

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

**February 26, 2008**

**The Rhode Island Ethics Commission held its 5th meeting of 2008 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 26, 2008, 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  
Ross Cheit., Secretary   Deborah M. Cerullo SSND  
Richard E. Kirby   J. William W. Harsch**

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

**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 February 12, 2008. Upon motion made by**

**Commissioner Murray and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To approve the minutes of the Open Session held on February 12, 2008.**

**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 Mello, the Building Official for the Town of Little Compton. Staff Attorney DeVault advised that the matter had been continued from the last meeting so that the petitioner may be present to answer questions. She informed that she made minor revisions to the draft language based upon the Commission's suggestions from the last meeting. The petitioner was present and represented that the Portsmouth or Tiverton Building Official would inspect any work he performed, which would not be on large projects. In response to Commissioner Cheit, he indicated that small jobs such as crown moulding or baseboards would not involve general contractors. In further response, he acknowledged that any general contractor working in Little Compton would come before him in his position as the Building Official. He represented that he would not work with a general contractor who performs work in Little Compton.**

Commissioner Kirby noted that the petitioner would have to recuse if he worked on a contractor's job in Portsmouth and the same contractor came before him in Little Compton on another job. Commissioner Cerullo inquired where the relationship between the petitioner and the homeowner would begin and whether it would be through his position as the Building Official. The petitioner advised that people do come into his office and ask for recommendations and, in response, he gives them a few names. He stated that if they ask him to perform the work, he refuses. He explained that people sometimes come to him for jobs through word of mouth. Commissioner Cerullo asked for further information regarding the names the petitioner gives to people and questioned who would be the petitioner's competitors in this business.

The petitioner replied that when asked he provides the names of a few local people whose work he has checked in the past. In response to Commissioner Cheit, he stated that he presently is performing small jobs outside of Little Compton which do not require inspection. In response to Commissioner Harsch, he advised that his position as the Building Official is a thirty-five hour per week full-time position. He informed that he works from 7:30 a.m. to 12:00 p.m. Monday through Thursday, and he performs inspections after noon. He stated that he has Fridays and Saturdays off and performs work for himself. In further response to Commissioner Harsch, he represented that he performs various duties for the Town, including acting as the Plumbing and Mechanical Inspector, and sometimes the Electrical

**Inspector. He confirmed that he receives a salary and benefits.**

**Commissioner Harsch inquired what percentage of the petitioner's income comes from his outside work. The petitioner indicated that it could be between 5-10% and added that he makes roughly \$30,000 yearly from his municipal position. In response to Commissioner Harsch, he stated that he does not perform plumbing work, but he is the Plumbing Inspector for the Town. He clarified that he performs plumbing, electrical and mechanical inspections for the Town, but he is only licensed as a contractor. He advised that he has worked for the Town for three years and previously performed work for churches. In response to Commissioner Cheit, the petitioner stated that he has never had to have a neighboring municipality's Building Official inspect his work. Commissioner Kirby commented that the Commission cannot control the petitioner's private conduct if the work he is performing is done on his own time and is not inspected by his office. However, he cautioned the petitioner regarding providing referrals and soliciting work.**

**In response to Commissioner Cerullo, the petitioner stated that he would like to be able to accept the offer if a person came into his office and asked him to perform work. He clarified that he has not previously done so. Commissioner Cheit requested that specific language be added to the opinion to make it clear that he cannot solicit work as the Building Official. Commissioner Kirby commented that if the petitioner is behind his desk and a person comes in looking**

for someone to perform work, the petitioner's standard response should be that he does not discuss it while he is at work. He advised that the petitioner would need to avoid any such discussion while at Town Hall or out on an inspection. Staff Attorney DeVault indicated that she would add the requested language. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray to adopt the draft opinion, as amended, there was discussion.

Commissioner Harsch complimented the petitioner for appearing before the Commission and for his candor. He noted that he has no problem with the petitioner's particular situation, but he is concerned as a general matter with full-time public employees who accept outside employment in the same field, which they supposedly perform on their own time. He asked if the Commission would be willing to request that the Staff provide a one page report on how the federal government addresses the situation. Chair Lynch suggested that it should be dealt with under New Business. Upon the original motion, it was unanimously

**VOTED:** To issue an advisory opinion, as amended, to Michael Mello, the Building Official for the Town of Little Compton.

Chair Lynch stated that the Code does not presently prohibit the acceptance of such outside employment and that, unless a change is made through the regulatory process, the Commission must permit it.

Commissioner Cheit expressed his belief that it is unfair to suggest

that a person with outside employment “supposedly” performs such work on his or her own time. Commissioner Harsch replied that he did not intend to be unfair to anyone but wanted to voice his concern regarding what he perceives as a fundamental problem.

The next advisory opinion was that of Sharon A. Santilli, Esq., Associate Director of the Office of Child Support Services, a division within the Department of Human Services. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present. Staff Attorney Leyden advised that the seven vendors who provide services to OCSS will be solicited and CLE credits will be provided. The petitioner informed that if OCSS is unable to solicit the vendors, it likely will be unable to continue to hold the conference because of the budget deficit. In response to Commissioner Murray, the petitioner advised that all contracts go out to bid. She stated that a review committee then considers whether the bid meets the needs specified in the RFP and cost factors, after which it is sent to the Division of Purchasing. In further response, the petitioner advised that one contract will probably expire within the next year.

In response to Commissioner Cerullo, the petitioner informed that the solicitation would be done by letter. At Commissioner Cerullo’s request, she stated that the letter could include language indicating that a donation would not impact the vendor’s likelihood of receiving future contracts. Commission Cheit expressed his discomfort with the situation, yet noted that the Code probably allows it. He agreed

that a public purpose is involved, but he also stated that vendors might believe their donation would affect them. He suggested that the state should pay for the conference if it supports a public purpose. Chair Lynch stated that he has a serious problem with the fact that there are only seven vendors and they are the only ones being solicited. He added that he cannot understand the government undertaking a program which is totally dependent upon vendors.

The petitioner advised that she cannot offer the program within her budget. She informed that the conference provides an opportunity to offer CLE credits, report to the public on what they have accomplished and their strategic plan. She noted that the Family Court also participates. Chair Lynch expressed his support for the program and his hope that it could continue without the use of vendor donations. Commissioner Kirby echoed the Chair's support for the program itself, but questioned whether a "pay to play" issue arises. He particularly inquired into state employees receiving the benefit of free CLE credits and food. Commissioner Cheit observed that the program was sponsored by a private foundation in the past. Commissioner Kirby stated that the foundation was not an interested person. Commissioner Cheit indicated that the only way he could approve the opinion would be with the addition of cautionary language in the solicitation letter, as suggested by Commissioner Cerullo. In response to Commissioner Cheit, the petitioner advised that she would not be able to state whether the vendors believe that they have to make a donation.

Chair Lynch expressed his concern with asking an agency to include specific language in their solicitation letter and suggested that the members vote to either approve or disapprove the draft. Commissioner Harsch voiced his agreement with the comments of the members. He suggested that allowing the solicitation would give the appearance to the outside world of an insider/outsider situation within the field. In response to Commissioner Murray, Staff Attorney Gramitt recalled that the Commission previously issued an advisory opinion to the Rhode Island Association of School Business Officials in which it allowed the organization to conduct solicitation of vendors. However, that opinion noted that there could be a private benefit and conflict if an individual solicited a vendor who did business with his or her school department.

Upon motion made by Commissioner Cheit and duly seconded by Commissioner Harsch to adopt the draft opinion, there was discussion. Commissioner Cheit inquired how the Commission would reconcile this situation with past precedents if it declines to approve the draft. Commissioner Kirby cautioned regarding potential implications under the gift regulation and suggested that allowing it would create a slippery slope which other agencies might follow. In response to Commissioner Cerullo's inquiry regarding the role of precedent, Legal Counsel Managhan suggested that the Commission pay close attention when departing from past opinions. Commissioner Cheit commented that the role of precedents could be

distinguished in the advisory opinion context versus complaints. Chair Lynch agreed with Commissioner Kirby regarding potential gift regulation considerations. Upon the original motion, it was

**VOTED:** To issue an advisory opinion to Sharon A. Santilli, Esq., Associate Director of the Office of Child Support Services, a division within the Department of Human Services.

**AYES:** None.

**NOES:** James V. Murray, Ross Cheit, Deborah M. Cerullo SSND, J. William W. Harsch, Richard E. Kirby and James Lynch, Sr.

The advisory opinion did not issue due to a lack of affirmative votes.

The next advisory opinion was that of Bruce J. Whitehouse, a member of the Jamestown School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. She noted that the petitioner was unable to attend but could be present at the next meeting if there were any questions. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray to approve the draft opinion, there was discussion. Commissioner Harsch indicated that he has questions for the Staff regarding the general situation of members of teachers' unions and cross local situations that seem to be present in Rhode Island. He noted that while unions are set up as local, the real bargaining is often done on

the state level. He stated that he finds it troubling that the union representative is that same for Little Compton and Jamestown and voiced his belief that the situation presents an appearance of impropriety. Commissioner Murray stated that he has some questions for the petitioner. Commissioners Kirby and Murray withdrew the original motion. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray, it was unanimously

**VOTED:** To table the advisory opinion request of Bruce J. Whitehouse, a member of the Jamestown School Committee, until March 11, 2008, so that the petitioner may be present to answer questions.

At approximately 10:12 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Cheit, it was unanimously

**VOTED:** To go into Executive Session pursuant to R.I. Gen. Laws § 42-46- 5(a)(2)(4), to wit:

a.) Motion to approve minutes of Executive Session held on February 12, 2008.

b.) Notification of Initiation of Preliminary Investigation pursuant to Commission Regulation 36-14-12001.

**c.) Motion to return to Open Session.**

**The Commission reconvened in Open Session at approximately 10:41 a.m. without the presence of Commissioner Kirby. The next order of business was a motion to seal minutes of the Executive Session held on February 26, 2008. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Harsch, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on February 26, 2008.**

**Chair Lynch reported that in Executive Session the Commission approved the minutes of the Executive Session held on February 12, 2008, and received notification of initiation of a Preliminary Investigation pursuant to Regulation 12001.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are eight complaints, one preliminary investigation and five advisory opinions pending. He informed that the March 25th public hearing on the proposed regulations was advertised in the Providence Journal on February 15th.**

**The next order of business was New Business. Chair Lynch complimented Staff Attorney Gramitt on his recent educational seminar at the State House. Commissioner Harsch requested that the**

**Commission ask the Staff to provide a brief analysis regarding federal rules governing an employee's outside employment within the same field in which he provides service to the federal government. Chair Lynch indicated that it could be presented at the next meeting or thereafter. Commissioner Cheit stated that a comparison to the federal rules would be helpful. At 10:46 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**Ross Cheit**

**Secretary**