

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

August 21, 2007

The Rhode Island Ethics Commission held its 14th meeting of 2007 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, August 21, 2007, 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 R. Binder, Vice Chair James C. Segovis

George E. Weavill, Jr., Secretary Frederick K. Butler

Richard E. Kirby* Ross Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; Commission Investigators Steven T. Cross and Peter J. Mancini; and Commission Administrative Staff Tracy Teixeira.

At approximately 9:05 a.m., the Chair opened the meeting. The first

order of business was a motion to approve minutes of the Open Session held on July 24, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously

VOTED: To approve the minutes of the Open Session held on July 24, 2007.

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 David M. Sullivan, the Tax Administrator for the State of Rhode Island. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present.

***Commissioner Kirby arrived at 9:09 a.m.**

In response to Commissioner Weavill, the petitioner indicated that the persons who would be contributing would be vendors and suppliers with whom he would be doing business. He advised that all of them would be subject to public bidding requirements. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to David M. Sullivan, the Tax Administrator for the State of Rhode Island.

ABSTENTION: Richard E. Kirby.

The next advisory opinion was that of Elizabeth M. Strout, a former paid intern with the Office of the General Treasurer. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Weavill, the petitioner informed that the Treasurer oversees management of the CollegeBound Fund and its investment options, but there is no separate division for the Fund within the Treasurer's Office. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Elizabeth M. Strout, a former paid intern with the Office of the General Treasurer.

The next advisory opinion was that of Peter F. Lambert, a member of the Burrillville School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Segovis, Staff Attorney DeVault stated that the petitioner represented that the relationship did not meet the criteria for common law marriage in Rhode Island. The petitioner

informed that they are just companions and that he has a casual relationship with his companion's daughter. In response to Commissioner Weavill, the petitioner indicated his belief that the daughter has been a teacher for about ten years, but does not know if she has tenure. Commissioner Weavill advised that if a matter arises regarding the daughter personally he should be cautious regarding the appearance of impropriety. In response to Commissioner Cheit, the petitioner informed that he sought the opinion upon recommendation of the School Committee Chair, given that he previously had been excluded from negotiations. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was

VOTED: To issue an advisory opinion, attached hereto, to Peter Lambert, a member of the Burrillville School Committee.

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

NOES: James V. Murray.

At approximately 9:25 a.m., upon motion made by Commissioner Cheit 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)(2) and 5(a)(4), to wit:

a.) Motion to approve minutes of Executive Session held on July 24, 2007.

**b.) In re: Raymond E. Gallison, Jr.,
Complaint No. 2007-1**

**c.) Status Update: Schubert, et al. v. Willever,
Superior Court C.A. No. 07-3733**

d.) Motion to return to Open Session.

The Commission reconvened in Open Session at approximately 9:40 a.m. Chair Lynch reported that the Commission voted to approve minutes of the Executive Session held on July 24, 2007, granted a sixty day extension of time in Complaint No. 2007-1, In re: Raymond E. Gallison, Jr., and discussed litigation.

The next order of business was a motion to seal the minutes of the Executive Session held on August 21, 2007. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To seal the minutes of the Executive Session held on August 21, 2007.

The next order of business was a motion hearing in the matter of In re: Joseph A. Montalbano, Complaint Nos. 2006-4 & 2006-11. The Commission heard argument from Attorney Max Wistow and Prosecutor Jason Gramitt on the Respondent's Motion to Dismiss or in the Alternative Motion to Stay and the Prosecution's Objection Thereto. Given time limitations, the Commission did not hear separate argument on the Respondent's Demand for a Jury Trial and the Prosecution's Objection Thereto, for which each party relied upon the submitted briefs. The hearing was stenographically recorded and the transcript is available at the Commission Offices.

***The Commission took a brief recess at 11:10 a.m. and reconvened at 11:20 a.m.**

At Chair Lynch's request, Legal Counsel Managhan advised the Commission regarding the issues before it and whether it has the ability to make determinations of facial unconstitutionality. She stated that if the Commission can determine issues on non-constitutional grounds it ought to do so. She advised that the Commission should decline to rule on allegations of facial statutory unconstitutionality, and should carefully consider whether it wishes to rule on the Speech in Debate issue.

Attorney Wistow suggested that the parties bring the matter to Superior Court and agree to certify the issue to the Supreme Court. Prosecutor Leyden replied that the Prosecution is not in favor and will not agree to extraordinary review.

***The Commission took a brief recess at 11:50 a.m. and reconvened at 12:00 p.m.**

The Commission and Legal Counsel Managhan discussed the procedure for addressing each of the Respondent's claims. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To deny Respondent's motion to dismiss Counts 1, 2, 6 & 7 on statutory grounds.

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

VOTED: To deny Respondent's motion to dismiss Counts 3, 4, & 5.

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

VOTED: To deny Respondent's motion to dismiss regarding evidentiary issues.

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

VOTED: To deny Respondent's motion to dismiss Complaint No. 2006-11.

Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray to deny Respondent's motion to dismiss Counts 6 & 7 on the basis that the Commission does not wish to rule on the facial unconstitutionality of R.I. Gen. Laws § 36-14-6, there was discussion. Commissioner Cheit suggested an amendment to the motion. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To deny Respondent's motion to dismiss Counts 6 & 7 and decline to address the issue because the Commission does not believe it is appropriate for it to do so.

There was discussion, with procedural input from Legal Counsel Managhan, regarding the Respondent's demand for a jury trial. Upon motion made by Commissioner Binder and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To deny Respondent's motion for a jury trial and decline to address the issue because the Commission does not believe it

is appropriate for it to do so.

Upon motion made by Commissioner Butler and duly seconded by Commissioner Weavill to deny the motion to dismiss as to Counts 1, 2, 6 & 7 on Speech in Debate grounds due to the fact it would be inappropriate to decide on the constitutional issue, there was discussion. The motion and second were withdrawn and there was further discussion. Upon motion made by Commissioner Binder and duly seconded by Commissioner Butler, it was

VOTED: To deny Respondent's motion to dismiss Counts 1, 2, 6 & 7 of Complaint No. 2006-4 on the grounds that the Speech in Debate Clause of the Rhode Island Constitution does not require dismissal of those Counts.

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

NOES: Ross Cheit and Richard E. Kirby.

Commissioner Kirby stated that he is not happy with the status of the constitutional text regarding speech in debate but believes the Commission has full jurisdiction over legislators. Commissioner Cheit agreed. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Kirby, it was

VOTED: To deny Respondent's motion to stay.

AYES: James V. Murray, Ross Cheit, James Lynch, Sr., James C. Segovis, Frederick K. Butler and George E. Weavill, Jr.

NOES: Barbara R. Binder.

In response to Commissioner Murray, Prosecutor Leyden stated that the timetable for moving forward on adjudication would be about six weeks. Chair Lynch directed Attorney Wistow to speak with the Prosecution for specific dates.

At approximately 12:47 p.m., given the lateness of the hour, the next order of business was that of adjournment. Upon motion made and duly seconded, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary