

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**November 14, 2006**

**The Rhode Island Ethics Commission held its 20th 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 24, 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**

**Richard E. Kirby**

**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; and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.**

**At approximately 9:15 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Sessions**

held on October 10, 2006 and October 24, 2006. Commissioner Weavill noted a typographical error on Page 5. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Cheit, it was unanimously

**VOTED:** To approve the minutes of the Open Sessions held on October 10, 2006 and October 26, 2006, as corrected.

**ABSTENTION** as to October 10, 2006: Richard E. Kirby.

**ABSTENTIONS** as to October 24, 2006: Frederick K. Butler and Ross Cheit.

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 Richard A. Caldarone, a Facilities and Grounds Coordinator employed by the Rhode Island Department of Administration, Division of Central Services. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present.

In response to Commissioner Butler, the petitioner advised that the system and equipment in place now was selected and installed prior to his employment. In response to Commissioner Segovis, he

indicated that he would deal with state and municipal clients in Massachusetts and some Rhode Island cities. He represented that no one north of Rhode Island is familiar with the system. He informed that all training would be done after hours and on the weekends. In response to Commissioner Segovis, the petitioner stated that he does not know if anyone else was approached for the position, but noted his 26 plus years of experience. The petitioner stated that he does not evaluate any E.J. Ward products in his position with the state. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Richard A. Caldarone, a Facilities and Grounds Coordinator employed by the Rhode Island Department of Administration, Division of Central Services.

The next advisory opinion was that of Paul Neves, a member and Chairman of the Cumberland School Committee. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present and informed that the job's title is Customer Service Coordinator, although the duties remain the same as represented. In response to Commissioner Weavill, he advised that he was unaware of the vacancy until Durham contacted him on September 1st and he was offered the position on October 11th or 12th. He stated that he has done no work for Durham and advised them the earliest he could begin would be December 1st.

**Commissioner Weavill inquired how the petitioner would handle interactions with the School Department's administration, many of whom he appointed. The petitioner indicated that Durham's General Manager would handle any meetings with administration that would present a conflict. In response to Commissioner Weavill, the petitioner indicated that he would be handling supervisory issues regarding bus drivers and dispatchers. Commissioner Weavill noted that the risk and potential for litigation would involve a potential financial gain or loss to the transportation company. The petitioner replied that he would be supervising the drivers, but the General Manager could be involved, if needed, with decisions relating to termination.**

**Commissioner Weavill expressed his concerns regarding the close relationship. Commissioner Kirby noted that the petitioner was Chair of the School Committee for over 14 years and within a short period of leaving that position would be working for its vendor. The petitioner advised that Durham bid for the job in March 2005 and received a three year contract. In response to Commissioner Kirby, the petitioner informed that he was working for Bank of America in customer service when Durham contacted him. He further stated that another individual vacated the position and it was not newly created.**

**Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, there was discussion. Commissioner Binder**

**stated that she was voting in the affirmative, but reminded the petitioner of the constraints set forth in the opinion. Commissioner Kirby expressed that the petitioner may be going into a job that he cannot perform for a year. Commissioner Lynch concurred with Commissioner Weavill's concerns regarding the close relationship. Thereafter, on the original motion, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Paul Neves, a member and Chairman of the Cumberland School Committee.**

**AYES: Frederick K. Butler, Richard E. Kirby and Barbara Binder.**

**NOES: James Lynch, Sr., George E. Weavill, Jr., James C. Segovis and Ross Cheit.**

**No advisory opinion issued due to a lack of five affirmative votes. Staff Attorney Gramitt advised the petitioner of the ramifications of not receiving an advisory opinion.**

**The next advisory opinion was that of Ronald A. Loparto, a member of the Lincoln Town Council. The petitioner was present with his attorney, Richard Paccia. Commissioner Weavill disclosed that he is a Lincoln resident and contacted Town Hall to inquire as to the petitioner's identity after reading a legal notice in the newspaper. There was no objection to Commissioner Weavill's participation.**

**Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner advised that he worked closely with the Town Solicitor from the start to ensure that he did everything properly. Commissioner Binder inquired regarding the procedure for transfer of a liquor license. Attorney Paccia replied that the Town Council looks at the totality of circumstances and it is largely pro forma unless certain concerns jump out.**

**Commissioner Cheit inquired as to the applicable legal standard for the transfer. Attorney Paccia noted that the petitioner has been involved in the restaurant business for approximately thirty years and has held liquor licenses in various municipalities, and in that experience it has never been an issue of great debate. Commissioner Kirby stated that the transfer to a transferee is usually a pro forma matter, as long as the transferee has not defrauded wholesale distributors under other licenses. He noted that location of the license could be an issue, but the transfer to another owner/operator at the same location usually is pro forma. In response to Commissioner Cheit, the petitioner stated that he is not proposing any changes to the establishment. He added that he also is required to submit a form at the state level regarding a criminal background check. He indicated that he does not believe Lincoln has ever denied a license transfer.**

**Commissioner Binder remarked that Attorney Paccia advised that the Town Council would look at the applicant's financial circumstances,**

but the petitioner specifically represents that his circumstances are precarious. Commissioner Kirby expressed that the pro forma nature of the transfer was more persuasive for him than the petitioner's financial circumstances. Chair Lynch asked the petitioner to explain why his situation is a hardship rather than mere inconvenience. The petitioner set forth the particulars of his financial situation, including the October closure of his Cape Cod hotel, which carries an \$8,000 monthly mortgage. He advised that he has no income and no money in the bank. He informed that he sought to purchase Brooksies to increase his income. Attorney Paccia represented that the petitioner was unaware of this opportunity at the time he decided on a 1031 exchange from the forced sale of his father's Cape Cod property. He stated that the petitioner must consummate the purchase within a certain time period to get the tax benefit of the transaction.

Commissioner Kirby distinguished the license transfer from an application to compete to acquire a new license. He suggested that if the transfer is ministerial, the Commission need not look at financial hardship. Chair Lynch noted that the petitioner raised the hardship issue. Attorney Paccia advised that the petitioner will not continue in office beyond December 31st and would recuse himself and retain independent counsel. In response to Commissioner Weavill, Staff Attorney Gramitt advised that the staff's recommendation is based on examining the totality of circumstances. He stated that the issue of whether the transfer is substantive or pro forma is only one factor, and the family and financial circumstances others. He advised that

no one factor is determinative of hardship and the Commission can consider additional factors and/or weigh one more heavily than another.

Commissioner Weavill distinguished the recent advisory opinion to T. Brian Handrigan, given that Handrigan was appearing before a subsidiary board. Commissioner Binder suggested that if the transfer turns out not to be pro forma, the issued opinion would not be valid. Commissioner Cheit asked if the request could include the petitioner's representation that he has had no prior issues with his licenses and, therefore, expects the transfer to be pro forma. The petitioner represented that he has had no problems with his licenses in Pawtucket and Newport. He noted that he received a warning regarding a license he has held in Warwick for the past three years, but has never been cited. He stated that his licenses are renewed annually without any problems.

In response to Commissioners Butler and Cheit, the petitioner represented that he has never had any problem with the renewal or transfer of a license. In response to Commissioner Weavill, he informed that his accounts payable and taxes are all paid to date. In response to Commissioner Segovis, the petitioner advised that he did not want to sell the Cape Cod family property, but the sale was forced by a family member. In further response, he advised that if the Brooksies opportunity did not arise, he would still be looking to purchase a property.

Commissioner Cheit questioned the petitioner entering into a contract knowing that he would have to go before his own board to transfer the license. Attorney Paccia stated that the petitioner recused himself. Staff Attorney Gramitt clarified that the petitioner's counsel contacted the Commission staff prior to the advisory opinion request. He explained that the transfer was originally scheduled to go before the Council prior to the effective date of the new regulation, which clarifies that one cannot appear before one's board through legal counsel. Staff Attorney Gramitt noted that the petitioner chose to obtain an opinion, rather than proceed. Executive Director Willever commented that the Commission would be in a stronger position to defend its position subsequent to the regulatory change.

Upon motion made by Commissioner Kirby and duly seconded by Commissioner Butler to approve the Commission Staff recommendation, with the addition of the petitioner's representations regarding prior receipt and renewal of liquor licenses without issue, there was discussion. Commissioner Kirby stated that he would vote in the affirmative based upon the petitioner's anticipation that it would be approved in the ordinary course of business. Commissioner Weavill voiced his concern regarding past precedent and the need to be consistent. Commissioner Segovis opined that the transfer is a ministerial matter, but cautioned against going down the slippery slope regarding hardship. Commissioners Butler and Kirby affirmed their support for the draft on the same basis.

**Commissioner Cheit echoed their sentiments and added that the petitioner is leaving the Council. Commissioner Binder indicated her approval of the draft based on representations that the transfer would be pro forma.**

**On the original motion, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Ronald A. Loparto, a member of the Lincoln Town Council.**

**AYES: James C. Segovis, Frederick K. Butler, Richard E. Kirby, Ross Cheit and Barbara Binder.**

**NOES: George E. Weavill, Jr. and James Lynch, Sr.**

**\*The Commission took a recess from 10:30 -10:46 a.m.**

**The next advisory opinion was that of Patrick Rogers, a member and Chairman of the East Providence Waterfront Special Development Commission. Commissioner Butler disclosed that he and the petitioner are members of the same country club, but he believes he may fairly and objectively participate. Commissioner Kirby advised that he would recuse to avoid an appearance of impropriety, given that he and the petitioner are frequent golf partners. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present.**

**In response to Commissioner Weavill, the petitioner stated that he does not believe he or the Waterfront Commission would be involved in matters involving East Providence boards. In further response, he stated that the project does not involve the construction of public highways. The petitioner added that ultimately the roads inside of a project could involve some city oversight. He advised that the City could ask the developer to assume maintenance and beautification of the abutting park, the City could require an easement to access the property or the developer could ask for a tax stabilization treaty with the City. He represented that the developer has been a client of his firm for many years and other attorneys would be involved regarding the environmental issues. Upon motion made by Commissioner Binder and duly seconded by Commissioner Segovis, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Patrick Rogers, a member and Chairman of the East Providence Waterfront Special Development Commission.**

**RECUSAL: Richard E. Kirby.**

**The next advisory opinion was that of Barbara B. Michel, a trustee of the Block Island Land Trust. The petitioner was not present. Staff Attorney Gramitt presented the Commission Staff recommendation. He advised that had spoken with the petitioner's legal counsel, who**

**represented that the petitioner was in accord with the draft opinion. Legal Counsel Managhan disclosed that she is opposing counsel in a litigation matter involving the Land Trust but believes that she can fairly and objectively advise the Commission, if required. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Barbara B. Michel, a trustee of the Block Island Land Trust.**

**At approximately 11:00 a.m., upon motion made by Commissioner and duly seconded by Commissioner Binder 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)(4), to wit:**

**a.) Motion to approve minutes of Executive Session held on October 10, 2006.**

**b.) Motion to approve minutes of Executive Session held on October 24, 2006.**

**At approximately 11: 01 a.m. the Commission reconvened in Open Session.**

**Chair Lynch reported that in Executive Session the Commission**

**voted to approve the minutes of the Executive Sessions held on October 10, 2006 and October 24, 2006.**

**The next order of business was discussion of proposed regulatory actions regarding Nepotism & Revolving Door. Staff Attorney Gramitt reported that at the Commission's request, the Staff solicited comments on the municipal staff revolving door proposal. He noted that the response from the League of Cities and Towns is likely representative of the comments it received. He stated that the comments were on point with concerns raised by Common Cause and the Governor's Legal Counsel regarding the impact on smaller communities. He pointed out that, for example, communities frequently would hire the outgoing finance director as a consultant to assist the new hire for a period of time.**

**Commissioner Segovis commented that the Commission originally set out to address some abuses of the revolving door, but the proposal could go too far, particularly as applied to smaller cities. Staff Attorney Gramitt advised that he received comments that people really did not see it as a problem in their own cities and perceived it as harmful to administration. Chair Lynch replied that he believes that the towns do have the problem, whether they realize it or not. He noted that the Commission has carved out certain exceptions. Commissioner Cheit also was skeptical of comments that there is no such problem. However, he questioned whether smaller towns should be exempted so as not to create hardships. Commissioner**

**Segovis concurred with Chair Lynch but cautioned that not having a bright line would lead to many requests for exceptions.**

**Commissioner Weavill suggested having an automatic allowance for transitions where the outgoing staff could serve for a 90 day period until his or her successor is appointed to resolve these concerns. Staff Attorney Gramitt advised that many had an issue with the exemption for staff with five years of uninterrupted service and did not understand the reason for it. Chair Lynch suggested removing the exemption. Commissioner Binder voiced her discomfort with enacting a regulation for a problem that may not exist. Chair Lynch cautioned that there may only be a perception that it does not exist. Commissioner Segovis recalled a case from Cumberland where the Town found that the former staff member was the only qualified person for the job. He stated that some municipalities do not pull their labor pool from beyond their confines.**

**Commissioner Kirby pointed out that some municipalities are constrained by Charter residency requirements. Commissioner Lynch noted that they are being abandoned. Christine Lopes, Executive Director of Common Cause, addressed the Commission and represented that the five year service exemption was carried down from the state statute. She stated her understanding that it was included in the statute to address differences between classified and unclassified staff that might otherwise eliminate any incentive to assist an incoming administration.**

Staff Attorney Gramitt advised that the employment in the Cumberland case previously cited was already prohibited by Regulation 5006. Commissioner Cheit expressed that the Commission must make a factual finding of the need for a regulation prior to its adoption. He stated that he is unsure that there are enough facts to support adoption of this proposal. Commissioner Weavill inquired if Executive Director Willever had evidence of the need for such regulation based on his work with the Providence Ethics Task Force. In response, Director Willever stated that his group had recommended adoption of a similar regulation.

Commissioner Weavill represented that he would be more comfortable if they had more substantiation, but indicated that it is unlikely that they would find it. Commissioner Cheit questioned whether there would be a way to determine who in Cranston and Providence left their positions and then came back. Legal Counsel Managhan informed that theoretically it would be possible, but many persons may have been denied positions because of it. Commissioner Binder suggested that former members of the Providence Ethics Task Force might be able to provide some insight on their findings and noted that Phil West had discouraged adoption of the draft. Commissioner Cheit clarified that Mr. West's concern related to impact on smaller jurisdictions.

Commissioner Weavill questioned whether the proposal could be

applied to cities based upon their populations or budgets. Legal Counsel Managhan voiced concern regarding its practical application. Commissioner Cheit pointed out that some states have statutes exempting particular counties. Commissioner Binder opined that population would be an important factor. Commissioner Butler stated his belief that the Commission needs some background as to actual experiences, but noted that it would be hard to develop data regarding people who were denied positions. Commissioner Binder suggested that the proposal be put aside until a need is demonstrated. The consensus of the Commission was to put this regulation aside and go forward with the remaining proposals.

\*Commissioners Cheit and Segovis left the meeting at approximately 11:30 a.m.

Senior Staff Attorney D'Arezzo provided a brief explanation of concerns relating to broadening the definition of "employment" for application to sections 5(n) and 5(o). She clarified that although this would prohibit certain outgoing senior staffers from serving as consultants, the Commission is authorized to grant exceptions under the statute where it would not create the appearance of impropriety. She advised that the Commission must determine whether it wishes to repeal, amend or keep Regulation 5007 intact and discussed two amendment alternatives. Commissioner Weavill suggested that language be drafted allowing for an automatic ninety day transition period. Commissioner Kirby agreed. Staff Attorney Gramitt

**explained that the Staff would present the proposals for final review at the next meeting, after which time a public hearing could be noticed.**

**The next order of business was the Director's Report. Executive Director Willever informed that there are eight advisory opinions and eight complaints pending. Senior Staff Attorney D'Arezzo distributed a tentative 2007 meeting schedule and asked the members to determine their availability for adjudication of In re: William V. Irons. The consensus of the Commission was to plan for two consecutive hearing dates. After Senior Staff Attorney D'Arezzo advised that she would consult with the absent members and opposing counsel to determine a date certain.**

**\* Commissioner Butler left the meeting at 11:54 a.m. Upon motion made by Com-missioner Kirby, there was no quorum to formally vote to adjourn the meeting, which concluded at 11:55 a.m.**

**Respectfully submitted,**

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