

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

September 23, 2008

The Rhode Island Ethics Commission held its 17th 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, September 23, 2008, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

Barbara R. Binder, Chair James V. Murray

Ross Cheit, Vice Chair Deborah M. Cerullo SSND

J. William W. Harsch, Secretary Edward A. Magro

Richard E. Kirby*

Also present were William J. Conley, Jr., 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 9:09 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held

on September 9, 2008. Commissioner Cheit noted a correction to be made on page six of the minutes, in the last sentence of the first full paragraph. Upon a motion made by Commissioner Cheit and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To approve the amended minutes of the Open Session held on September 9, 2008, as corrected.

The next order of business was that of 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 Paul D. Ragosta, Esq., Legal Counsel to the Rhode Island Office of the Auditor General. Commissioner Murray disclosed that he had a prior attorney-client relationship with the petitioner, but he stated that it is no longer ongoing and further stated his belief that he can fairly participate in this matter. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present.

In response to Commissioner Cerullo, the petitioner stated that the Office of the Auditor General is pulled more and more into municipal affairs, but that the City of Providence hasn't even been on that radar screen. The petitioner further stated that he does not anticipate a lot of interaction between the Office of the Auditor General and the City of Providence. He stated that the Auditor General doesn't want to

have to resort to outside counsel if the petitioner can properly participate in Providence matters, so long as they do not involve the Board of Licenses. In response to Commissioner Cerullo, the petitioner stated that in his opinion, for his judgment to be impaired as Legal Counsel, it would have to be a discrete fiscal issue involving the Bureau of Licenses.

Upon a motion made by Commissioner Murray and duly seconded by Commissioner Magro, discussion was had. Commissioner Cerullo noted her belief that the petitioner should be required to recuse on all matters regarding the City of Providence and stated her concern as to the difficulty of judging the independence of judgment standard in a complaint context. The petitioner stated that he is subject to the “Yellow Book” of governmental auditors and that, as an auditor, he is subject to an annual peer review and is further required to sign a certificate as to potential conflicts. In response to Commissioner Cerullo, the petitioner stated that he would write on the certificate that he is a member of the Bureau of Licenses.

In response to Commissioner Cheit, Staff Attorney Gramitt stated that the independence of judgment section of the Code is always difficult to analyze. He stated his opinion that to put in place a blanket prohibition on the petitioner participating in City of Providence matters, a determination would have to be made that his independence of judgment was in fact impaired. Commissioner Cerullo stated that she was reluctant to give a safe harbor in this

instance. Chair Binder asked the petitioner why he originally stated in his request that he would recuse on any matter involving the City of Providence. The petitioner stated that he had made a quick application to the Commission in light of the timing of the appointment; but, upon reflection afterwards, he questioned whether he needed to limit himself in that way, due to practical considerations. Chair Binder responded that she knew auditor standards were strict and questioned whether it would raise any red flags if he were involved in a matter with the City of Providence. The petitioner responded that he didn't think it would impair the Auditor General.

Commissioner Cerullo inquired what other matters involving the City of Providence may arise. The petitioner responded that perhaps no more than 2-5 times per year. In response to Chair Binder, the petitioner described the duties of the Bureau of Licenses. In response to Commissioner Harsch, Staff Attorney Gramitt stated that he had not spoken with the Auditor General. Commissioner Cerullo stated that she is concerned about how to adjudicate the subjective standard of independence of judgment. Upon the original motion made by Commission Murray and duly seconded by Commissioner Magro, it was

VOTED: To issue an advisory opinion, attached hereto, to Paul D. Ragosta Esq., Legal Counsel to the Office of the Auditor General.

AYES: Barbara R. Binder, James V. Murray, Ross Cheit, J. William W. Harsch and Edward A. Magro.

NOES: Deborah M. Cerullo SSND.

The next advisory opinion was that of Jeffrey Brenner, a Barrington Town Council member. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Chair Binder, the petitioner stated that Staff Attorney DeVault's statement was accurate and that he had read the draft report. The petitioner stated that issue started in Barrington in early 2007. He stated that the Town Council appointed an exploratory commission which was made up of two dozen people. The petitioner stated that he was the liaison between the Town Council and the commission and, further, that the commission was discharged in late 2007 and did not make a final recommendation to the Town Council.

The petitioner stated that he decided to get an advisory opinion because, while 98% of the residents of the Town support a wind farm, a couple of people who live near the two potential sites are very concerned that the wind turbine will have a negative effect on their property. The petitioner stated that a reporter from the Barrington Times called him to ask about AWEA and that he told the reporter that his firm was affiliated with AWEA and that his firm had helped AWEA draft a publication. The petitioner stated that two weeks later he saw an article in the Barrington Times in which a person was quoted as

saying that she and other residents were going to file a complaint with the Ethics Commission. The petitioner stated that the Council's legal counsel stated that there was no conflict and that he reviewed the issue and he didn't see a conflict. The petitioner stated that he wanted to seek guidance from the Commission to tell him if he is correct and that is what brought him before the Commission today.

In response to Commissioner Cheit, the petitioner stated he was elected in November of 2004 and that he is up for re-election in November of 2008. In further response, the petitioner stated that this was not an issue in 2007. The petitioner then spoke about energy supplies and skyrocketing prices. In response to Commissioner Harsch, the petitioner stated that his firm does not do any work for the Town of Barrington. He noted that the Town has a more stringent code of ethics in its charter and, because he is a member of the Town Council, his firm is prohibited from doing any legal work for the Town. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Jeffrey Brenner, a Barrington Town Council member.

The next advisory opinion was that of JoAnne M. Waite LMFT, a Sex Offender Notification Review Board member. Staff Attorney Leyden presented the Commission Staff recommendation. Commissioner Cheit recused himself from the proceedings at 9:45 a.m. and left the

room.* The petitioner was present. In response to Commissioner Cerullo, the petitioner stated that Magistrate Smith had raised the issue to her when she was involved in proceedings before him in which a person is appealing the decision of the Sex Offender Notification Review Board. In response to Commissioner Magro, the petitioner clarified that in those proceedings she is not attendant to provide support for her clients, but rather to provide the court with an updated report. In response to Commissioner Harsch, the petitioner clarified that she is not testifying before the Court and never does.

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

VOTED: To issue an advisory opinion, attached hereto, to JoAnne M. Waite, LMFT, a member of the Sex Offender Notification Review Board.

***Commissioner Cheit returned to the room at 9:54 a.m.**

At approximately 9:55 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, 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 September 9, 2008.

b.) Motion to return to Open Session.

The Commission reconvened in Open Session at 10:10 a.m.

At 10:11 a.m. Chair Binder stated her recusal in the matter of In re: Joseph S. Larisa, Jr. and left the meeting. Acting Chair Cheit reported that the Commission approved the minutes of the Executive Session held on September 9, 2008.

The next order of business was the Director's Report. Executive Director Willever reported that there are seven complaints and five advisory opinions pending. He advised that there had been one formal APRA request since the last meeting. He stated that the staff is currently working on financial disclosure and will soon be filing complaints in that regard. He reported that the Staff is busy addressing budget and personnel matters.

The next order of business was New Business. Commissioner Harsch stated that he wanted to comment on the record regarding a recusal he had previously made in a matter involving the person who appointed him. He stated that one factor he considered important in making that recusal was the closeness in time in which that appointment was made and that he formed a particularly close

relationship with the Governor on political campaigns recently. He further stated that it didn't mean that he would recuse in the future in matters involving the Governor and that he feels he can be impartial. Commissioner Cheit stated that the minutes from the September 9, 2008 meeting reflect that Common Cause had written a letter to the Commission on this recusal issue and that those minutes indicate that the item would either be on the agenda for this meeting or that Common Cause would receive a letter. He noted that, in fact, Common Cause has received a letter from the Chair which indicates that the general issue will be on the Agenda for the October 7, 2008 meeting.

The Commission recessed at 10:15 a.m. and reconvened at 10:36 a.m. with Commissioner Kirby present.*

The next matter was an adjudicative hearing in the matter of In re: Joseph S. Larisa, Jr., Complaint No. 2007-6. Legal Counsel Conley recused and left the meeting. Staci Kolb, Esq. served as the Commission's independent Legal Counsel. The hearing was stenographically recorded and a transcript of the proceeding will be available in the Commission Offices.

As the Executive Director's designee, Commission Prosecutor Katherine D'Arezzo represented the People of the State of Rhode Island. The Respondent, Joseph S. Larisa, Jr., was present and acted pro se.

The Prosecution objected to the Respondent's affidavit, with attached exhibits, coming into evidence on grounds of relevance and materiality. Acting Chair Cheit reserved ruling on the admission of the affidavit and made note that the documents were untimely filed.

The Prosecution made a motion to sequester the Respondent's witnesses pursuant to R.I. Rule of Evidence 615, to which the Respondent objected. Acting Chair Cheit denied the motion.

Acting Chair Cheit read the Finding of Probable Cause in accordance with Commission Regulation 1015. The Respondent entered a Denial of the Charge.

The parties presented two joint stipulations: one as to exhibits, the other as to facts. The Prosecution read into the record Joint Exhibit 1, which listed the Prosecution's exhibits to be admitted in full as P1-P6. The Prosecution then read into the record a joint stipulation as to certain facts and moved to admit this into evidence as Joint Exhibit 2. Both exhibits were admitted in full.

The parties made opening statements and the Prosecution called William J. Conley, Jr. as its witness. Mr. Conley was subject to direct and cross-examination.

At 11:47 a.m., Acting Chair Cheit called a short recess. The

proceedings reconvened at 12:12 p.m. The parties agreed to stipulate with respect to certain facts relating to the July 12, 2007 hearing before the East Providence City Council. The Prosecution then rested.

The Respondent moved to have his exhibits admitted into evidence. The Respondent then called himself as his first witness and read his own Affidavit into the record. The Prosecution commenced cross-examination of the witness. Various Commissioners then questioned the witness. The Respondent then rested his case. Both parties gave closing arguments.

At approximately 2:10 p.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

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

The Commission deliberated in Executive Session with only Legal Counsel Kolb present. The Commission reconvened in Open Session at 3:17 p.m. Upon motion made by Commissioner Magro and duly seconded by Commissioner Harsch, it was

VOTED: To find the Respondent, Joseph S. Larisa Jr., in the matter of Complaint No. 2007-6, in violation of R.I. Gen. Laws § 36-14-5(e)(4)

with a fine of \$500.

AYES: Ross Cheit, James V. Murray, J. William W. Harsch and Edward A. Magro.

NOES: Deborah M. Cerullo SSND and Richard E. Kirby.

At approximately 3:18 p.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary