

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

April 19, 2005

The Rhode Island Ethics Commission held its 8th 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 19th, 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 Frederick K. Butler*

Richard E. Kirby* Barbara R. Binder

James V. Murray Ross E. Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/Commission Education Coordinator; Staff Attorney Macall Robertson; and Commission Investigators Peter Mancini and Michael Douglas.

At approximately 9:00 a.m., Chair Lynch opened the meeting. The first order of business was to approve the minutes of the Open Session held on March 8, 2005. Upon motion made by Commissioner

Binder and duly seconded by Commissioner Segovis, it was unanimously

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

ABSTENTION: James V. Murray

The next order of business was to approve the minutes of the Open Session held on April 5, 2005. Commissioner Weavill noted that a statement made by petitioner Col. Stephen McGrath, Chief of Police for the City of Cranston, was omitted in the minutes and asked that the Commission Staff amend these minutes by adding the petitioner's statement that he would take no action regarding his brother during the continuance of his advisory opinion request. Upon motion made by Commissioner Murray and duly seconded by Commissioner Binder, it was unanimously:

VOTED: To approve the amended minutes of the Open Session held on April 5, 2005.

*** Commissioners Kirby and Butler arrived at 9:05 a.m.**

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 Wayne E. Cross, an Exeter Town Councilor. The petitioner was present. After the Commission Staff recommendation was presented by Staff Attorney Gramitt, Commissioner Weavill asked the petitioner if other Exeter Town Councilors were similarly impacted by the proposed tax freeze ordinance. The petitioner stated that two out of the five Town Councilors were impacted and that he was informed that the other impacted Town Councilor, Mr. Devaney, had already requested an advisory opinion on this issue several years ago. Commissioner Cheit inquired why the petitioner sought this advisory opinion given that one was apparently already issued on this question. The petitioner replied that he wanted his own advisory opinion to protect his actions. Upon motion made by Commissioner Weavill, and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Wayne E. Cross, an Exeter Town Councilor.

The next advisory opinion was that of Stephanie P. Manzi, a member of the Johnston Town Council. The petitioner was present. After the Commission Staff recommendation was presented by Staff Attorney Robertson, the petitioner informed that another member of the Town Council is a retired member of the Johnston Police Department and that she submitted this request out of concern that two of the five Town Councilors may not be able to vote on these police matters.

Commissioner Binder stated that she had some concerns about the petitioner participating in the ratification of the police contract. In response to Commissioner Binder, the petitioner clarified that the contract contains general provisions related to the detective division of the Police Department and that her husband is on the promotional list for the rank of sergeant. Also in response to Commissioner Binder, the petitioner informed that there are thirteen detectives and seventy-eight police officers in the Johnston Police Department. Commissioner Weavill pointed out that if her spouse becomes an officer in the union and participates in the negotiation of the police contract the advisory opinion would change. Upon motion made by Commissioner Kirby, and duly seconded by Commissioner Butler, it was

VOTED: To issue an advisory opinion, attached hereto, to Stephanie P. Manzi, a member of the Johnston Town Council.

AYES: George E. Weavill, Jr., James C. Segovis, Frederick K. Butler, Richard E. Kirby, James Lynch, Sr., Ross E. Cheit, and James V. Murray.

NOES: Barbara Binder.

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. In presenting the

Commission Staff recommendation, Staff Attorney Gramitt noted that this was continued from the prior meeting to allow the City to implement a procedure to remedy the problem of having the petitioner's subordinate conduct promotional interviews. Attorney Gramitt pointed out that the updated draft advisory opinion contains a procedure that was implemented by the City of Cranston prior to this meeting where by the Mayor and his two designees will conduct the interviews, rather than the Major. After the Commission Staff recommendation was presented, Commissioner Weavill asked the petitioner if the previously presented problems would be exacerbated if his brother were to receive a promotion. The petitioner replied that the next promotion for his brother is the rank of captain and even with this promotion the Major would insulate him from his brother. In response to Commissioner Weavill, the petitioner informed that the Major works directly with him and that the position of captain is the next highest position. Commissioners Weavill and Segovis expressed their concern about the future promotion of petitioner's brother. The petitioner explained how such promotions are made and informed the Commission on the interactions between the positions of major and captain. In response to Commissioner Cheit, the petitioner stated that the two Mayoral designees that conduct the promotional interview are outside of the Police Department and that they are the Director of Administration and Director of Personnel. Upon motion by Commissioner Segovis, and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Col. Stephen McGrath, Chief of Police of the City of Cranston.

