

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION  
November 8, 2005**

**The Rhode Island Ethics Commission held its 18th 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, November 8, 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                      Patricia M. Moran  
Barbara Binder, Vice Chair                James C. Segovis  
George E. Weavill, Jr., Secretary        Frederick Butler\*  
James V. Murray    Ross Cheit**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Senior 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 9:05 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on October 11, 2005. Upon motion made by Commissioner**

**Segovis, duly seconded by Commissioner Binder, it was**

**VOTED: To approve the minutes of the Open Session held on October 11, 2005.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V. Murray, James C. Segovis, and Ross Cheit.**

**ABSTENTIONS: Patricia Moran.**

**\* At approximately 9:10 a.m., Commissioner Butler arrived.**

**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 Paul Silva, a member of the Bristol Warren Regional School Committee. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.**

**Upon motion made by Commissioner Murray, duly seconded by Commissioner Segovis, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Paul Silva,**

**a member of the Bristol Warren Regional School Committee.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V. Murray, Patricia M. Moran, James C. Segovis, Frederick Butler, and Ross Cheit.**

**The next advisory opinion was that of Mark E. Felag, Chief Civil Engineer for the Rhode Island Department of Transportation (Materials). The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation.**

**In response to Commissioner Binder, Staff Attorney Robertson stated that the petitioner is not presently a business associate of URI under the Code of Ethics. The petitioner elaborated that he was asked and declined to teach a course this semester and that he is not currently in negotiations with URI to teach a class.**

**In response to Commissioner Cheit, the petitioner stated that he anticipates teaching a class in the future at URI. Commissioner Binder expressed concern over whether the petitioner should be voting on URI projects now given that he is already contemplating teaching a class at URI and previously had discussions with URI about teaching. The petitioner informed that no agreement exists between himself and URI. Commissioner Segovis stated that as soon as negotiations begin again he should recuse.**

**Chair Lynch inquired whether the Commission wanted to amend the staff recommendation. Commissioner Murray pointed out that there is no on-going discussion right now and inquired whether the modification should provide that the petitioner should recuse once negotiations to teach a class were reinstated. Commissioner Cheit noted that negotiations and discussions have already taken place for this past semester and recommended that the petitioner should recuse from this point forward.**

**Staff Attorney Robertson stated that the petitioner's past conduct did not establish a current business association under the Code of Ethics. She pointed out that the staff recommendation provides that a business association will be created once there is a contract between URI and the petitioner. She noted that the recommendation also provides that the petitioner must recuse himself for the duration of this contract. To clarify the business association issue, Legal Counsel Managhan read aloud the definition of a business association under the Code of Ethics.**

**Commissioner Moran questioned whether a conflict under the Code of Ethics exists here given that the petitioner sits only on an advisory committee. The petitioner informed that JRAC ranks projects from URI for funding, but does not select who receives the funding. Commissioner Weavill expressed his opinion that advisory committees do have an affect on the funding outcome.**

**Chair Lynch stated that he would approve the opinion as amended and asked whether there was a motion in support of it. For review, Staff Attorney Robertson stated that the Commission's proposal was to add language to the opinion specifying that the petitioner had to recuse from participating in JRAC as soon as discussions and negotiations with URI regarding teaching had commenced. She noted that the Commission's discussions indicated that the petitioner had already commenced such activities and must recuse going forward.**

**In response to Commissioner Cheit, Staff Attorney Robertson reviewed the procedural status of the advisory opinion. She stated that the petitioner sought an advisory opinion after discussions with URI ended to teach last semester and before he discussed teaching in the future. She noted that the Commission's discussions are focusing on when the petitioner should recuse. In response to Commissioner Weavill, the petitioner informed that historically the course he would teach is offered every two years at URI and that it may next be offered in the fall of 2006.**

**Upon motion made by Commissioner Murray, duly seconded by Commissioner Butler, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Mark E. Felag, Chief Civil Engineer for the Rhode Island Department of Transportation (Materials) with the amendment that the petitioner had**

to recuse from participating in JRAC given that discussions and negotiations with URI had already commenced regarding him teaching at URI.

**AYES:** James Lynch, Sr., James V. Murray, James C. Segovis, and Frederick Butler.

**NOES:** Barbara Binder, George E. Weavill, Patricia M. Moran, and Ross Cheit.

The motion failed for lack of a majority. At Commissioner Cheit's request, Staff Attorney Robertson clarified the business association issue before the Commission. She pointed out that the request only regards the petitioner's future conduct and not his past conduct. She noted that in past advisory opinions the Commission has opined that when a business relationship has ceased there is no longer a business association under the Code of Ethics.

As an example, Staff Attorney Robertson referenced advisory opinions on the attorney/client relationship and noted that once such a relationship has ended, the Commission has determined that there is no longer a business association because there are no longer two individuals joined together to achieve a common financial objective. By comparison, Staff Attorney Robertson pointed out that here the petitioner never had a business association with URI and that even if one were found it ceased once the petitioner declined to teach this

past semester. She noted that any future prospect of teaching will require new discussions, which may greatly vary from those previously conducted.

In response to Legal Counsel Managhan, the petitioner stated that it is possible that he may not teach at URI at all. Legal Counsel Managhan commented that given this situation it is difficult to say there is a business association under the Code of Ethics. In response to a question, the petitioner stated that his membership in JRAC does not involve the awarding of grants and that he only assists in the ranking of projects. Commissioner Cheit pointed out that the petitioner could favor URI when ranking the projects.

Staff Attorney Robertson pointed out that the staff recommendation is conservative as it stands. She discussed a point made earlier by Commissioner Moran about the financial impact of the petitioner's participation in JRAC. She stated that the opinion nonetheless requires the petitioner to recuse from any URI matters for the duration of his contract. She stressed the importance of giving the petitioner direction and a bright line.

Chair Lynch asked the Commissioners whether they would like to vote on the original staff recommendation. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Moran, it was

**VOTED: To issue the original advisory opinion, attached hereto, to Mark E. Felag, Chief Civil Engineer for the Rhode Island Department of Transportation (Materials).**

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

**NOES: Barbara Binder and Ross Cheit.**

**The next advisory opinion was that of Thomas Breckel, a member of the Town of Johnston Planning Board. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.**

**In response to Commissioner Cheit, the petitioner stated that none of his gas stations are on the street where the project is located and that there are at least two gas stations between the project and his stations. He stated that there “could be some small percentage of impact” on his businesses. Commissioner Weavill asked the petitioner why he stated in his request letter that he recused from a matter before the Board regarding BJ’s Wholesale Club. The petitioner stated that this project was only ¼ mile down the street from one of his businesses and he thought there would be a financial impact to his business.**

**Commissioner Weavill asked the petitioner to explain his statement in his request that he appeared before the Board to speak against this**

**BJ's matter. As the petitioner did not have his request letter, Staff Attorney Leyden provided her copy to him and showed him the statement to which the Commissioner was referring. After reading this statement, the petitioner stated that an attorney from his business appeared before the Board and that he did not do so personally.**

**Commissioner Binder stated that she is uncomfortable with the opinion now that the petitioner has stated that there will be some impact to his businesses. The petitioner stated that he is unsure of the impact. Commissioner Segovis stated that he thinks the petitioner means to say that the impact is indeterminable. The petitioner agreed. Commissioner Weavill commented that he knows a lot of people who will drive an extra distance to buy cheaper gas.**

**Upon motion made by Commissioner Murray, duly seconded by Commissioner Moran, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Thomas Breckel, a member of the Town of Johnston Planning Board.**

**AYES: James Lynch, Sr., James V. Murray, Patricia M. Moran, James C. Segovis, and Frederick Butler.**

**NOES: Barbara Binder, George E. Weavill, and Ross Cheit.**

**Chair Lynch stated that the Commission would go into Executive Session and consider the remaining advisory opinions thereafter given that no other petitioners were present.**

**At approximately 10:00 a.m., upon motion made by Commissioner Butler 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)(1), (a)(2), and (a)(4), to wit:**

**a.) To approve the minutes of Executive Session held on October 11, 2005.**

**b.) In re: Michelle R. Williams,  
Complaint No. 2005-3**

**c.) In re: William J. Murphy,  
Complaint No. 2005-4**

**d.) In re: Gordon D. Fox,  
Complaint No. 2005-5**

**e.) In re: Paul E. Moura,  
Complaint No. 2005-6**

- f.) In re: Joseph L. Faria,  
Complaint No. 2005-7**
  
- g.) In re: Peter F. Kilmartin,  
Complaint No. 2005-8**
  
- h.) In re: John J. McCauley, Jr.,  
Complaint No. 2005-9**
  
- i.) In re: John P. Shanley, Jr.,  
Complaint No. 2005-10**
  
- j.) In re: Donald J. Lally,  
Complaint No. 2005-11**
  
- k.) In re: Timothy A. Williamson,  
Complaint No. 2005-12**
  
- l.) In re: Raymond E. Gallison, Jr.,  
Complaint No. 2005-13**
  
- m.) In re: Jan P. Malik,  
Complaint No. 2005-14**
  
- n.) T. Brian Handrigan v. RIEC,  
C.A. No. PC05-3759.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V. Murray, Patricia M. Moran, James C. Segovis, Frederick Butler, and Ross Cheit.**

**At approximately 10:40 a.m., the Commission returned to Open Session. Chair Lynch reported that the Commission took the following actions in Executive Session:**

