

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

**March 11, 2008**

**The Rhode Island Ethics Commission held its 6th 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, March 11, 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  
Barbara R. Binder, Vice Chair   Frederick K. Butler  
Ross Cheit., Secretary   J. William W. Harsch   Richard E. Kirby**

**Also present were Kathleen Managhan, Commission Legal Counsel; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross and Peter J. Mancini.**

**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 26, 2008. Commissioner Cheit noted that on page three the word supposedly should be in quotation marks.**

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

**VOTED: To approve the minutes of the Open Session held on February 26, 2008, as corrected.**

**ABSTENTIONS: Barbara R. Binder and 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 Bruce J. Whitehouse, a member of the Jamestown School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. Commissioner Binder inquired whether there could be any tie in between the benefits negotiated for one bargaining unit and that provided by another municipality. The petitioner replied that there is no such relationship between Jamestown and Little Compton. In response to Commissioner Cheit, the petitioner indicated that the union representative would be present in Executive Sessions relative to contract negotiations and grievances and she would not be present in Open Sessions unless she were arguing against teacher layoffs.**

**Commissioner Cheit inquired as to the implications of telling the**

**petitioner he may not vote and whether it would mean that any School Committee member who is a teacher in another district is prohibited from so voting. The petitioner stated that any teacher whose bargaining unit is represented by that individual would be unable to vote. Commissioner Cheit commented that the people in Jamestown may want a teacher on the School Committee and questioned who would be eligible to participate. The petitioner suggested that the School Committee member could participate if he were a member of the AFT, rather than the NEARI. In response to Commissioner Kirby, the petitioner advised that there is only one union in Little Compton, which represents approximately thirty-five teachers and twenty-five staff. In response to Commissioner Kirby, the petitioner further informed that the president of the local is also a member of the NEARI board.**

**The petitioner advised that if a grievance were filed against a Little Compton teacher either the union president would handle it or, if not, Jane Argentieri would handle it. He acknowledged that he would have to recuse if she were to appear before the Jamestown School Committee if she were simultaneously handling a grievance filed by him. In response to Commissioner Kirby, the petitioner acknowledged that it is possible that he could work with Ms. Argentieri as part of a Little Compton bargaining team. However, he clarified that he has no intention of doing so and would seek another advisory opinion prior to taking such action. Commissioner Cheit commented that such activity could give rise to a business**

relationship with Ms. Argentieri that he does not presently have. Commissioner Harsch expressed that he has a general question with regard to this type of case and asked about the statutory basis for the class exception.

Staff Attorney DeVault noted that the opinion does not apply the class exception, but it addresses the fact that there is no business association between the petitioner and Ms. Argentieri. Legal Counsel Managhan advised that the class exception is found in R.I. Gen. Laws § 36-14-7(b). Commissioner Harsch commented that the issues of business associations and the class exception seem interrelated. Commissioner Cheit stated that the “financial or otherwise” language is at issue here. He related that the Commission’s legal analysis always relates to the financial component, but the Commission often wonders what constitutes “otherwise,” although the courts have stated to the contrary with respect to the appearance of impropriety. Commissioner Kirby noted that the Commission started to address the “otherwise” language by addressing matters of career advancement or educational incentives. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Bruce J. Whitehouse, a member of the Jamestown School Committee.

The next advisory opinion was that of Russell S. Crossman, Chairman of the Town of Coventry Planning Commission. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present with his attorney, Peter Ruggiero, Esq. The petitioner advised that, due to fiscal constraints, the Town of Coventry eliminated its Engineering Department and will outsource such services. He indicated that the Town is looking for a firm to staff its offices approximately twenty hours per week. He informed that the Planning Commission would submit plans for a large development to the Engineering Department for review. The petitioner represented that Crossman does not appear before the Planning Commission in Exeter, where it acts in the same capacity. He stated that he could not say with what frequency the firm would appear before the Planning Commission, but he does not anticipate it occurring each month. In response to Attorney Ruggiero, he expressed his understanding that he would need to recuse if Crossman or one of its employees were to appear.

The petitioner informed that he had no involvement in the RFP process, which was handled by the Town Manager. He stated that Crossman, in which he has an interest, submitted a proposal due to an impending deadline. Staff Attorney Leyden clarified that the RFP deadline was February 28th. In response to Commissioner Harsch, the petitioner advised that his father started the company in 1983 and Steven Cabral, its current president, was the first employee. He stated that his father remains Chairman of the Board, but he is not

involved in daily operations. The petitioner indicated that he serves as the company's vice president and secretary and also sits on the Board.

In response to Commissioner Kirby, the petitioner stated that he could not recall the last time the firm had a project in Exeter. He noted that he recused on the two occasions when the firm appeared before the Coventry Planning Commission. He clarified that in one matter, representatives of Crossman appeared regarding a Dunkin Donuts franchise and in the other matter, Crossman had performed a survey for an auto parts store, although the firm did not appear before the Commission. In further response to Commissioner Kirby, the petitioner stated that there are four stockholders, with Mr. Cabral being the majority stockholder. In response to Commissioner Harsch, Attorney Ruggiero confirmed that he does not represent the Planning Commission and is acting as the petitioner's personal attorney.

Upon motion made by Commissioner Butler and duly seconded by Commissioner Cheit to approve the draft opinion, there was discussion. Commissioner Harsch noted that the language on page five of the draft addresses the Commission's concerns and caveats with regard to frequency of recusals and potential ineffectiveness as a member of the Planning Commission. Commissioner Kirby echoed those concerns and stated that he would have a problem if the petitioner were the majority shareholder. Upon the original motion, it

**was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to  
Russell S. Crossman, Chairman of the Town of Coventry  
Planning Commission.**

**The next advisory opinion was that of James D. Berson, a potential candidate for the North Kingstown Town Council. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Chair Lynch, the petitioner indicated that he sought the opinion out of an abundance of caution. In response to Commissioner Kirby, the petitioner advised that he has been the Chief Operating Officer for two years and has not had any interaction with the Town Council. Commissioner Cheit commented that, aside from the question of whether he may run for office, the other issues are hypothetical. Chair Lynch noted that, as a North Kingstown resident, he understands why the petitioner would seek an opinion given the School Department's history. Commissioner Kirby stated that the opinion would not insulate the petitioner later on if Meeting Street were to have a relationship with the Town through the Council. Upon motion made by Commissioner Murray and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to James  
D. Berson, a potential candidate for the North Kingstown**

**Town Council.**

**At approximately 9:55 a.m., upon motion made by Commissioner Binder 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) and (4), to wit:**

**a.) Motion to approve minutes of Executive Session held on February 26, 2008.**

**b.) Status Update:**

**William V. Irons v. Rhode Island Ethics Commission, Superior Court C.A. No. 07-6666**

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

**The Commission reconvened in Open Session at approximately 10:06 a.m. Chair Lynch reported that in Executive Session the Commission approved the minutes of the Executive Session held on February 26, 2008, and received a status update on William V. Irons v. Rhode Island Ethics Commission.**

**The next order of business was a Motion to Seal minutes of the**

**Executive session held on March 11, 2008. Upon motion made by Commissioner Murray and duly seconded by Commissioner Harsch, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on March 11, 2008.**

**The next order of business was a Review and Discussion of Ethics Legislation. Staff Attorney Gramitt advised that House Bill 7655, which would strike the Roney amendments from the Code of Ethics, has been held in committee for further study. He noted that the Commission previously opposed such legislation, but in recent years it has taken no position. He reported that House Bill 7674 would prohibit a person employed by a government employees' union from participating in legislation regarding the rights and benefits of government employees. As to Senate Bill 2721, Staff Attorney Gramitt stated his assumption that the legislative intent is to expand the definition of "employees" to include the employees of consultants to government entities. However, he informed that the language utilized would make every employee of a company contracting with the state a state employee. Although a hearing has not been scheduled, he represented that, if asked, he would point out to the sponsors that the language is not accomplishing the intent. In response to Commissioner Harsch, Staff Attorney Gramitt stated that such private employees conceivably could be subject to financial disclosure requirements if they were major decision makers.**

The next order of business was the Director's Report. On behalf of Executive Director Willever, Senior Staff Attorney D'Arezzo reported that there are six complaints, one preliminary investigation and two advisory opinions pending. She advised that there has been one formal APRA request since the last meeting, which was granted in part and denied in part, as it requested investigatory records. Staff Attorney Gramitt reported that, consistent with the Commission's recent opinion to the Smithfield Zoning Board of review, the Board applied the Rule of Necessity and drew Gordon Stoupe's name as the member who would participate in an appellate matter. He stated that the developer, Keegan, LLC, has now filed a complaint in Superior Court seeking declaratory and injunctive relief and has named the Board members and Alternates, as well as abutting property owners, as defendants. He further advised that the developer is arguing that the Rule of Necessity is not recognized under Rhode Island law.

Staff Attorney Gramitt stated that the Commission is not named in the action and there is no need to intervene at this time. He reported that the Executive Director has suggested that he monitor the case to ensure that it does not implicate the Commission's jurisdiction. Commissioner Cheit commented that it seems like the action might affect the Commission's jurisdiction, but not right now. Staff Attorney Gramitt stated that the action does not impact the Commission's right to declare that an individual has a conflict of interest, but it potentially could involve whether the Commission has

**the right to state that the common law Rule of Necessity applies in a particular situation.**

**Senior Staff Attorney D'Arezzo advised that the Commission would hold its public hearing on proposed regulations at the March 25th meeting. Chair Lynch suggested that the Commission not take up other matters on that date. Senior Staff Attorney D'Arezzo indicated that there may be a need for a brief Executive Session regarding a complaint.**

**The next order of business was New Business. Commissioner Kirby complimented Commissioner Cheit on his opinion editorial, which was published in the March 10th Providence Journal. Chair Lynch expressed that his reply was very appropriate and timely. Commissioner Harsch expressed that he is troubled by the class exception and how it is intertwined with business associate language, and he stated his intent to research the issue. Chair Lynch noted that it is a good time to bring up the issue as the Commission will be looking at its next round of regulatory changes. Chair Lynch voiced his appreciation for Staff Attorney Gramitt's memorandum regarding federal government restrictions on outside employment. Commissioner Kirby suggested that the Commission workshop the class exception issue closely and bring in others to examine the direct language. Commissioner Cheit concurred. At 10:25 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**Ross Cheit**

**Secretary**