presented the recommendation, the petitioner clarified that as an engineer of record he stamps and prepares a plan. In response to Commissioner Weavill, the petitioner clarified that the Town Engineer worked for the Planning Commission. Commissioner Weavill noted that the facts provided by the petitioner misstate the authority of the Coventry Planning Board, which does more than just approve a project. Commissioner Weavill stated that he had a problem with the petitioner's request because the petitioner is a member of the Planning Commission and that this Commission supervises the completion of the project and has the authority to revoke permits and bring charges. Commissioner Binder stated that she also had concerns with this request. Upon motion by Commissioner Weavill, and duly seconded by Commissioner Binder, it was unanimously

VOTED: To reject the advisory opinion to Christopher M. Reynolds, PE, a Coventry Planning Board member.

The next advisory opinion was that of James Durkin, a member of the Narragansett Town Council. The petitioner was present. After the Commission Staff presented the recommendation, Chair Lynch asked the petitioner whether his property was commercial or residential. Mr. Reynolds stated his property was commercial. Chair Lynch inquired about the different tax implications for residential versus commercial use. Mr. Reynolds provided the percentage difference between residential and commercial property taxes. Upon motion by Commissioner Segovis, and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To accept the advisory opinion to James Durkin, a member of the Narragansett Town Council.

***Commissioner Cheit left the meeting at 10:07 a.m.**

At approximately 10:08 a.m., upon motion by Commissioner Murray, and duly seconded by Commissioner Segovis, 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 approval to wit:

a.) Motion to extend time to approve the minutes of the Executive Session held on March 8, 2005.

b.) Motion to approve the minutes of the Executive Session held on March 22, 2005.

At approximately 10:10 a.m., the Commission returned to Open Session. The next order of business was to review the Rhode Island Board of Governors for Higher Education (RIBGHE)'s Public Private Partnership Policy. In attendance were Sandra Lanni, General Counsel for RIBGHE, and Louis Saccoccio, General Counsel for the University of Rhode Island.

Staff Attorney Gramitt provided a brief background on this Policy and informed the Commission that the Commission Staff reviewed these documents and is of the opinion that they adequately address the concerns previously raised by the Commission. Commissioner Segovis asked what percentage of ownership is negotiated or set on a project. General Counsel Saccoccio stated there is no particular limit but that this may be an issue to manage or limit. General Counsel Lanni stated that they took all definitions from the Code of Ethics. Chair Lynch pointed out that in today's Providence Journal there is an article about the concerns of Brown University professors over a proposed patent and invention policy at Brown University. Chair Lynch noted that this article mentioned federal law and asked the General Counsel if they could discuss it. General Counsel

Saccoccio stated the Bayh-Dole Act was the start of law in this area and that it was enacted in the 1980s by the United States Congress in recognition that academics develop inventions and in an effort to give such inventors incentives.

Commissioner Segovis opined that these policies would facilitate Rhode Island becoming a center of emerging inventions. Commissioner Binder inquired about the policy behind these efforts. Chair Lynch replied that there were concerns in the past that Rhode Island was not attracting enough qualified individuals because there was not enough incentive. Commissioner Weavill asked whether major companies have such policies. General Counsel Saccoccio stated that the policies vary by company, but that individuals can make more money in the private sector. General Counsel Lanni noted that these policies are an effort to retain faculty and not lose them to the private sector where there are more incentives. Upon motion by Commissioner Segovis, and duly seconded by Commissioner Binder, it was unanimously

VOTED: To approve the RIBGHE Public Private Partnership Policy.

The next order of business was the Director's Report. Executive Director Willever stated that thirteen complaints and twenty-six advisory opinions are pending. In response to Commissioner Weavill, Executive Director Willever stated that the lead inspection advisory opinions constitute about eight to ten of the pending

advisory opinions. Executive Director Willever noted that the Commission is currently operating without Senior Staff Attorney D'Arezzo.

Executive Director Willever also informed the Commission that on March 23, 2005, he appeared before the House Finance Committee to discuss the Commission's budget. He shared with the Commission that he thanked the General Assembly for last year's budget increase and that he requested additional funding for next year's budget regarding nondiscretionary items. He indicated that Mr. West from Common Cause also testified in support the Commission's budget increase. Executive Director Willever informed the Commission that he previously appeared before the Senate with Senior Staff Attorney D'Arezzo. He stated that after both hearings he received positive feedback from the members. Executive Director Willever stated that he asked for funding for the annual COGEL conference and noted that this year it will be held in Boston from December 4th to 7th, 2005.

As a result of the proximity of this location, he informed that the costs to attend the conference this year will be less and that more individuals will be able to attend.

In addition, Executive Director Willever pointed out that the annual security review of the building took place and noted that Investigator Cross and the other investigators did a fine job training the Commission Staff and the rest of the building on security measures. He stated that the Commission Staff is receiving a lot of questions on

the new gift regulations and that the website is being updated to reflect these changes. He pointed out that the Commission Staff will be sending out informational letters about these changes and creating a pamphlet on them.

The next order of business was new business. There being none, at approximately 10:30 a.m., upon motion made by Commissioner Weavill, and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.
Secretary