

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

February 7, 2006

The Rhode Island Ethics Commission held its 3rd meeting of 2006 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, February 7, 2006, 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 Frederick K. Butler

Richard E. Kirby

Also present were Kathleen Managhan, Commission Legal Counsel; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall S. Robertson; and, Commission Investigators Peter J. Mancini and Michael Douglas.

At approximately 9:17 a.m., the Chair opened the meeting.

At the start of the meeting, Staff Attorney Gramitt provided each Commissioner with a copy of a faxed letter received yesterday from Merlyn O'Keefe, the Town Solicitor of New Shoreham, regarding the advisory opinion request of John A. L. Sisto that the Commission is hearing today. The Commissioners were then given an opportunity to read the document.

The first order of business was to approve the minutes of the Open Session held on January 24, 2006. Upon motion made by Commissioner Binder, duly seconded by Commissioner Butler, it was

VOTED: To approve the minutes of the Open Session held on January 24, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James C. Segovis, and Frederick K. Butler.

ABSTENTION: James V. Murray.

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 R. Petrarca, the Director of Administration for the West Warwick Public Schools. The

petitioner was present. Staff Attorney Gramitt presented the Commission Staff recommendation. As background, he informed that he recently gave a seminar on the Code of Ethics at a RIASBO meeting and that this issue was discussed.

In response to Commissioner Binder, Staff Attorney Gramitt stated that the gift regulation would not apply because RIASBO is a private organization and that so long as RIASBO is engaging vendors there will be a layer in between the public officials and the vendors. Commissioner Kirby pointed out that this request presents a slippery slope and noted some interactions that would raise concerns. Staff Attorney Gramitt commented that some interactions could fall into a gray area and pose appearance of impropriety issues.

Commissioner Segovis discussed the ramifications of the vendors being associate members of RIASBO as opposed to an outside entity.

Commissioner Kirby advised the petitioner to disseminate the opinion issued by the Commission to this request to the members of RIASBO involved with these interactions as well as to the legal counsels of school committees.

The petitioner stated that he was aware that such interactions required caution and that this is why he requested an opinion. He pointed out that RIASBO does not have an Executive Director and that the organization is trying to obtain one. He expressed his belief that an Executive Director would alleviate some of the concerns

raised.

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

VOTED: To issue an advisory opinion, attached hereto, to Michael R. Petrarca, the Director of Administration for the West Warwick Public Schools.

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

The next advisory opinion was that of John A. L. Sisto, a member of the New Shoreham Town Council. The petitioner was present with Merlyn O'Keefe, the Town Solicitor of New Shoreham.

Chair Lynch commented that the Commissioners all received Mr. O'Keefe's faxed letter and had an opportunity to read it this morning. Before presenting the Commission Staff recommendation, Staff Attorney Gramitt noted that this opinion did not change the previously issued advisory opinion to the petitioner regarding whether the petitioner may participate in the Town Council's review of Liquor and Entertainment Licenses given his private employment at a restaurant holding a Class B liquor license. Staff Attorney Gramitt then presented the Commission Staff recommendation.

The petitioner expressed his opinion that a landlord and tenant are not business associates because their differences outweigh their similarities. He stated that both want to keep the most of their money. Commissioner Kirby noted that both also want the property occupied. Commissioner Binder stated that there is “financial interplay” between a landlord and tenant and that the landlord might not raise the rent for a tenant that is furthering the landlord’s interest by serving on a public board.

In response to Commissioner Weavill, Staff Attorney Gramitt stated that the opinion does not address how the Council should handle complaints regarding a license because it was not raised in the request. Commissioner Kirby noted that the Home Rule Charter could be amended to avoid some of the problems discussed today. Mr. O’Keefe responded that he could not see such an amendment taking place.

Chair Lynch acknowledged Mr. O’Keefe. Mr. O’Keefe expressed his opinion that the petitioner should be able to participate in the caps. He explained his disagreement with the staff’s interpretation of a business association under the Code of Ethics and pointed out that the “flavor” of the Commission has changed since the last meeting because certain Commissioners are not present. He informed that the dominant businesses on Block Island involve liquor licenses and expressed the petitioner’s view that as much as 50% of the Island’s

population cannot vote on matters regarding liquor licenses. Mr. O'Keefe noted that at the last meeting Ms. Balser had a lower estimation than the petitioner. He commented that another petitioner sought a declaratory ruling regarding a similar Code of Ethics issue; however, he stated that none was received because the petitioner passed away. He concluded by asking the Commission not to follow the staff recommendation.

The petitioner stated that when he previously recused on a matter regarding Class B liquor licenses a member of the public objected and stated he was uncomfortable with less than the entire Council voting on the matter. Commissioner Binder asked the petitioner if he could see the appearance problem with which the Commission has concerns. By example, she noted the scenario where the petitioner votes against an application to increase the cap that will benefit his landlord. The petitioner stated that he understood the hypothetical, but informed that his vote would be based on the application.

In response to Commissioner Kirby, the petitioner informed that the Council sets caps once a year. Commissioner Kirby stated that he has more concerns if the Council handles caps on a case-by-case basis as suggested by Commissioner Binder's scenario. The petitioner informed that he can only speak to the practice followed during his service and that he is a third term Councilor and that he has served for almost six years. The petitioner informed that there is no written process for addressing applications; however, during this

service, the petitioner informed that the Council has set the caps before any applications were considered. He noted that there is disagreement over this process. He pointed out that the reality is that there is a limited environment for business on Block Island. He also expressed his opinion he is against voting on the caps before applications are heard.

Commissioner Segovis informed that this process has confirmed his concerns that there is not an arms-length decision-making process at issue. The petitioner informed that this is historically how the Town has handled caps, but that next year it could change as there is no written policy.

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

VOTED: To issue an advisory opinion, attached hereto, to John A. L. Sisto, a member of the New Shoreham Town Council.

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

The next advisory opinion was that of Scott T. Spear, Esq., in his capacity as legal counsel for the East Greenwich Fire District Board of Commissioners. The petitioner was not present. Staff Attorney

Leyden presented the Commission Staff recommendation.

Commissioner Segovis questioned whether there was an issue of quid pro quo as the Charter does not automatically allow for such reimbursements. Staff Attorney Leyden responded that such concerns regard the Charter, not the Code of Ethics. She also informed that it is too hypothetical at this time to know the impact of such a policy. She stated that the petitioner represented that this is the first time, in the six years that he has served as legal counsel for the Fire District, that such a vote was considered. She also pointed out that Commissioners are named Defendants in the civil action at issue.

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

VOTED: To issue an advisory opinion, attached hereto, to Scott T. Spear, Esq., in his capacity as legal counsel for the East Greenwich Fire District Board of Commissioners.

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

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

unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:

a.) To approve the minutes of Executive Session held on January 24, 2006.

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

At approximately 10:13 a.m., the Commission returned to Open Session. The Commission took a brief recess until 10:20 a.m.

The next order of business was discussion of Commission Regulations. Chair Lynch stated that there are two subcommittee meetings today. He reported that at the last Subcommittee A meeting, he and Commissioner Cheit decided to take time to digest the information provided to them until today's meeting. He pointed out, however, that Commissioner Cheit is not present today. Commissioner Segovis requested copies of the nepotism subcommittee materials. By consensus, the Commission decided that the information provided to each subcommittee be given to each Commissioner. Staff Attorney Gramitt stated that he will arrange for each Commissioner to receive all subcommittee materials.

Commissioner Binder noted that Subcommittee B's second meeting was today.

The next order of business was discussion of vote reporting requirements under Open Meetings Act. Senior Staff Attorney D'Arezzo stated that she prepared a memorandum for the Commission, as requested, on this subject and noted a correction to it on page 2. Commissioner Weavill requested that this item be tabled to the next meeting since Commissioner Cheit is not present and raised the issue. By consensus, the Commission decided to continue this item to the next meeting.

Commissioner Segovis inquired what the detriments would be to implementing Commissioner Cheit's proposal to report out in Open Session the individual votes cast by Commissioners in Executive Session. Chair Lynch noted that individual votes would be reported out before the minutes were approved. He also shared the problems that several Commissioners faced when a complainant reported out events to the press. Senior Staff Attorney D'Arezzo stated that implementing Commissioner Cheit's proposal would require the Commission to report out and correct the individual votes in Open Session. She also noted that these votes would be recorded in the Open Session minutes. Commissioner Kirby stated that there is value to allowing for a cooling off period after the vote, particularly if there is a lone dissenter as he may not be able to leave the meeting. Commissioner Weavill pointed out that the cooling off time may not

always exist as the votes are sometimes revealed in a matter of minutes after the meeting has ended.

The next order of business was the Director's Report. Senior Staff Attorney D'Arezzo informed that there are five advisory opinions pending that were all received in the last two weeks. She informed that there are no new complaints and that there are six pending in total, three pertaining to one person. She apprised the Commission that staff members are receiving advanced computer training made available through the state. She also informed that the office received a letter complementing the Commission's investigators for providing police ethics training. Regarding the budget, she informed that the Governor has not yet released his proposed budget for the Commission and that she is assuming the funding will match our revised FY2006 request. She stated that if there are issues, she and Kent will attend the Finance Committee meetings. She also informed that the staff is in the early stages of preparing future computer projects, such as electronic filing of financial disclosure statements.

The next order of business was New Business. There was none.

At approximately 10:35 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, Jr., Richard E. Kirby, James V. Murray, James C. Segovis, and Frederick K. Butler.

Respectfully submitted,

George E. Weavill, Jr.
Secretary