**a.) Voted to approve the minutes of Executive Session held on October 11, 2005.**

**b.) Voted to dismiss with prejudice In re: Michelle R. Williams, Complaint No. 2005-3.**

**c.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice In re: William J. Murphy, Complaint No. 2005-4.**

**d.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice In re: Gordon D. Fox, Complaint No. 2005-5,**

**e.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice In re: Paul E. Moura, Complaint No. 2005-6.**

**f.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice  
In re: Joseph L. Faria, Complaint No. 2005-7.**

**g.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice  
In re: Peter F. Kilmartin, Complaint No. 2005-8.**

**h.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice  
In re: John J. McCauley, Jr.,  
Complaint No. 2005-9.**

**i.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice  
In re: John P. Shanley, Jr., Complaint No. 2005-10**

**j.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice  
In re: Donald J. Lally,  
Complaint No. 2005-11.**

**k.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice  
In re: Timothy A. Williamson,**

**Complaint No. 2005-12.**

**l.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice**

**In re: Raymond E. Gallison, Jr.,**

**Complaint No. 2005-13.**

**m.) Voted that there is no probable cause to believe the Respondent violated Commission Regulation 5009 and dismissed with prejudice**

**In re: Jan P. Malik, Complaint No. 2005-14.**

**h.) The Commission took no action for T. Brian Handrigan v. RIEC, C.A. No. PC05-3759.**

**The next order of business was sealing the minutes of the Executive Session held on November 8, 2005. Upon motion made by Commissioner Weavill, duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on November 8, 2005.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler,**

**and Ross Cheit.**

**The next order of business was to return to the advisory opinions. The first advisory opinion was that of Howard E. Walker, a member of the Hopkinton Planning Board. The petitioner was not present. Staff Attorney Robertson presented the Commission Staff recommendation.**

**In response to Commissioner Weavill, Staff Attorney Robertson informed that she was unaware of whether the Board had considered the permit already. Commissioner Weavill stated that he had read something regarding it in the paper. Staff Attorney Robertson informed that she was aware that a meeting was to take place before today; however, she stated that she did not know whether this item was on the agenda. Also in response to Commissioner Weavill, Staff Attorney Robertson stated that she was not aware of whether there were any quorum problems.**

**Upon motion made by Commissioner Segovis, duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Howard E. Walker, a member of the Hopkinton Planning Board.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler,  
and Ross Cheit.**

**The next advisory opinion was that of Alfred W. DiOrio, a member and  
Chairman  
of the Hopkinton Planning Board. The petitioner was not present.  
Staff Attorney Robertson presented the Commission Staff  
recommendation.**

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

**VOTED: To issue an advisory opinion, attached hereto, to Alfred W.  
DiOrio, a member and Chairman of the Hopkinton Planning Board.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James  
V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler,  
and Ross Cheit.**

**The next advisory opinion was that of David A. Fontaine, a member  
of the Burrillville Redevelopment Agency. The petitioner was not  
present. Staff Attorney Robertson presented the Commission Staff  
recommendation.**

**Upon motion made by Commissioner Segovis, duly seconded by**

**Commissioner Butler, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to David A. Fontaine, a member of the Burrillville Redevelopment Agency.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler, and Ross Cheit.**

**The next advisory opinion was that of Charles A. Thibaudeau, Jr., a member of the Town of Warren Planning Board. The petitioner was not present. Senior Staff Attorney Gramitt presented the Commission Staff recommendation. Commissioner Binder pointed out that a correction should be made on page three from mother to grandmother-in-law. Senior Staff Attorney Gramitt stated he would make this correction.**

**Upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Charles A. Thibaudeau, Jr., a member of the Town of Warren Planning Board.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler,  
and Ross Cheit.**

**The next advisory opinion was that of Byron S. Kee, a member of the  
Town of Warren Planning Board. The petitioner was not present.  
Senior Staff Attorney Gramitt presented the Commission Staff  
recommendation.**

**Upon motion made by Commissioner Binder, duly seconded by  
Commissioner Cheit, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Byron S.  
Kee, a member of the Town of Warren Planning Board.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James  
V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler,  
and Ross Cheit.**

**The next order of business was discussion of Commission  
Regulations. Senior Staff Attorney Gramitt reported that there was no  
update on this item.**

**The next order of business was the Director's Report. Executive  
Director Willever informed that there are approximately five  
complaints pending and five advisory opinions pending. He reported**

that Senior Staff Attorney Gramitt recently taught an educational program on Block Island. He informed the Commission that in December the Commission Staff will be hosting officials from Mozambique. He reported that the Commission obtained a new copier and training on it, and that there is a new conference table in the library that was obtained at no cost. He reported that there have been some problems with the office ceilings leaking and that the landlord is fixing them. He informed that there is a housekeeping matter for which he will need the Commission's advice. Specifically, he stated that there are two more meetings scheduled in 2005 that are on November 22nd and December 6th. He informed that the December meeting is during the week of COGEL and that some Commissioners and Commission Staff will be attending it in Boston.

By consensus, the Commission decided to tentatively cancel the December 6th meeting and to make the November 22nd meeting the last meeting in 2005.

The next order of business was New Business. There was no New Business.

At approximately 11:00 a.m., upon motion made by Commissioner Binder, duly seconded by Commissioner Weavill, it was unanimously

**VOTED: To adjourn the meeting.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James V.**

**Murray, Patricia M. Moran, James C. Segovis, Frederick Butler,  
and Ross Cheit.**

**Respectfully submitted,**

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