

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

**May 17, 2005**

**The Rhode Island Ethics Commission held its 10th 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 17, 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 V. Murray  
Patricia M. Moran, Vice Chair   Frederick K. Butler  
George E. Weavill, Jr. , Secretary   Barbara Binder  
Richard E. Kirby\*   Ross Cheit\***

**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 and Peter J. Mancini.**

**At approximately 9:01 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on May 3, 2005. Upon motion made by Commissioner**

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

**VOTED: To approve the minutes of the Open Session held on May 3, 2005.**

**RECUSAL: Richard E. Kirby and Ross Cheit.**

**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 Commission Staff recommendation was presented by Staff Attorney Robertson. She reported that the matter was continued from the last meeting of the Rhode Island Ethics Commission to amend the language of the opinion. The petitioner was not present. Upon motion made and duly seconded by Commissioner Weavill, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Robert J. Leary, a member of the Newport School Committee.**

**The next advisory opinion was that of Colleen A. McGrath, a member**

of the Newport City Council. The Commission Staff recommendation was presented by Staff Attorney Robertson. She reported that the matter was continued from the last meeting of the Rhode Island Ethics Commission to amend the language of the opinion. The petitioner was not present. Upon motion made by Commissioner Weavill, and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Colleen A. McGrath a member of the Newport City Council.

Commissioner Weavill noted that a lot of advisory opinions regard contract negotiations and inquired whether the Commission should notify other petitioners about the new policy adopted today for such situations. Legal Counsel Managhan replied that such special notification is not necessary as the Commission will apply the new standard to future advisory opinions and that it would be a “Herculean” task for the Commission Staff to reanalyze those advisory opinions that have already been issued on the subject. Commissioner Weavill asked whether past petitioners would be protected if they follow the old policy contained in their advisory opinion. Commissioner Kirby replied that the public actions at issue in past advisory opinions may have already occurred.

Commissioner Binder inquired whether the new policy would become part of future educational programs conducted by the Commission

**Staff. Staff Attorney Gramitt answered that it would and noted that other policy changes made by the Commission, through the advisory opinion process, also become part of the Commission's education programs. Executive Director Willever pointed out that the Commission Staff will be conducting a seminar at the Rhode Island Bar Association's annual meeting and that this policy will be a component of the seminar.**

**Commissioner Binder queried whether this change in policy should be put into a regulation. She noted that a regulation would inform public officials of this new policy and that such awareness could limit the number of advisory opinions received on this subject. Executive Director Willever pointed out that the advisory opinion process is dynamic and provides the Commission with flexibility to develop and change its recommendations. He noted that regulations can clarify policies as well as limit the Commission's ability to adjust and develop its policies. Staff Attorney Gramitt indicated that the new policy on contract negotiations will provide the Commission Staff with a bright-line to apply to future advisory opinions on contract negotiations that will make addressing them much faster and simpler.**

**The next order of business was discussion of Commission Regulations. Chair Lynch noted that the Commissioners were previously given a packet of material on this subject. Staff Attorney Gramitt stated that this packet was provided at the last meeting of the**

**Rhode Island Ethics Commission. Chair Lynch stated that he is looking into ways to address nepotism in Rhode Island and asked the other Commissioners to do the same. He pointed out that questions are constantly posed to the Commission by officials regarding their participation in matters involving family members.**

**Commissioner Cheit stated that he had concerns about the revolving door provision. He informed that he is looking into it and that he will bring his views to the Commission once his research is completed. Chair Lynch expressed his opinion that this provision's one-year prohibition is too short of a time period and noted that it would be easy to change the duration of years. Commissioner Kirby commented that there may be instances where the one-year waiting period should not apply or would be too long. He suggested that the Commission craft a flexible and practical rule.**

**Commissioner Kirby then asked the Commission to consider whether complainants should be present at probable cause hearings. Chair Lynch stated the Commission discussed this issue at the last meeting and that he agrees with restricting attendance at probable cause hearings to the parties concerned. He indicated that Commissioner Segovis may have some proposals on this issue and to keep this discussion on the agenda.**

**The next order of business was the Director's Report. Executive Director Willever indicated that the financial disclosure statements**

were sent out and discussed the number of outstanding statements. He stated that the reminder letter will soon go out and noted that it contains enhanced language. He informed the Commission that the lead paint advisory opinions were withdrawn. He discussed the status of the pending complaints and noted that twelve new complaints were recently accepted.

Commissioner Butler requested that language in the reminder letter be clarified to emphasize that only the Commission would be precluded from filing a complaint for failing to file a financial disclosure statement. Commissioner Moran suggested that the letter state that a complaint filed by a private individual will be prosecuted.

Commissioner Murray asked whether the financial disclosure statements are date stamped by the Commission Staff when they are received. Executive Director Willever replied that the statements are so stamped and that they are also reviewed to ensure they are complete. Commissioner Weavill inquired what date the reminder letter provided as the deadline. Executive Director Willever stated that the letter requires that the financial disclosure statement be filed by July 16th. Commissioner Cheit inquired about who may receive an extension for filing their financial disclosure statement. Executive Director Willever stated that anyone who is required to file may submit a written request for an extension and that the granting of an extension is made on a case by case basis.

**The next order of business was new business. There was no new business.**

**\*At approximately 9:39 a.m., Commissioner Kirby and Commissioner Cheit recused themselves and left the meeting room for the duration of the forthcoming Executive Session meeting. They returned for the Open Session.**

**At approximately 9:40 a.m., upon motion made and duly seconded, 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 the minutes relating to such discussions, to wit:**

**a.) Motion to approve the minutes of the Executive Session held on May 3, 2005.**

**At approximately 10:00 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 May 17, 2005. Upon motion made and duly seconded, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on May 17, 2005.**

**The next order of business was an adjudicative hearing in the matter of In re: Luis Aponte, Complaint No. NF2005-3, alleging the respondent failed to file a Financial Disclosure Statement for calendar year 2003 with the Rhode Island Ethics Commission in violation of R.I. Gen. Laws § 36-14-16. The respondent was not present. Staff Attorney Leyden presented the Commission Staff recommendation and Tracy Teixeira served as the clerk. A transcript of the hearing will be available in the Commission Office.**

**Upon motion made by Commissioner Kirby, and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To find Luis Aponte in violation of R.I. Gen. Laws § 36-14-16 for failing to file a Financial Disclosure Statement for calendar year 2003 with the Rhode Island Ethics Commission.**

**At approximately 11:00 a.m., the Commission went into Executive Session to deliberate and reconvened in Open Session at 11:12 a.m.**

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

**VOTED: To impose a civil penalty of \$7,500 upon Luis Aponte for failing to file a Financial Disclosure Statement for calendar year 2003 with the Rhode Island Ethics Commission in violation of R.I. Gen. Laws § 36-14-16.**

**At approximately 11:15 a.m., upon motion made and duly seconded, it was unanimously**

**VOTED: To adjourn the meeting.**

**Respectfully submitted,**

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**George E. Weavill, Jr.**

**Secretary**