The next advisory opinion was that of Michelle A. Buck, a Westerly Town Councilor. The petitioner was present. After the Commission Staff recommendation was presented by Staff Attorney Gramitt, the petitioner noted that she already recused from the Town Council's recent appointment of a Probate Judge. In response to Commissioner Segovis, the petitioner stated that the basis of her Christmas bonus is one week's salary and that everyone employed by her firm automatically receives the same bonus. Also in response to Commissioner Segovis, the petitioner stated that she could not remark on whether the bonus is always automatic or profit-based as she has only been there two years and that she has received it both years. In response to Commissioner Weavill, the petitioner confirmed that the Town Council appoints Zoning and Planning Board members and that her firm does not do much work before such boards as most of their Town work is before the Probate Court. Upon motion by Commissioner Butler, and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Michelle A. Buck, a Westerly Town Councilor.

The next advisory opinion was that of Lucien E. Benoit, DDS, a member and the Chairman of the North Smithfield Planning Board.

The petitioner was not present. Commission Staff Attorney Gramitt presented the recommendation. Upon motion by Commissioner Weavill, and duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue and advisory opinion, attached hereto, to Lucien E. Benoit, DDS, a member and the Chairman of the North Smithfield Planning Board.

RECUSAL: Richard E. Kirby.

Upon motion by Commissioner Segovis, and duly seconded by Commissioner Weavill, 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 approve the minutes of Executive Session held on March 8, 2005.

b.) Motion to approve the minutes of Executive Session held on April 5, 2005.

The Commission returned to Open Session, and the Chairman reported out the votes taken in executive session.

The next order of business was the Director's Report. Executive Director Willever reported on the pending complaints and advisory opinions. Chair Lynch inquired about the relationship between the Ethics Commission and the Attorney General's Office. Executive Director Willever stated that out of comity and efficiency of investigatory techniques that he and the Commission's prosecutors meet with federal and local law enforcement officials. Executive Director Willever stated that he did not want to prejudice the Commissioners by discussing particular matters. In response to Commissioner Cheit, Executive Director Willever stated that the same set of facts can give rise to a criminal complaint as well as an ethics complaint. Executive Director Willever explained that there are differences between these proceedings, such as the standard of proof. Commissioner Cheit inquired as to whether the resolution of a state case can impact a Commission complaint. Executive Director Willever replied that this is fact and judgment determinative. In response to Commissioner Cheit, Executive Director Willever stated that it is conceivable that the resolution of a federal case could remove the need for separate ethics proceedings. In response to Commissioner Cheit, Executive Director Willever confirmed that such a decision is an example of prosecutorial discretion. Commissioner Murray requested a spreadsheet on all pending Ethics Commission complaints. Executive Director Willever replied that he has such a chart with him and that Commissioner Murray can have a copy of it immediately.

The next order of business was new business. Commissioner Binder inquired whether the Staff had any documents or research on how we define an appearance of impropriety under the Code of Ethics. Executive Director Willever stated that he was aware of a Supreme Court case defining this language as “too thin a reed.” Commissioner Binder inquired about the utility of such language. Executive Director Willever expressed his opinion that such language is hortatory not mandatory and that it is more applicable to advisory opinions than to complaints. Commission Legal Counsel Managhan stated that she agreed with this interpretation. Commissioner Binder requested a copy of this case for the next meeting and inquired whether the Commission could issue regulations defining this phrase. Executive Director Willever stated that this issue would require further review. Commissioner Segovis recalled that Staff Attorney D’Arezzo previously created a memorandum on this issue, and that perhaps we could include it in the packet for next meeting. Chair Lynch indicated that he wanted to return to the proposed regulations the Commission previously discussed issuing and requested that they be placed on the agenda. Chair Lynch pointed out that the Commissioners should have a packet on the previously proposed regulations and that they could get this information from the Commission Staff. Commissioner Weavill inquired whether the Commission Staff had addressed the “or otherwise” language in the Code under R.I. Gen. Laws § 36-14-5(a). Commissioner Binder inquired whether the Commission Staff had addressed how to determine fair market value. Commissioner Kirby indicated that such

a determination is difficult as exemplified by the existence of tax courts to establish such values. Commissioner Segovis suggested that the Commission could determine value by looking at the circumstances presented. Commissioner Kirby proposed that the Commission could also make a finding of fact based on the record.

Mr. H. Philip West of Common Cause of Rhode Island was recognized by the Chairman, and addressed the Commission to voice his concerns over the application of the new laws regarding lobbyists' monthly disclosure reports.

At 9:40 a.m., upon motion made by Commissioner Weavill, and duly seconded by Commissioner Binder, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary