

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

November 18, 2008

The Rhode Island Ethics Commission held its 20th 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, November 18, 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 Frederick K. Butler

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 9:06 a.m., the Chair opened the meeting. The first order of business was

a motion to approve minutes of the Open Session held on October 21, 2008. Upon motion made by Commissioner Cheit and duly seconded, it was unanimously

VOTED: To approve minutes of the Open Session held on October 21, 2008.

ABSTENTION: Frederick K. Butler.

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 Anne Marie Coleman & Frank Annunziato, the Assistant Vice President for Human Resources and the Executive Director of University Professors for the University of Rhode Island. Staff Attorney DeVault presented the Commission Staff recommendation. Both petitioners were present.

***Commissioner Harsch arrived at 9:08 a.m.**

Mr. Annunziato advised that the parties have lived with the language in the collective bargaining agreement for thirty-five years. He indicated that he did not see how the process would be tarnished if a spouse or household member participated in the process, noting that evaluations are of a purely academic nature. Commissioner Cheit

asked about the specific issue that gave rise to the request. Ms. Coleman informed that a dean in one college challenged the ability of a department member's spouse to participate in the process. Mr. Annunziato stated that the dean provided materials to all departments in which he indicated that the law prohibits such participation in the annual review and that he urged its passage as part of the evaluation procedure. He noted that many departments either placed it on hold or did not pass it. Chair Binder expressed that collective bargaining agreements are subject to existing law. Commissioner Cheit acknowledged that the provision pre-dates the Code of Ethics; however, he noted that once the Commission was created, the provision conflicted with the law. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Anne Marie Coleman & Frank Annunziato, the Assistant Vice President for Human Resources and the Executive Director of University Professors for the University of Rhode Island.

ABSTENTION: J. William W. Harsch.

The next advisory opinion was that of Cynthia Bernard, a member of the Foster School Committee. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present.

Staff Attorney Leyden advised that this morning the petitioner informed her that she also serves on the Foster Gloucester Regional School Committee. She indicated that this information would not change the analysis. Upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Cynthia Bernard, a member of the Foster School Committee.

The next advisory opinion was that of Walter Pristawa, a member of the Woonsocket Zoning Board of Review. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. Staff Attorney DeVault noted that the next four requests deal with the same issue. Upon motion made by Commissioner Magro and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Walter Pristawa, a member of the Woonsocket Zoning Board of Review.

The next advisory opinion was that of Peter Vosdagalis, a member of the Woonsocket Zoning Board of Review. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. In response to Commissioner Harsch, Staff Attorney DeVault indicated that, to her knowledge, the petitioner does not have a contract with CVS, but there is an open account. She explained that

each month CVS rewards a particular department with pizza. She also noted that CVS owes the petitioner money on the account. Upon motion made by Commissioner Cerullo and duly seconded, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Peter Vosdagalis, a member of the Woonsocket Zoning Board of Review.

The next advisory opinion was that of Robert M. Ericson, AICP, the Zoning Officer for the City of Woonsocket. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. In response to Commissioner Harsch, Staff Attorney DeVault stated that she did not inquire of the petitioner whether a member of his family has a relationship with CVS. Upon motion made by Commissioner Butler and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Robert M. Ericson, AICP, the Zoning Officer for the City of Woonsocket.

The next advisory opinion was that of Norman Frechette, a member of the Woonsocket Zoning Board of Review. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. Commissioner Harsch observed that when a company like CVS is deeply entwined with a community it is hard to see how a body of public officials cannot be somehow influenced.

Commissioner Cheit inquired whether there should be some language in the opinion regarding whether the impact is reasonably foreseeable, as with the prior opinion regarding the pizza restaurant. He also asked whether, in that case, a business association exists even though there is no specific contract.

Staff Attorney DeVault replied that prior opinions dealt with one time consumer oriented transactions, such as haircuts and patronage of a restaurant. She distinguished them from that involved in the earlier opinion, where there is a long-standing relationship between the parties involving monthly purchases and an outstanding balance. She stated that, in that case, a financial benefit was not required under the Code because the opinion was based upon a 5(f) analysis. Commissioner Butler noted that the Commission previously discussed the issue and commented that an individual will typically use the same law firm or accountant and, although no future relationship is specifically anticipated, they would likely use that firm or individual for future matters. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Norman Frechette, a member of the Woonsocket Zoning Board of Review.

At approximately 9:34 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, 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 October 21, 2008.

**b.) In re: Donald L. Carcieri,
Complaint No. 2008-3**

**c.) In re: Dwight Farrar,
Complaint No. 2008-6**

**d.) In re: Shea E. Butcher,
Complaint No. NF 2008-9**

**e.) In re: Patrick Sullivan,
Complaint No. 2008-8**

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

**g.) Jason E. Ferrell v. Frank Caprio, Jr., et al.,
U.S. District Court C.A. No.08-378S**

h.) Motion to return to Open Session.

The Commission reconvened in Open Session at 10:57 a.m.

****Commissioner Kirby was present, having arrived during the Executive Session at approximately 9:40 a.m.**

The next order of business was a motion to seal minutes of the Executive Session held on November 18, 2008. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To seal minutes of the Executive Session held on November 18, 2008.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on October 21, 2008; 2) unanimously approved an Informal Resolution & Settlement in Complaint No. 2008-3, In re: Donald L. Carcieri; 3) unanimously approved an Informal Resolution & Settlement in Complaint No. 2008-6, In re: Dwight Farrar; 4) unanimously issued a Finding of Probable Cause in Complaint No. NF 2008-9, In re: Shea E. Butcher; 5) unanimously approved a full investigation in Complaint No. 2008-8, In re: Patrick Sullivan; and 6) engaged in discussion of the litigation matters of William V. Irons v. Rhode Island Ethics Commission and Jason E. Ferrell v. Frank Caprio, Jr., et al.

In response to Commissioner Cheit, Chair Binder confirmed that the Informal Resolution & Settlement documents are now public.

***Commissioner Kirby left the meeting at approximately 11:00 a.m.**

The next order of business was discussion of the Alaska Ethics Statute. Staff Attorney Gramitt stated that the Commission had been interested in a report issued in mid-October which indicated that Alaska Governor Palin had taken actions in violation of the Alaska Ethics Act, particularly given that there had been no financial motive necessary. He noted that the Act is mostly enforced by the Attorney General and the Alaska Personnel Board handles matters relating to the general officers. The subject report was commissioned by the legislature, which hired an independent attorney to conduct its investigation. He informed that its main flaw is the conclusion that Governor Palin violated the Act by violating its scope section, which is similar to ours, rather than any substantive provision.

Staff Attorney Gramitt advised that the matter did go to the Alaska Personnel Board, which concluded in a separate report that there could not be a violation of the Act's scope section, which is basically a statement of legislative intent. He stated that the Personnel Board's report indicated that the Act does not make an appearance of impropriety a violation, but that there has to be a financial gain. Staff Attorney Gramitt explained that while the Act talks about personal or financial gain, "personal interest" is a defined term. He stated that a

personal interest really amounts to involvement in civic agencies, charities and the like.

The next order of business was approval of the Tentative 2009 Meeting Schedule. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To approve the tentative 2009 meeting schedule.

The next order of business was the Director's Report. Executive Director Willever reported that there are fourteen complaints pending, including eight conflict matters and six non-filing complaints. He stated that there are six advisory opinions pending and no preliminary investigations. He noted that there have been no formal APRA requests since the last meeting. Director Willever informed that the staff continues to work on complex cases and investigations.

He indicated that, while financial disclosure is ongoing, all staff members are working on it, given the absence of the Administrative Assistant position. He noted the staff's continued efforts in personnel and budget matters, as well as the strong education program.

Staff Attorney Gramitt provided the Commission with an overview of new and ongoing education program initiatives. He advised that the Commission has implemented training pursuant to the Governor's Executive Order on Public Integrity and Ethics, which requires each

state agency to designate an ethics officer. He informed that he is currently training these ethics officers regarding the advisory opinion process and Commission procedures during a day-long training session which provides one CLE credit. Commissioner Harsch suggested that Staff Attorney Gramitt take his program out on the road through the Bar Association to reach those attorneys who are not municipal solicitors.

The next order of business was New Business. Chair Binder asked that the next meeting's agenda contain a line item for discussion of proposed regulations. She suggested that the Commission be provided with a succinct list of items so that it can get a consensus for action in January. Staff Attorney Gramitt requested that any members who have a particular initiative in mind contact him directly.

Commissioner Harsch inquired if the Commission would ever be set up to accept public comment on its agenda. Chair Binder stated that it has not done so in the past, but she assumes it could. Commissioner Harsch indicated that some public bodies provide people with the opportunity to stand up and address them and questioned whether the membership and Legal Counsel envision the Commission as that type of body. Chair Binder suggested that the membership think about it and discuss it at the next meeting.

At approximately 11:16 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary