

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

**May 3, 2005**

**The Rhode Island Ethics Commission held its 9th 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, May 3, 2005, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

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|--|----------------------------|
| <b>James Lynch, Sr., Chair</b>           | <b>James C. Segovis*</b>   |
| <b>Patricia M. Moran, Vice Chair*</b>    | <b>Frederick K. Butler</b> |
| <b>George E. Weavill, Jr., Secretary</b> | <b>Barbara Binder</b>      |
| <b>James V. Murray</b>                   |                            |

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/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 9:10 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on April 19, 2005. Upon motion made by Commissioner Segovis,**

**and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To approve the minutes of the Open Session held  
on April 19, 2005.**

**ABSTENTION: Patricia M. Moran.**

**At approximately 9:16 a.m., upon motion made by Commissioner Weavill, and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) 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 April 19, 2005.**

**b.) In re: Donald L. Carcieri,  
Complaint Nos. 2004-3 and 2004-9**

**c.) In re: J. William W. Harsch,  
Complaint No. 2005-1**

**d.) In re: A. Lauriston Parks,  
Complaint No. 2005-2**

**At approximately 10:05 a.m., the Commission returned to Open Session and Chair Lynch reported that the Commission took the following actions in the Executive Session:**

**a.) Voted to approve the minutes of Executive Session held on April 19, 2005.**

**b.) Voted to accept the proposed Informal Resolution and Settlement Agreement for In re: Donald L. Carcieri, Complaint Nos. 2004-3 and 2004-9.**

**c.) Voted to dismiss the complaint In re: J. William W. Harsch, Complaint No. 2005-1, at Initial Determination and that no sanctions be imposed against the complainant for filing the complaint.**

**d.) Voted to dismiss the complaint In re: A. Lauriston Parks, Complaint No. 2005-2, at Initial Determination.**

**The next order of business was a motion to seal the minutes of the Executive Session held on May 3, 2005. Upon motion made by Commissioner Weavill, and duly seconded, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on May**

**3, 2005.**

**ABSTENTION: Barbara Binder.**

**The Commission took a brief recess at 10:10 a.m. and reconvened at 10:20 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 Robert J. Leary, a member of the Newport School Committee. The petitioner was present. After the Commission Staff recommendation was presented by Staff Attorney Robertson, Commissioner Segovis commented that the Commission has previously permitted petitioners in such circumstances to participate in an up or down vote on a negotiated contract, but has not allowed petitioners to participate in substantive contract negotiations. Commissioner Segovis then inquired whether the Commission has allowed petitioners in similar situations to participate in negotiations. Staff Attorney Robertson responded that the Commission has allowed petitioners to participate in negotiations to the extent that collective input was provided. Commissioner Segovis expressed his concern that the progression of negotiations can be unpredictable and can lead down a slippery slope. He stated that he favored a bright line rule regarding negotiations.**

**Staff Attorney Robertson pointed out the petitioner's representation that he will not be directly involved in the negotiations as the School Committee provides collective input to their attorney who negotiates the teachers' contract. Staff Attorney Robertson asked the petitioner if this portrayal of the negotiation process was correct and if he could elaborate on it for the Commission. The petitioner agreed with this description and stated that the School Committee provides suggestions and feedback to their attorney. Commissioner Segovis indicated that he would be more comfortable with the Staff's recommendation if the opinion was changed to emphasize that the petitioner cannot directly participate in substantive contract negotiations. Staff Attorney Robertson stated that the language in the advisory opinion could be amended as Commissioner Segovis suggested.**

**In response to Commissioner Binder, the petitioner stated that twelve reading teachers are employed by the Newport School Department. Commissioner Binder also inquired whether the petitioner could be involved in deciding the pay scale for these teachers. The petitioner responded that he would only be involved in deciding issues that impacted all teachers.**

**Commissioner Segovis suggested that the advisory opinion contain a bright line on what conduct the Commission would allow regarding negotiations. Staff Attorney Robertson pointed out that a related advisory opinion contained language that could be utilized to stress**

to the petitioner that his participation should be limited to his representations. Chair Lynch suggested that the Commission hear and consider this language. Staff Attorney Robertson noted this language was located in concluding paragraph of advisory opinion number 2004-16 and that the language generally provided as follows: “the Commission opines that the petitioner may participate in contract negotiations to the extent that collective input was provided during such negotiations.” Commissioner Segovis recommended that this language be included in the amended advisory opinion.

In response to Chair Lynch, the petitioner informed that the School Committee has seven members and that no other members have spouses that are teachers in Newport. Also in response to Chair Lynch, the petitioner replied that the School Committee could change what their lawyer brings back to them from the negotiations. In response to Commissioner Weavill, the petitioner informed that has been on the School Committee since 2001 and that he was elected in 2000. Commissioner Weavill cautioned the petitioner that if there is a change in the circumstance presented, such as if the petitioner’s wife becomes a leader in the union, the petitioner would have to recuse or seek another advisory opinion.

