

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

January 6, 2005

The Rhode Island Ethics Commission held its 1st 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 Thursday, January 6, 2005, pursuant to the notice published at the Commission Headquarters and on the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair James C. Segovis
Patricia M. Moran, Vice Chair Frederick K. Butler
George E. Weavill, Jr., Secretary* Barbara R. Binder
James V. Murray Ross E. Cheit**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Commission Education Coordinator; Dianne L. Leyden, Staff Attorney and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:09 a.m., the Chair opened the meeting. The first order of business was to swear in new Commissioners Barbara R. Binder and Ross E. Cheit. The next order of business was that of

advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the 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 Vincent McAloon, a recent appointee to the Town of New Shoreham Motor Vehicles for Hire Commission. Upon motion made by James V. Murray and duly seconded by James C. Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Vincent McAloon, a recent appointee to the Town of New Shoreham Motor Vehicles for Hire Commission.

The next advisory opinion was that of Robert B. Holbrook, a Commissioner of the Rhode Island Public Utilities Commission. *George E. Weavill, Jr. arrived at 9:21 a.m. In response to Commissioner Butler, Mr. Gramitt stated that the petitioner made no representation that the PUC is investigating the Planning Board or its approval process.

Commissioner Binder asked whether it would impinge upon the petitioner's independence of judgment if the Board had a policy to bring business into town. Mr. Gramitt explained that having a bias one way or another does not necessarily impair one's independence of judgment, but the opinion could address the issue. Commissioner Cheit observed that the statute prohibits having an interest, financial or otherwise, and inquired if the "or otherwise" provision has ever

been used.

Mr. Gramitt explained the conflict between the language of section 5(a) and the definition of substantial conflict contained in section 7(a).

He advised that he could not recall any instance where the Commission relied solely on the “or otherwise” language. He stated that the Commission could put cautionary language in the opinion advising the petitioner to be mindful of section 5(b) when approaching each of his public duties. Commissioner Binder indicated that the inclusion of such language would make her more comfortable with the opinion. Chair Lynch suggested that the staff prepare the additional language and bring the draft back to the Commission for review. Commissioner Butler concurred. Upon motion made by James V. Murray and duly seconded by Barbara R. Binder, it was unanimously

VOTED:To continue the advisory opinion to the next meeting.

ABSTENTION:Patricia M. Moran.

The next advisory opinion was that of Donna Walsh, a member of the Charlestown Town Council. In response to Commissioner Cheit, Mr. Gramitt informed that the petitioner’s request was received on November 29, 2004 and is not moot. Commissioner Butler questioned whether the opinion should be tabled for further discussion regarding the “or otherwise” provision of section 5(a). He

noted that the Council is deadlocked and the petitioner would, in effect, pick the next member of the School Committee. Commissioner Moran observed that another School Committee member could change his or her vote, removing the deadlock. In response to Chair Lynch, Mr. Gramitt advised that the rule of necessity would not apply since a quorum is present. Chair Lynch concurred with Commissioner Butler. Commissioner Cheit noted that the petitioner is only one vote.

Commissioner Butler observed that the petitioner previously recused on the issue. He suggested that, no matter how she ultimately may vote, there would be the implication that she was the deciding vote. Commissioner Segovis indicated that the fundamental issue is that she would be voting to appoint her boss. Commissioner Moran noted that there is more than one person on the School Committee. Commissioner Binder indicated that teachers are allowed to vote for School Committee members in the general election. She stated that others overlook the petitioner's appointment as House Leader and opined that it is premature to imply any bad behavior relative to the appointment. Mr. Gramitt advised that there is no direct supervisory relationship between the petitioner and the School Committee. In response to Commissioner Cheit, Commissioner Butler expressed his opinion that there would be no appearance of impropriety if the Council were not deadlocked. Upon motion made by George E. Weavill, Jr. and duly seconded by Patricia M. Moran, it was

VOTED: To issue an advisory opinion, attached hereto, to Donna Walsh, a member of the Charlestown Town Council.

AYES: George E. Weavill, Jr., James C. Segovis, James V. Murray, Ross E. Cheit, Barbara R. Binder and Patricia M. Moran.

NOES: James Lynch, Sr. and Frederick K. Butler.

The next order of business was a Motion to Consolidate Complaint Nos. 2001-41 & NF2002-13, In re: Patrick T. McDonald, for adjudication. Ms. D'Arezzo advised that these Complaints against the same Respondent allege violations of the financial disclosure statute for calendar years 1999 and 2001. She informed that the Prosecution must present the same witnesses and documents before the Commission at the adjudication, which has been noticed for January 25th. Upon motion made by George E. Weavill, Jr. and duly seconded by James V. Murray, it was unanimously

VOTED: To consolidate Complaint Nos. 2001-41 & NF2002-13, In re: Patrick T. McDonald, for adjudication.

At 9:50 a.m., upon motion made by George E. Weavill, Jr. and duly seconded by Frederick K. Butler, 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 minutes relating to such discussions, to wit:

a.) Motion to approve minutes of Executive Session held on November 9, 2004.

b.) Motion to approve minutes of Executive Session held on December 7, 2004.

**c.) In re: Donald L. Carcieri,
Complaint No. 2004-9.**

At 10:45 a.m. the Commission returned to Open Session, at which time Commissioner Murray left the meeting. The next order of business was a motion to approve minutes of the Open Session held on December 7, 2004. Upon motion made by George E. Weavill, Jr. and duly seconded by James C. Segovis, it was unanimously

VOTED: To approve the minutes of the Open Session held on December 7, 2004.

**ABSTENTIONS: James V. Murray, Barbara R. Binder and
Ross E. Cheit.**

Chair Lynch reported on actions taken in Executive Session. The next order of business was a motion to seal the minutes of the Executive Session held on January 6, 2005. Upon motion made by James C. Segovis and duly seconded by George E. Weavill, Jr., it was unanimously

VOTED: To seal the minutes of the Executive Session held on January 6, 2005.

The next order of business was discussion of proposed regulatory actions. Mr. Gramitt summarized the measures previously raised by the members and for which the staff drafted proposed regulations and/or amendments. Chair Lynch requested clarification regarding how to close the loophole in section 5(e). Ms. D'Arezzo clarified that while 5(e) prohibits a public official from appearing before his own board, while serving and for one year thereafter, it does not prohibit the official's employee or business partner from representing the official's company before the board. However, as outlined in the staff's memorandum, a regulation addressing this loophole necessarily must address the conduct of private citizens. She advised that the Commission lacks authority to proscribe the conduct of individuals who are not subject to the Code. Chair Lynch suggested that the staff draft a regulation prohibiting a public official from bringing his financial interests before his board.

Ms. D'Arezzo opined that such a regulation would be problematic,

particularly where an private citizen is a business partner of a public official and seeks to obtain relief before the official's board without any action by the official. Commissioner Segovis expressed his belief that the partners chose to create the legal entity of a business partnership and would be bound by any constraints placed thereon due to one partner's status as a public official. Commissioner Cheit expanded upon Commissioner Segovis' comments and suggested that the Commission does regulate the actions of private citizens by prohibiting public officials from hiring their family members. Ms. D'Arezzo replied that the proscription runs to the official's act of hiring, rather than to the family member's employment. Commissioner Cheit requested that the staff research the issue and report back with a possible approach to the problem.

Chair Lynch expressed his desire for the Commission to return to a "zero tolerance" gift regulation. Commissioner Segovis indicated that they could resubmit the old zero tolerance regulation, as well as a proposal similar to the federal model, perhaps with limits of \$20 per instance and \$40 in the aggregate. Commissioner Binder proposed a zero tolerance regulation with exceptions for items of de minimus value. Commissioner Butler voiced his support for returning to zero tolerance, but suggested getting guidance on what would constitute insignificant or de minimus values. He also suggested consideration of an exception based on personal relationships, addressing such issues as wedding gifts from friends.

Chair Lynch opined that zero tolerance solves any problem of where to draw the line because there is no doubt regarding what you are allowed to accept. He favored eliminating any exceptions that would start allowing every politician to attend Chamber of Commerce dinners and similar events. Commissioner Weavill voiced his concern that a public official could be placed in an embarrassing situation in which he or she has to quibble over the value of meals received. Chair Lynch reiterated that it would be best to make no exceptions. Mr. Gramitt explained that the staff does not take a position regarding the gift issue itself, but examines any proposed regulation from a perspective of whether it can be enforced. Mr. Willever indicated that a regulation requiring minimal record keeping and reporting would be advisable.

Commissioner Butler stated that defining what constitutes insignificant monetary value would bring the old regulation in line with what would be enforceable. Chair Lynch and Commissioner Segovis debated how one determines the value of a meal. Commissioner Butler replied that it would be best for the Commission to determine what insignificant value means up front. In response to Commissioner Weavill, Ms. D'Arezzo clarified that the Commission must decide which draft regulations it will consider before providing public notice of the hearing. In response to Commissioner Binder, she stated that no complaints were filed under the prior zero tolerance regulation, although many people complained about the regulation itself. She added that there has been a lot of confusion

under the current \$150/\$450 rule. In response to Legal Counsel's inquiry, Mr. Willever advised that some states have zero tolerance rules and others have higher limits. He indicated that the federal model employs a \$20 limit.

Commissioner Weavill also noted that the Commission could keep the regulation as it is. Phil West of Common Cause addressed the Commission and recommended that the Commission pick one proposal and notice it for hearing, rather than submitting a few big proposals. Chair Lynch asked the staff to present the Commission with draft regulations based on today's discussion. Commissioner Moran suggested that the absent members receive notice of same. After discussion, Mr. Gramitt clarified that the staff would present four proposals, including the following: true zero tolerance; zero tolerance with a definition of insignificant value; \$20/\$40 limits with no reporting requirement; and the current regulation. Mr. Gramitt noted that the old regulation provided an exception for those giving speeches and advised that some officials reportedly gave impromptu speeches to qualify for the exception. He suggested adding language to subsection (f) to state that speeches must be given "as an official part of a program."

In response to Commissioner Butler, Mr. Gramitt stated that reporting is only required under the current gift regulation. Commissioner Butler indicated that the requirement is a burden on staff and creates uncertainty for the public. Mr. Willever opined that there is no way to

enforce it. Chair Lynch requested that the staff address the gift regulation and 5(e) loophole as directed at the next meeting. He suggested that the Commission initially notice a hearing solely on the gift regulation, given the duration of the last hearings on gifts. In response to Commissioner Moran, Mr. Gramitt indicated that he would include proposals to address citation and other errors in the procedural regulations, for which there would likely be no testimony. Commissioner Cheit noted that they have not discussed a statute of limitations. He expressed that he would like more information on the issue, as well as whether other states deem a non-filing complaint moot if a financial disclosure statement is subsequently filed. Chair Lynch advised that they would address the other issues after separating the gift issue for individual hearing. Commissioner Segovis proposed that they reach a conclusion as to gifts at the next meeting. Chair Lynch concurred and indicated they would vote on which gift proposals shall go forward.

The next order of business was the Director's Report. Mr. Willever welcomed the new Commission members and thanked Robin L. Main and Francis J. Flanagan for their service. He reported that he and Chair Lynch recently taped an ethics program hosted by former Governor Bruce Sundlun on Access RI. Chair Lynch advised that he explained to Governor Sundlun that the House and Senate Fiscal Committees had been very responsive to the need for additional funding and emphasized that there also is a need for two additional appointments. Chair Lynch reported that Governor Sundlun

indicated that there is a public perception that the Commission is not responsive and effective. He and Mr. Willever discussed the expansion of staff, training of new hires and proactive measures the Commission will be taking. Chair Lynch encouraged all the members to be vocal and speak to the press and public about the Commission. Mr. Willever reported that there are nine complaints and thirty advisory opinions pending. He explained that a dozen advisory opinion requests involve the same issue and the staff is waiting for more information. He also stated that he recently hired a new attorney whose primary duties will involve drafting advisory opinions, which should place them back on track within a month or two.

At 11:51 a.m., upon motion made by Patricia M. Moran and duly seconded by Frederick K. Butler, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary