

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**March 10, 2009**

**The Rhode Island Ethics Commission held its 4th meeting of 2009 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 10, 2009, 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**

**James V. Murray**

**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 and Peter J. Mancini.**

**At 9:02 a.m., the Chair opened the meeting. The first order of business was a motion to approve the minutes of the Open Session**

held on February 24, 2009. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Cheit, it was unanimously

**VOTED:** To approve the minutes of the Open Session held on February 24, 2009.

**ABSTENTIONS:** Frederick K. Butler and Edward A. Magro.

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 Gregory S. Dias, Esq., a former Assistant Solicitor for the City of East Providence. Staff Attorney Leyden presented the Commission Staff recommendation. The Petitioner was present.

\*Commissioner Harsch arrived at 9:06 a.m.

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

**VOTED:** To issue an advisory opinion, attached hereto, to Gregory S. Dias, Esq., a former Assistant Solicitor for the City of East Providence.

**ABSTENTION: J. William W. Harsch.**

**The next advisory opinion was that of Michael D. Cassidy, Director of the City of Pawtucket Department of Planning and Redevelopment. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present. He advised that he would not be sending out 12,000 letters, and he stated that the Solicitor suggested that he seek an opinion out of an abundance of caution. In response to Commissioner Cheit, Staff Attorney DeVault distinguished the instant opinion from a recent draft opinion which did not issue. She noted that in the prior matter, only seven vendors would be solicited and the conference, which would provide attendees with continuing education credits, was wholly reliant on such funding.**

**In response to Commissioner Cheit, the Petitioner stated that the Department has not directly solicited municipal vendors in the past, but it has conducted solicitation using a list of individuals and entities who previously donated. He explained that this would be the first time the Department would look to solicit from the municipal vendor list. He clarified that it would not accept donations from individuals or entities with matters pending before municipal boards and agencies. Commissioner Cheit inquired whether an individual who receives the letter would know they received it because they were on the municipal vendor list. The Petitioner indicated that the**

individual would not necessarily know. Commission Cheit expressed his concern that vendors might think that they have to donate.

In response to Commissioner Cheit, the Petitioner stated that the letter is generic and the recipient may or may not be a vendor. In response to Commissioner Harsch, the Petitioner advised that the chairman of the event, Herb Weiss would sign the letter, rather than the Mayor. He stated that Mr. Weiss, a city employee, is the Economic Development Coordinator in the Department of Planning and Redevelopment. Chair Binder suggested that the letter be signed by a more appropriate person, perhaps on Arts Festival letterhead. Commissioner Cheit agreed and voiced his discomfort with the letter being signed by a city official. In response to Commissioner Cerullo, the Petitioner clarified that there are 12,000 individuals on the municipal vendor list, but the list of prior donors numbers approximately 1,000. The Petitioner indicated that there would be no solicitation of sponsors outside of the city, as this is a city event. He reiterated that the same letter would be sent to everyone.

Chair Binder noted that the purpose of the solicitation is to fund an event to promote Pawtucket, and she indicated that the scope of the solicitation is sufficiently wide. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro to adopt the draft opinion, there was discussion. Commissioner Butler sought clarification as to whether the motion is to approve the draft as amended to state that the signatory not be a public official.

**Commissioner Harsch amended the original motion, which was duly seconded. Upon the amended motion, it was**

**VOTED: To issue an advisory opinion, attached hereto, to Michael D. Cassidy, Director of the City of Pawtucket Department of Planning and Redevelopment.**

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

**NOES: Deborah M. Cerullo SSND.**

**At approximately 9:20 a.m., upon motion made and duly seconded, 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 24, 2009.**

**b.) Status Update:**

**William V. Irons v. The Rhode Island Ethics Commission, No. 2008-335-M.P. and 2009-01-M.P.**

**c.) Status Update:**

**Jason E. Ferrell v. Frank Caprio, Jr., et al.,**

**U.S. District Court C.A. No.08-378S**

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

**The Commission returned to Open Session at approximately 9:27 a.m. The next order of business was a motion to seal minutes of the Executive Session held on March 10, 2009. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on March 10, 2009.**

**Chair Binder reported that the Commission approved minutes of the Executive Session held on February 24, 2009 and received status updates on William V. Irons v. The Rhode Island Ethics Commission and Jason E. Ferrell v. Frank Caprio, Jr.**

**The next order of business was a Collections Update. Staff Attorney Leyden provided an overview of the process by which the Commission seeks collection of unpaid fines. She noted that all fines collected go to the general fund. She reported that the Commission, through the Department of Administration, hired a law firm to collect arrears in three cases, after letters sent by Commission Staff failed to produce payment. With regard to outstanding fines imposed by the**

predecessor Conflict of Interest Commission, she advised that former Legal Counsel Gary Yesser had attached the individuals' property. Staff Attorney Leyden also stated that there are three small fines outstanding which result from Respondents falling behind on payment plans. She indicated that the Staff would call to gently remind the individuals of their obligations.

Commissioner Murray expressed his concern that the Commission act on those fines resulting from adjudications. Staff Attorney Leyden advised that the general statute of limitations is ten years with respect to civil actions. She noted that there is only one matter where the statute is about to run and the Staff is acting on it. In response to Commissioner Magro, she informed that the Commission has hired the law firm of Robert Rossi, after consultation with Louis DeQuattro in the Department of Administration. In further response, she stated that the fee structure is 12%, 23% for litigated accounts, and 40% if they have to go out of state. Commissioner Cheit inquired whether Attorney Rossi is authorized to accept less than full payment. Staff Attorney Leyden replied that he is not. In response to Commissioner Murray, she advised that there is a total amount of approximately \$140,000 unpaid, which includes one fine of \$130,000 as well as a \$1,000 fine that is due by the end of April.

In response to Commissioner Harsch, Staff Attorney Leyden stated that only three cases need to be collected. Executive Director Willever indicated that the State handles collections for other, larger

agencies. He stated that it requires a significant amount of work to recover a small amount. Director Willever advised that the system of tracking and collecting fines has been reviewed and updated. He stated that the Commission has piggybacked onto a system for collections that was already in place and approved by the Department of Administration. He noted that he has met with the Governor's Executive Counsel and everyone knows of and approves of these actions. Commissioner Harsch observed that only a small amount of the fines imposed require collection. In response to Commissioner Murray, Legal Counsel Conley advised that the fines cannot be discharged as debts in bankruptcy.

In response to Commissioner Magro, Staff Attorney Leyden indicated that interest may be involved in some cases and it would be computed by the Clerk of the Court. Commissioner Magro suggested that any agreements state that if an individual's account becomes delinquent, the Commission will charge the cost of collection. Staff Attorney Leyden informed that the Commission does give Respondents thirty or sixty days to pay their fines, but noted that the cases in collection are older. Commissioner Cheit inquired about posting delinquent fines on the website. Staff Attorney Leyden and Director Willever advised that they have discussed the issue and believe it is fraught with potential problems, including unintended consequences.

Commissioner Cheit asked if the Staff would add information to the

website regarding fines, particularly an explanation that the fines go to the general fund, not the Commission, as well as general information about the process of collecting unpaid fines. Chair Binder voiced support for the suggestion. Commissioner Harsch inquired whether Legal Counsel Conley could envision the Commission ever bringing a matter back before it relative to non-payment of fines. Legal Counsel Conley considered whether the Commission has the authority to subsequently modify a fine imposed and suggested that it may be an inherent authority. Chair Binder indicated that the Commission should consider the issue when such a problem presents itself.

In response to Commissioner Butler, Staff Attorney Leyden stated her belief that the collection firm would not have the authority to settle for less sua sponte, but that the matter would have to be brought back before the Commission for authorization. Legal Counsel Conley informed that he has worked with the law firm handling the collection matters and indicated that, in his experience, their practice does not allow them to compromise without the client's approval. Executive Director Willever stated that the Staff would not compromise any fine levied by the Commission without bringing the matter before it.

The next order of business was a Legislative Update. Staff Attorney Gramitt reported that he attended a hearing before the House Judiciary Committee on House Bill 5378, which had been introduced by Representative McNamara and which would broaden revolving

door restrictions on executive branch employees. He noted that Common Cause opposed the legislation based upon it being too broad and having the effect of prohibiting state employees from transferring between state agencies. He advised that he offered to work with its sponsors regarding the language. Staff Attorney Gramitt informed that House Bill 5429, introduced by Representative Trillo, is being held for further study. The legislation would prohibit legislative leaders from doing business or entering contracts with non-profit entities or businesses which employ over one hundred employees. He noted that the legislation, if passed, would be placed within the operating rules of the General Assembly and the Commission would not exercise jurisdiction over it.

The next order of business was Discussion of the Complainant's role in the Complaint process. Staff Attorney Gramitt advised that the Staff would present three draft proposals for the Commission's consideration at the next meeting.

The next order of business was the Director's Report. Executive Director Willever reported that there are two complaints and four advisory opinions pending. He stated that there has been one formal APRA request since the last meeting, which is in the process of being granted. He advised that the Staff is preparing its briefs in the Irons litigation. Director Willever indicated that he has hired two individuals to fill the vacant administrative and investigative positions, and the hires will both be in place by the end of the month.

He stated that the Education Program continues to be a busy, important priority, and he noted that the Staff continues to receive telephone and walk-in inquiries as a result of the provision of training. He advised that the Staff is preparing for the annual mailing of approximately 4,500 financial statements in the upcoming weeks.

The next order of business was New Business. Commissioner Cheit inquired about vacancies on the Commission. Executive Director Willever stated that he has spoken with the Senate President, Senate Legal Counsel, Executive Counsel to the Governor and Chair Binder. He informed that lists either have been or are about to be submitted to the Governor very shortly. He indicated that all parties are aware of the need to act on the appointments and he expressed appreciation for their cooperation.

At approximately 10:04 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously

**VOTED: To adjourn.**

Respectfully submitted,

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**J. William W. Harsch**

**Secretary**