Commissioner Segovis recommended that the Commission consider further amending the advisory opinion to limit the petitioner’s ability participate in votes on the teachers’ contract. Commissioner Segovis suggested that the petitioner only be permitted to vote up or down on

**the teachers' contract as a whole. He suggested that this new approach would create more of a bright line rule for petitioner's to follow to avoid a conflict of interest, and that it would follow the rule that now applies to votes on an overall town budget.**

**The Commissioners provided feedback on the proposed amendments to the advisory opinion and clarified the additional language to be added to the advisory opinion. Commissioner Binder asked Staff Attorney Robertson to read aloud the final amendments based the Commission's suggestions. Staff Attorney Robertson summarized the Commission's proposed amendments as follows: "the Commission opines that the petitioner may participate in the contract negotiations to the extent that the School Committee provides collective input during such negotiations and may participate in the vote to accept or reject the teachers' contract as a whole." Staff Attorney Robertson pointed out that this language would need to be added to two parts of the advisory opinion.**

**Commissioner Binder asked the petitioner if there was any urgency in having the Commission rule on the advisory opinion today. The petitioner stated that there was no urgency with the vote on the contract, but that there was urgency regarding the negotiation of the contract. The petitioner then asked whether he may vote on contract items that the School Committee's lawyer may present to the Committee during the negotiation process. Commissioner Segovis stated that it would have to be an up or down vote. Commissioner**

**Weavill stated that he would feel more comfortable if the advisory opinion was referred back to the Commission Staff to amend the advisory opinion's language as discussed.**

**Upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was**

**VOTED: To return the advisory opinion back to the Staff to revise the language of the advisory opinion as indicated by the Commission.**

**AYES: George E. Weavill, Jr., James C. Segovis, Frederick K. Butler, James V. Murray, Barbara Binder, and James Lynch, Sr.**

**NOES: Patricia M. Moran.**

**Chair Lynch proposed that the safe harbor provisions of the advisory opinion remain in effect until the next meeting. Commissioner Binder inquired whether the petitioner had recused from these matters up until this point. The petitioner stated that he had not participated in any votes on any matter regarding the contract, but that he has participated in discussions of the contract consistent with the draft opinion. Chair Lynch then inquired whether Commissioner Binder wanted to withdraw the safe harbor "as it appears in this opinion." Commissioner Weavill stated that the petitioner must have some protection and that the safe harbor should stay in effect. Upon motion made by Commissioner Weavill, and duly seconded by**

**Commissioner Murray, it was**

**VOTED: To keep the safe harbor provisions of the draft advisory opinion in effect until the amended advisory opinion is presented to the Commission.**

**AYES: George E. Weavill, Jr., James C. Segovis, Frederick K. Butler, James V. Murray, Patricia M. Moran, and James Lynch, Sr.**

**NOES: Barbara Binder.**

**Staff Attorney Robertson next presented the advisory opinion of Colleen A. McGrath, a member of the Newport City Council. The petitioner was not present. Staff Attorney Robertson informed the Commission that this advisory opinion also regarded contract negotiations and contained similar language to that found in the previous advisory opinion. She therefore asked the Commission whether she should present this advisory opinion to the Commission today or revise the language as previously discussed and present the opinion to the Commission at the next meeting. Commissioner Weavill pointed out that this petitioner was a member of the City Council, not a School Committee, and was not a part of the negotiation team. Staff Attorney Robertson indicated that this had petitioner represented that, like the petitioner in the previous advisory opinion, she can provide collective input regarding the contract during the negotiation process. Upon motion made by**

**Commissioner Segovis, and duly seconded by Commissioner Murray, it was unanimously**

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

**The next advisory opinion was that of Thomas E. Skuba, a member of the Bristol Warren Regional School Committee. The petitioner was not present. Staff Attorney Robertson presented the Commission Staff recommendation. Upon motion made by Commissioner Weavill, and duly seconded, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Thomas E. Skuba, a member of the Bristol Warren Regional School Committee.**

**Commissioner Segovis inquired whether this advisory opinion should contain the previously proposed language regarding contract negotiations. Staff Attorney Robertson responded that while this request also regarded contract negotiations, this petitioner represented that no conflict of interest existed and therefore that the restrictive language was inapplicable.**

**The next advisory opinion was that of Robert Weber, Sr., a member of the Central Falls City Council. The petitioner was not present. The Commission Staff recommendation was presented by Staff Attorney Robertson. Upon motion made by Commissioner Segovis and duly**

**seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Robert Weber, Sr., a member of the Central Falls City Council.**

**The next order of business was discussion of the Rhode Island Code of Ethics and the Commission's Regulations. Staff Attorney Gramitt stated that this topic was placed back on the Open Session Agenda per the request of Chair Lynch. Staff Attorney Gramitt summarized the proposed regulations and/or amendments to the Code of Ethics that were previously raised by the Commission. Chair Lynch suggested that there should be a confidential investigatory period after a complaint is filed. Commissioner Weavill noted that a complainant can file a complaint with the Commission and then walk across the street and give it to the Providence Journal. Commissioner Segovis agreed that the Commission needs to discuss privacy and confidentiality issues regarding complaints and recommended that the Commission take a balanced approach.**

**Staff Attorney Gramitt pointed out that a complainant now receives a copy of a proposed settlement of their complaint and that the complainant can make this document public before a final settlement is reached. He suggested that there are two issues related to the confidentiality of complaints. He stated that one is the confidentiality of the complaint process and that the second is the complainant's involvement in the complaint process. Chair Lynch and**

Commissioner Binder urged the Commission to look into both aspects. Commissioner Segovis stated that the Commission should try to educate the public about the complaint process as there is a lack of awareness about it. Commissioner Weavill pointed out that keeping the complaint process confidential could be problematic. Chair Lynch agreed and discussed the difficulties that presented themselves in the past with placing a gag order on complaints. Commissioner Binder noted that such proposals may also raise constitutional issues.

Chair Lynch next raised the proposal of closing section 5(e)'s "loophole." Staff Attorney Gramitt stated that the perceived loophole arises when an official recuses from a matter before his board that regards his partnership only for the matter to be presented to the board by the official's partner. Staff Attorney Gramitt noted that section 5(e)'s prohibitions do not apply to this situation because the official is not personally appearing before his board.

Chair Lynch mentioned the proposal to define "business" to include non-profits. Chair Lynch stated that this issue stemmed from a complaint against Judge Arrigan that alleged he did not disclose a non-profit organization on his financial disclosure statement. Staff Attorney Gramitt stated that the definition of the word "business" in Code of Ethics is confusing because it defines "business" using the word "business." He pointed out that this definition could be clarified to address whether or not non-profits are considered a business.

**Chair Lynch inquired whether there is a statute of limitations for the filing of ethics complaints. Staff Attorney Gramitt replied that no such limitation yet exists and that the difficulty with this proposal would be determining how long to make such a limitation. Staff Attorney Gramitt stated that a proposed statute of limitations should run at least four years and should not begin to run while an official is in a position to prevent discovery of the violation.**

**Commissioner Segovis inquired about the previous ethics complaints the Commission received against Vincent Cianci. Executive Director Willever replied that a federal gag order on parties and witnesses was in effect at the time that prevented the Commission from investigating ethics complaints against Mr. Cianci until the order was lifted. Commissioner Weavill inquired whether there is anything stopping anyone from filing an ethics complaint now against Mr. Cianci. Executive Director Willever responded that this is a possibility as there is no time limit for filing an ethics complaint.**

**Chair Lynch asked the Commissioners to think about these proposals and others and to bring their thoughts for amending the Code of Ethics to the next meeting so that a final list can be created and the items can be prioritized. Commissioner Weavill pointed out that the Commission spends a lot of time considering advisory opinion requests and wondered if there was a better way to handle them. Commissioner Weavill then inquired whether it would be helpful if the**

**Commission issued regulations applicable to particular public officials, like School Committee members. Commissioner Binder asked the Staff to look into how other states handle such issues. Staff Attorney Gramitt stated that through COGEL the Staff can poll members and get their comments. Commissioner Binder asked the Staff to look at what other agencies do as well.**

**Commissioner Binder also noted that anyone can now file an ethics complaint, not just the Commission's Staff, and that there should be a review process beforehand to determine if a complaint is frivolous. Executive Director Willever stated that the current policy is for at least one attorney and one investigator to meet with a potential complainant to inform the complainant about how the Commission investigates and prosecutes an ethics complaint. He stated that he has no problem with creating a new mediation process for complaints, but he recommended that such a goal should be part of a five-year plan for the Commission. Executive Director Willever suggested that the Commission first consider what it already has on its list of proposals as a few big cases will soon be before the Commission.**

**Chair Lynch noted that it will take some time for the Staff to obtain such information and that the Commissioners should not expect it at the next meeting. In response to Staff Attorney Gramitt, Chair Lynch stated that these proposals should remain on the Commission's agenda as an ongoing line item.**

**\* Patricia M. Moran and James C. Segovis left the meeting at approximately 11:27 a.m.**

**The next order of business was the Director's Report. Executive Director Willever reported on the number of outstanding advisory opinions and complaints. He informed that there will be a full hearing on two non-filing complaints at the next meeting.**

**The next order of business was new business. No new business was presented.**

**At approximately 11:30 a.m., upon motion made by Commissioner Butler, and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To adjourn the meeting.**

**Respectfully submitted,**

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**George E. Weavill, Jr.**  
**Secretary**