

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION
November 22, 2005**

The Rhode Island Ethics Commission held its 19th 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 22, 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
Barbara Binder, Vice Chair James C. Segovis
George E. Weavill, Jr., Secretary Ross Cheit
Richard E. Kirby**

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 9:16 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on November 8, 2005. Upon motion made by Commissioner

Segovis, duly seconded by Commissioner Weavill, it was

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

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

RECUSAL: Richard E. Kirby.

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 Michael T. Napolitano, Esq., a judge of the Cranston Municipal Court. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation.

In response to Commissioner Cheit, Staff Attorney Leyden clarified that the Code of Ethics prohibits both solicitation and acceptance of gifts, and that the advisory opinion covers any actions by the petitioner regarding the election, including cases that come before him as a judge involving either the election or his opponents.

Commissioner Cheit expressed his concern that the opinion did not mention the election generally.

Commissioner Kirby pointed out that the petitioner should be aware that the judicial canons apply and that the Commission has no authority over them. Staff Attorney Leyden stated that the petitioner was provided notice of this in the advisory opinion.

The petitioner inquired whether he could accept unsolicited contributions from individuals who come before him. Commissioner Kirby pointed out that the canons of judicial ethics come into play in such situations. Senior Staff Attorney Gramitt stated that the petitioner may accept unsolicited contributions from individuals appearing before him. Senior Staff Attorney Gramitt clarified that section 5(g) is not a blanket prohibition on all contributions or solicitation, and pointed out that Regulation 5011 provides that subordinates cannot be solicited for political contributions. He also noted that section 5(g) is limited to an understanding being made in exchange for the contribution, that Regulation 5011 has an exception for subordinates who offer to provide a contribution, and that the gift regulation has a political contribution exception.

Commissioner Cheit stated that such situations may create an appearance of impropriety. Senior Staff Attorney Gramitt agreed and noted that such actions are also likely covered by the judicial canons.

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

VOTED: To issue an advisory opinion, attached hereto, to Michael T. Napolitano, Esq., a judge of the Cranston Municipal Court.

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

The next advisory opinion was that of Howard R. Croll, Esq., an appointee to the Woonsocket Personnel Board. The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation.

The petitioner stated that he wanted to be “absolutely clear” about what Board matters he can participate in before the Board with regard to his closed cases in his private practice. Staff Attorney Robertson pointed to page three of the opinion that provides for a two-part analysis regarding the petitioner’s private cases that are closed or have reached final adjudication. First, she stated that the petitioner must ask whether or not an attorney-client relationship still exists with a client in his private practice of law and then second whether it is reasonably foreseeable that the client will be financially impacted

by a matter before the Board.

In response to Commissioner Murray, the petitioner stated that the Board has approximately 100 matters involving police officers. Commissioner Murray stated that he was uncomfortable with this advice given that police officers appear before him and given the area of his law practice. The petitioner discussed the criminal discovery process and the type of information he is provided about police officers through that process in his private practice of law. He also stated that he would not take any cases against the city while on the Board.

Commissioner Weavill expressed his concern that the cases the petitioner has in his private practice may be intermingled with those before the Board. The petitioner represented that he was a probate judge for twenty years and that no one filed a complaint against him then and that this position is less troubling to him than this one. Commissioner Weavill stated that he sees this situation as a “thicket of potential problems” for the petitioner in the future.

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

VOTED: To issue an advisory opinion, attached hereto, Howard R. Croll, Esq., an appointee to the Woonsocket Personnel Board.

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

NOES: George E. Weavill.

RECUSAL: Richard E. Kirby.

Commissioner Kirby reminded the petitioner that he many not use any privileged information provided to him on the Board in his private practice of law. The petitioner replied that Brady requires certain disclosures and that he would rely upon them. The petitioner stated that the Commissioners seem to be concerned that he would take revenge on some officers. He informed the Commission that he would not consider taking revenge against any police officers.

The next advisory opinion was that of Marie Evans Esten, who is currently employed by the University of Rhode Island as a contract employee and is also the owner of Loon Environmental LLC. The petitioner was not present. Staff Attorney Leyden presented the Commission Staff recommendation. She informed the Commission that the petitioner called her and told her that she was very ill and had wanted to attend.

In response to Commissioner Binder, Staff Attorney Leyden stated that the petitioner represented that she was classified as a contract

employee. Commissioner Binder stated that it is unclear what the petitioner does exactly and expressed concern that the petitioner would be conflicted because she may have to give URI unfavorable news.

Staff Attorney Leyden stated that the petitioner was hired to be a research associate. She pointed out that the petitioner's work is research focused and that she assists with NEMO. She informed that the petitioner's work includes restructuring a spreadsheet model on Excel and that GIS is a method of keeping data together.

Commissioner Binder expressed concern about the petitioner's private consulting firm being hired by URI. Staff Attorney Leyden stated that the petitioner would best answer such a question. Commissioner Cheit stated that he also had questions to ask the petitioner.

Staff Attorney Leyden suggested that the Commission hold this opinion until the next meeting so that the petitioner can be present to answer such questions. Commissioner Segovis noted the importance of the petitioner being here to make these representations. Chair Lynch remarked that he was uncomfortable with the petitioner's absence.

Staff Attorney Leyden commented that the petitioner was aware of the complexities in her request and wanted to attend to answer any

questions. Commissioner Kirby inquired whether this request was time sensitive. Staff Attorney Leyden responded that the petitioner's contract ends in December. In response to Commissioner Cheit, Staff Attorney Leyden stated that the petitioner informed her that she would not do anything in her work with her firm regarding NEMO or watershed work.

Commissioner Segovis pointed out that without a vote the petitioner would retain safe harbor until the January 10th meeting. Legal Counsel Managhan stated that the petitioner should be informed that her advice may be different at that meeting. Staff Attorney Leyden stated that she would communicate these remarks to the petitioner.

At approximately 10:00 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Kirby, 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 November 8, 2005.

**b.) In re: William J. Murphy,
Complaint No. 2005-19**

c.) T. Brian Handrigan v. RIEC,

C.A. No. PC05-3759

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

At approximately 10:35 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
November 8, 2005.**

**b.) Voted to dismiss In re: William J. Murphy,
Complaint No. 2005-19**

**c.) The Commission took no action on 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 Binder, duly seconded by Commissioner Weavill, 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,
Richard E. Kirby, James V. Murray, James C. Segovis, and
Ross Cheit.**

The next order of business was discussion of Commission Regulations. Commissioner Binder suggested that the Commission create subgroups to work on the proposals since the Commission has been so busy at its meetings and given that regulations take time to formulate. Chair Lynch expressed his support of this idea. Commissioner Binder recommended that the subgroup topics be assigned now so that contacts can be made at the COGEL conference to assist them. Chair Lynch suggested three subgroups of three Commissioners. Commissioner Binder noted that this may be overly optimistic given that not every Commissioner attends every meeting. Commissioner Kirby proposed that there be two subgroups that handle different topics and that the groups make recommendations to the whole Commission, which would have a workshop on proposals.

Commissioner Murray asked Legal Counsel Managhan whether these subcommittees had to fulfill the posting requirements. Commissioner Kirby stated that the subgroups would need agendas under the Open Meetings Act. Senior Staff Attorney Gramitt stated that the staff would be happy to get involved with these subcommittees. Commissioner Binder commended this idea and

suggested that a staff attorney be assigned to each group. Commissioner Segovis noted that Commissioner Cheit had done work on nepotism issues that he could present and suggested that topic be the focus of one group. He proposed that the other subgroup could work on the revolving door issues. He suggested having the first subgroup meetings take place sometime in January after the holidays.

Commissioner Binder supported that creating a subcommittee to handle revolving door issues and a subcommittee to handle nepotism issues. Commissioner Kirby, Commissioner Binder, Commissioner Weavill, Commissioner Segovis, and Commissioner Murray volunteered to work on the revolving door subcommittee. Chair Lynch remarked that the remaining Commissioners will work on the nepotism subcommittee.

Chair Lynch stated that the groups should gather information and determine when to have meetings in January. Commissioner Kirby recommended that each subgroup have a leader and possibly that Chair Lynch lead his subgroup handling nepotism and Vice Chair Binder lead her subgroup on revolving door. The Commissioners agreed to this proposal. Senior Staff Attorney Gramitt stated that a staff attorney will be assigned to each subgroup and advised the Commissioners to inform the staff in advance of any meetings so that the posting requirements can be met.

Commissioner Cheit inquired about how much can be discussed before a meeting. Commissioner Kirby stated that there is a rolling quorum issue and that no official activity can occur in the subcommittee meetings. He noted that discussions were acceptable; however, he stated that no votes could take place until the workshop of the entire Commission.

Executive Director Willever pointed out that the Commissioners could share materials. Senior Staff Attorney Gramitt noted that the Commissioners cannot have a discussion if a quorum is present, however, materials can be circulated. Commissioner Cheit suggested that the Commissioners only share information and not discuss proposals outside of a meeting.

The next order of business was the tentative meeting schedule for 2006. Chair Lynch suggested the Commissioners review the first half of the schedule now. Senior Staff Attorney Gramitt stated that the schedule can be amended. Commissioner Kirby stated that the schedule had to be voted on. Commissioner Segovis and Legal Counsel Managhan remarked that they were not sure of the school breaks yet. Commissioner Kirby suggested voting on the schedule now and amending it later.

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

VOTED: To accept the tentative meeting schedule for 2006.

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

In response to Commissioner Kirby, Senior Staff Attorney Gramitt stated that the Secretary of State's Office places the meeting schedule on their website and that our staff also places it on our website. In response to Commissioner Cheit, Executive Director Willever stated that the staff always sent the schedule to the Secretary of State and that the staff only recently started to place it on our website.

The next order of business was the Director's Report. Executive Director Willever reported out the complaints pending and recently closed and the outstanding advisory opinions. Chair Lynch stated that he appreciated that the staff had cut down on the number of advisory opinions and complaints pending. Executive Director Willever noted that these numbers can quickly change.

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

At approximately 10:56 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Binder, it was unanimously

VOTED: To adjourn the meeting.

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

Respectfully submitted,

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