

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

October 10, 2006

The Rhode Island Ethics Commission held its 18th 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, October 10, 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 C. Segovis

Barbara Binder, Vice Chair Frederick K. Butler

George E. Weavill, Jr., Secretary Ross Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Dianne Leyden 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 extend time to approve the

minutes of the Open Session held on September 26, 2006. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To extend time to approve the minutes of the Open Session held on September 26, 2006.

ABSTENTION: Frederick K. Butler.

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 Irving J. Owens, the former Rhode Island State Fire Marshal. Commissioner Weavill disclosed that he is an officer in the State Council on Churches, which had business with the petitioner prior to his retirement in December 2005, but believed he could fairly participate. Staff Attorney Leyden presented the Commission Staff recommendation. In response to Commissioner Segovis, the petitioner indicated that he is not currently reviewing documents for clients or making recommendations. In response to Commissioner Cheit, he further stated that he does not envision doing so before December 2006. The petitioner informed that he would not participate in any matter in which the Fire Marshal's Office has an ongoing investigation, unless

subpoenaed relative to his former duties. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Irving J. Owens, the former Rhode Island State Fire Marshal.

The next advisory opinion was that of John P. McCoy, a Cumberland Zoning Board member. Staff Attorney Leyden presented the Commission Staff recommendation. Commissioner Binder voiced her discomfort with the situation and inquired if the petitioner was on the Board of Directors when the comments were written. In response, the petitioner stated that the comments were written in January 2006 and the Land Trust is one of the entities solicited by the Town for comments. In response to Commissioner Weavill, the petitioner advised that he is not aware of the Trust having any aspirations for ownership of use of the subject property. Upon motion made by Commissioner Butler and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to John P. McCoy, a Cumberland Zoning Board member.

The next advisory opinion was that of Marc Zawatsky, a Barrington Planning Board member. Staff Attorney Gramitt presented the Commission Staff recommendation. Chair Lynch observed that the

petitioner was not present. Staff Attorney Gramitt noted that it is possible that the petitioner did not receive notice of today's hearing until Friday or Saturday. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Marc Zawatsky, a Barrington Planning Board member.

The next advisory opinion was that of John W. Kovolski, a member of the Smithfield Zoning Board. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was not present. Upon motion made by Commissioner Binder and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to John W. Kovolski, a member of the Smithfield Zoning Board.

The next advisory opinion was that of Richard S. Humphrey, the Little Compton Town Solicitor. Senior Staff Attorney D'Arezzo presented the Commission Staff recommendation. The petitioner was not present. In response to Commissioner Cheit, Senior Staff Attorney D'Arezzo clarified that a complainant is not a party to a matter before the Commission; therefore, absent an existing familial, business or private employment relationship between the parties, no financial nexus exists. Commissioner Cheit agreed that the Code

would not bar participation in the present case and supported the inclusion of language regarding recusal and appearances of impropriety. However, he indicated that recusal should have been mandatory in a prior analogous opinion involving a pending complaint in Block Island. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Richard S. Humphrey, the Little Compton Town Solicitor.

At approximately 9:35 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

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

a.) Motion to extend time to approve minutes of Executive Session held on September 26, 2006.

b.) In re: Donald L. Carcieri,
Complaint No. 2006-9

At approximately 9:45 a.m. the Commission reconvened in Open Session.

Chair Lynch reported that in Executive Session the Commission voted to extend time to approve the minutes of the September 26, 2006 Executive Session and found that Complaint No. 2006-9, In re: Donald L. Carcieri, alleged sufficient facts to support a violation of the Code of Ethics.

Staff Attorney Gramitt advised that Marc Zawatsky, a Barrington Planning Board member, had arrived during Executive Session and would like the Commission to reconsider his request for an advisory opinion and allow him to be heard. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

VOTED: To reconsider the advisory opinion request of Marc Zawatsky, a Barrington Planning Board member.

Staff Attorney Gramitt summarized his earlier presentation of the Commission Staff recommendation. Mr. Zawatsky advised that the land in question has been in his family for over 30 years and his father transferred it to him in July 2006 after prior unsuccessful attempts to develop it. He represented that he relied upon the Town Solicitor's advice at a Grow Smart seminar that recusal is all that is required to appear before your own board, which he later learned was erroneous. He advised that his application is for affordable housing and Barrington has less than 1.5%. Mr. Zawatsky inquired whether, if he could not develop the property unless he resigned and waited one

year, another family member could do so. He noted that he is unemployed and was planning on working on the subject development as his primary business, which is adjacent to his primary residence.

In response to Commissioner Weavill, Mr. Zawatsky stated that he relied upon bad advice and discovered the problem after he filed the application. In further response, he indicated that the land was zoned for business, but he seeks relief for residential use. Chair Lynch asked why the development could not proceed in a year. Mr. Zawatsky replied that the Town has an aggressive schedule for the next 12 months and will likely make the rules stricter after its comprehensive plan update. He stated his belief that the land will become unbuildable. He further stated that he acquired the property as a gift after his father's attempts to develop the land or sell it to the Town were thwarted after 18 months. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Marc Zawatsky, a Barrington Planning Board member.

The next order of business was discussion of proposed regulatory actions regarding Nepotism & Revolving Door. Staff Attorney Gramitt advised that the October 2006 Code Supplement was produced as an interim measure until the next set of regulations are adopted and

printing the updated Code takes place in January 2007. He suggested that the Commission proceed with the current proposals for the balance of the year and consider new proposals beginning in January. The consensus of the Commission was to complete the current rule-making process and consider new matters next year.

Staff Attorney Gramitt advised of draft changes to the Nepotism proposal, in light of public testimony received and Commission discussions. He also noted that he removed language regarding “an individual’s” so that it reads better. Staff Attorney Gramitt indicated that he added “spouse” and submitted that an “in-law” would already be covered by the “by blood, marriage or adoption” language. Chair Lynch and Commissioner Segovis agreed that in-laws are already covered, but suggested specifically adding the language to make it clear to the general public. Commissioner Binder noted that step-children would also be included. Chair Lynch recommended including a laundry list of all relations.

In response to public testimony, Staff Attorney Gramitt stated that he removed the class exception in subsections (3) and (4). He represented that the Commission would not be precluded from applying it, but that with regard to budgets and collective bargaining the initial answer is a no. He stated that if the person wants to participate, he or she must come to the Commission, which can then look at hardship or class exception factors. Staff Attorney Gramitt suggested that the language would work well with school and town

budgets, but could be problematic with regard to the state budget because a large portion of the General Assembly probably has family members affected by some portion of it.

Chair Lynch stated that legislators should be able to vote on the bottom line on the floor, but should not be involved in committee voting. Commissioner Weavill cautioned that it could eliminate 40% of the legislature from the creation of the budget. He suggested that there be a cut-off point that one may not participate if persons with whom you live or your children are affected. Commissioner Cheit queried whether the committee process would be full of class exceptions regarding broad issues like education and transportation. Commissioner Weavill noted that the general public is electing these individuals, despite their relationships. Commissioner Segovis replied that he does not believe that the public really knows about them.

Commissioner Butler stated that he understood the points raised by the Governor's Office and Common Cause, but suggested adding language requiring that an advisory opinion be obtained regarding participation in line items. He further suggested that the original language be retained outlining the class exception standard, but not requiring an advisory opinion, with regard to the general vote. Commissioner Segovis concurred. Chair Lynch advised that Commissioner Butler's suggestion addressed his concerns and does not allow for committee action without first getting an advisory

opinion. Staff Attorney Gramitt added that an opinion would not be required for an up or down vote on the budget.

Commissioner Segovis recalled testimony regarding removing the requirement that a financial impact be “direct.” Commissioner Weavill inquired whether there was anything better in another jurisdiction. Chair Lynch stated his belief that the Commission’s requirements were more stringent, even before proposed amendments. Commissioner Weavill raised concerns regarding tying the hands of the General Assembly and creating a proliferation of opinions. Staff Attorney Gramitt indicated that he would draft some changes for the Commission’s review at the next meeting. Chair Commissioner Binder inquired as to how many other states have a part-time legislature. Chair Lynch suggested that they review Louisiana’s rules and those of other states with part-time legislatures.

Staff Attorney Gramitt recommended that if any major overhaul is needed it should be scheduled for January.

Staff Attorney Gramitt further advised that the Governor’s Office also raised the issue of removing the “direct” language from subsection (b)(1). He stated that he is not sure what a non-direct interest is and indicated his discomfort with having a standardless component. Commissioner Binder also voiced her concern.

***Chair Lynch left the meeting at 10:29 a.m. and returned at 10:30 a.m.**

Executive Director Willever advised that the Staff has discussed the issue and he believes that taking out specific language and leaving it more general opens the Commission to more legal challenges in the courts where the standards are not well defined. Staff Attorney Gramitt added that if specific evils need correction a subsection could be drafted to address them. Chair Lynch agreed.

***Legal Counsel Managhan left the meeting at 10:32 a.m.**

Commissioner Cheit stated that by removing the “direct” language the Commission would open itself up to a million arguments. Commissioners Butler and Segovis recommended leaving it in.

The next proposed regulation related to Municipal Official Revolving Door. Chair Lynch voiced his belief that there is a need for it. Commissioner Cheit recalled Common Cause’s concerns regarding its application in small towns and inquired whether there are any parts of the Code that distinguish among the cities and towns. Staff Attorney Gramitt indicated that there were not. Commissioner Cheit stated that the issue arguably is a problem in Providence. Commissioner Binder suggested that the Commission solicit comments from the mayors and town council presidents. Staff Attorney Gramitt replied that the Staff would ask for written comments from all 39 municipalities and the League of Cities and Towns. The Commission discussed soliciting comments from all town managers, administrators, mayors, school committees and

councils within a two week time frame.

***Legal Counsel Managhan returned at 10:40 a.m.**

Senior Staff Attorney D'Arezzo next addressed the Commission regarding proposed Regulations 36-14-5016 and 36-14-5007. She reiterated Commissioner Kirby's concern that Regulation 5007 should not be repealed, but its language should be amended to reflect a broader definition of employment. She also summarized concerns that Regulation 5016 would prohibit the Governor from hiring an attorney with expertise in a particular area if that attorney had served the prior administration. Commissioner Cheit noted that you never know the true reason why a person is hired and questioned how the Commission could judge its validity. Commissioner Weavill stated that he had no problem grandfathering in existing relationships. Commissioner Segovis suggested that the Commission work on defining employment to balance its concerns.

Executive Director Willever informed that Staff Attorney Gramitt would have primary responsibility for Staff action on the regulations. Chair Lynch reiterated his goal to complete the regulatory process before the current membership is replaced.

The next order of business was the Director's Report. Executive Director Willever informed that there are 10 advisory opinions and 7 complaints pending. He reported on the recent filing of complaints

which will involve complex legal and investigatory work in the next two months. He advised that all of the 15 non-filing complaints filed by staff have been settled without the need for hearing. He informed that Chief of Investigations Steven Cross will provide a financial disclosure update at the next meeting. Executive Director Willever also reported that the Staff has obtained audio recording equipment for use at Commission meetings, but suggested that how to implement its use should be discussed by the full Commission. In response to Commissioner Weavill, he stated that it cost less than \$500.

Commissioner Cheit inquired as to the status of correspondence received from the ACLU. Executive Director Willever replied that the letter is a public record and could be considered as input in response to the prior public hearing on the regulations. Senior Staff Attorney D'Arezzo explained that all such correspondence is placed in the Commission's rule-making file, as required by the APA. In response to Chair Lynch's observation of changes to the financial disclosure statute, Senior Staff Attorney D'Arezzo informed that Staff Attorney Gramitt devised a form for general officer candidates' disclosure of their income within certain listed ranges. She added that the form, or some version of it, would be sent to general officers separately with the 2006 financial statements next year. Executive Director Willever stated that additional changes to financial disclosure must be undertaken, specifically regarding the issue of non-profits.

At approximately 11:02 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.
Secretary