

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

**November 3, 2009**

**The Rhode Island Ethics Commission held its 16th 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, November 3, 2009, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Ross Cheit, Vice Chair Edward A. Magro**

**J. William W. Harsch, Secretary Mark B. Heffner**

**Frederick K. Butler John D. Lynch, Jr.**

**Deborah M. Cerullo SSND**

**Also present were William J. Conley, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:04 a.m., the Vice Chair opened the meeting. The first order of business was approval of minutes of the Open Session held on**

**October 20, 2009. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To approve minutes of the Open Session held on October 20, 2009.**

**ABSTENTIONS: Deborah M. Cerullo SSND and 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 Danielle R. Coulter, a Tiverton School Committee member. The Petitioner was present with her spouse, Robert Coulter, Esq. Staff Attorney DeVault presented the Commission Staff recommendation.**

**Attorney Coulter referenced application of Regulation 7003, the Public Forum Exception. He advised that the request he had placed on the agenda did not implicate his financial interests. He stated that he has withdrawn the request, so the Staff Attorney is correct that the issue may now be moot. However, he expressed his concern regarding the general issue of what would constitute his participation in a matter before the School Committee. He represented that the Superintendent, the Chair of the School Committee and the School Committee's attorney have repeatedly advised that there is not a**

problem because there is no financial interest involved. Attorney Coulter suggested that, with reference to the past advisory opinions cited by Staff, the Commission should look at the spirit of the Code and the real target interest being brought before the public body. He cited to the following advisory opinions, which he described as involving a real client with a narrower interest than the public at large: A.O. 2006-18; A.O. 2004-14; A.O. 2002-53; A.O. 99-142; and A.O. 99-134.

Attorney Coulter stated that the specific agenda item will not be pressed by the Petitioner's spouse, but the general issue will be raised again. He voiced concern that adoption of the draft opinion would overturn A.O. 2009-19 and A.O. 2009-20, which were issued to them earlier this year. He further cited to the following past opinions: A.O. 95-111; A.O. 98-28; A.O. 2000-23; A.O. 97-10; and A.O. 2006-38. With respect to application of Regulations 5002 and 5004, he argued that the regulations must relate to the statutes, specifically sections 5(a) and 7(a). He noted that the matter will come before the Commission again with respect to his membership on the Budget Committee and requested that the Commission also consider that issue. Vice Chair Cheit clarified that the Petitioner's request letter specifically states that she is not before the Commission on that issue. He indicated that Attorney Coulter is now addressing his role, which is not before the Commission today.

Vice Chair Cheit stated that the Public Forum Exception addresses

**the Petitioner's right to speak, but not her right to vote. The Petitioner indicated that she is required to vote as an elected official and the public wants her to articulate her views before the School Committee. Vice Chair Cheit and Commissioner Lynch advised that the Public Forum Exception addresses the Petitioner's right to speak, not that of her spouse. Attorney Coulter requested that the Commission accept public comment on the issue.**

**The Petitioner represented that the School Committee received ethics training earlier this year and was advised that financial interest was the main aspect of the Code to be concerned about. She stated that if the Commission is changing the direction in which it is going it needs to re-educate public boards. Attorney Coulter expressed that the draft recommendation cannot be squared with the Commission's practice of allowing spouses to serve on a school board together and not finding that they are parties or participants in a matter before each other.**

**In response to Vice Chair Cheit, Legal Counsel Conley advised that the request as written raises a real circumstance for which an advisory opinion could issue. In response to Vice Chair Cheit, the Petitioner stated that her spouse's request will go forward, albeit under another person's name. She and Attorney Coulter expressed that it remains a matter of public concern. Vice Chair Cheit informed that the Commission generally does not issue an opinion where a matter is moot, but could if it were a situation that clearly will arise**

again. Legal Counsel Conley advised that once the facts and circumstances set forth in the request are no longer extant, there is no longer a real situation for which the Commission can issue an opinion. He stated that opinions are specifically limited to the facts presented and the Commission does not issue opinions on hypothetical situations.

In response to Commissioner Lynch, Attorney Coutler informed that the workshop is still on the agenda, at another person's request. Staff Attorney DeVault noted that the Petitioner has raised a number of issues not addressed in the advisory request, for which she can request further guidance in the future. She explained that some of the opinions cited by Attorney Coulter, particularly regarding fire district boards, do not involve familial relationships covered by Regulation 5002. She pointed out that, while most prohibitions in the Code relate to a financial nexus, the draft opinion does not rely at all upon section 5(a). As to the Public Forum Exception, Staff Attorney DeVault advised that the Petitioner's spouse is in no way limited in his right to speak before the School Committee. She also noted that the Petitioner herself can recuse, step down to the public floor and speak.

Commissioner Cerullo requested clarification as to the meaning of party or participant. Staff Attorney DeVault replied that it would involve a matter by matter analysis, and she stated that she has encouraged the Petitioner to seek guidance as further matters arise.

Vice Chair Cheit questioned what the workshop would entail, and specifically whether it would result in a vote. The Petitioner replied that prior workshops have resulted in a recommendation to the School Committee, which then votes on the recommendation. In response to Commissioner Lynch, Attorney Coulter indicated that he requested that a workshop be held to get all the stakeholders and experts together for a dialogue and exchange ideas. Vice Chair Cheit expressed that it is difficult for the Commission to deal with hypotheticals and stated that they need to know what a workshop is and whether people will be voting.

The Petitioner clarified that the end result of the workshop would be to bring something back to the School Committee for a vote. In response to Commissioner Cerullo, she stated that everyone present in the room at the workshop would vote for the recommendation. In further clarification to Commissioner Heffner, she stated that anyone who shows up can vote. The Petitioner indicated that it would be a mix of people, including parents, teachers and others. Vice Chair Cheit commented that the fact that everyone present would be voting seems like a clear case of participation.

Commissioner Butler stated that he is troubled about how the Commission could issue an opinion based upon a factual situation that involves a lot of speculation. He noted that the issue initially raised is moot. He expressed that he is unsure how the Commission would draft the opinion when there are questions regarding the

intention of the workshop and what constitutes participation. Legal Counsel Conley advised that the matter has evolved from the four corners of the initial request. He stated that the Commission is now presented with different facts which are not logical inferences from the request, and he indicated that the Commission is not in a position to opine on the secondary question. In response to Vice Chair Cheit, Attorney Coulter stated that the business of the public has now been delayed for four to six weeks and he wants to be at the meeting noticed on the agenda for next week. He further stated that the draft opinion suggests that the Petitioner cannot vote if he shows up at the meeting. Staff Attorney DeVault disagreed; she clarified that, pursuant to Regulation 5002, the Petitioner would need to recuse if her spouse were to speak before the School Committee about holding a workshop.

Commissioner Cerullo expressed that, based upon what the Petitioner anticipates occurring at the workshop, she is comfortable with the Petitioner's spouse being present, but she is not so comfortable with him speaking at the workshop and with the Petitioner voting. She questioned whether there is any clarity regarding if participation could mean working toward putting something on an agenda. Vice Chair Cheit inquired whether others agree that there is enough information to opine whether the the Petitioner's spouse would be a participant at the workshop if he shows up and if he shows up and speaks. Commissioner Heffner stated that he would be inclined to answer if the Commission can.

**Commissioner Magro stated that he does not believe that the Petitioner's spouse's presence in the room, like any other member of the public at a public meeting, would make him a participant.**

**Attorney Coulter inquired how the Commission can allow spouses to serve on the same school board together. Vice Chair Cheit explained that the regulation prohibits a person from appearing before the public body on which his spouse serves. Attorney Coulter suggested that the prohibition would run afoul of his first amendment rights. Commission Lynch replied that first amendment rights are not implicated here because he can speak as much as he likes; his spouse, the Petitioner, just cannot vote if he speaks. Vice Chair Cheit noted that the first amendment right goes to the Petitioner's spouse, over whom the Commission has no jurisdiction.**

**In response to the Petitioner, Vice Chair Cheit suggested that the issue relating to the Budget Committee should be addressed in a supplemental request. In response to Attorney Coulter, Vice Chair Cheit stated that the Commission would not consider comments from the public, given that this is an advisory opinion, not rulemaking. The Petitioner suggested that the Commission's Education Program should be enhanced to address these situations. Vice Chair Cheit stated that he does not believe that there was any implication made that the Commission would have taken a different direction or that the regulation is no longer enforced.**

**In response to Commissioner Magro, Vice Chair Cheit indicated that the Commission could offer an opinion that if the Petitioner's spouse were to come to the workshop, the Petitioner need not recuse, but if he were to come and speak, the Petitioner needs to recuse. Staff Attorney DeVault clarified that she would add a sentence or two to the draft opinion addressing the fact that his presence in the room does not convert him into a participant. Vice Chair Cheit stated that the language addressing the circumstances from the workshop forward should be omitted. He reiterated that if the Petitioner's spouse is in the room, the Petitioner may vote. However, he stated that if the Petitioner's spouse speaks, he is appearing before the School Committee and the Petitioner must recuse.**

**Upon motion made by Vice Chair Cheit and duly seconded by Commissioner Harsch, it was unanimously**

**VOTED: To adopt the draft opinion, subject to the following amendment:**

**1) that the opinion makes it clear that Mr. Coulter's attendance at next Tuesday's meeting does not violate the Code; and 2) that the material in the draft referencing the workshop is omitted and the Petitioner is encouraged to come back with additional facts for further guidance.**

**Staff Attorney DeVault clarified that the Petitioner need not recuse due to her spouse's attendance at the workshop, provided that he**

**does not speak. In response to Commissioner Harsch, Legal Counsel Conley advised that this matter was properly noticed given that the Commission is addressing the issue presented that is ripe.**

**At 10:15 a.m., upon motion made by Commissioner Heffner and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To 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 20, 2009.**

**b.) In re: Patrick C. Lynch,  
Complaint No. 2009-3**

**c.) Status Update:**

**Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission, Superior Court C.A. No. 08-7325.**

**d.) Collection Action Update:**

**In re: Sarah Murphy,  
Complaint No. NF85-36**

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

**The Commission returned to Open Session at 10:30 a.m. Vice Chair Cheit announced that the Commission has suspended its Executive Session due to a lack of a quorum for consideration of In re: Patrick C. Lynch. He reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on October 20, 2009; 2) received a status update on Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission, Superior Court C.A. No. 08-7325; and 3) received a collection action update on In re: Sarah Murphy, Complaint No. NF85-36.**

**The next order of business was Public comment on and Commission adoption of proposed General Commission Advisory (GCA) No. 2009-4: Secondary Employment. Staff Attorney DeVault informed that the Commission had only received one written comment, which was distributed to the membership and seems to be directed at Regulation 5014. In response to Vice Chair Cheit, Staff Attorney DeVault advised that interested parties were notified of the proposal and have not responded. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Harsch, it was unanimously**

**VOTED: To adopt (2nd vote) GCA. No. 2009-4: Secondary Employment.**

**The next order of business was discussion regarding the reporting of**

individual votes taken in Executive Session. Senior Staff Attorney D'Arezzo advised that the issue of whether the Open Meetings Act (OMA) requires the Commission to report with specificity how each member voted in Executive Session upon reconvening in Open Session, or whether it should adopt such practice in its discretion, arises every few years. She noted that excerpts of meeting minutes reflecting the Commission's prior discussion of the issue are attached to her memorandum. She informed that how each member voted on each issue must be available to the public at the Commission Office within two weeks of the vote, assuming the subject matter of the vote is not otherwise exempt from disclosure.

Senior Staff Attorney D'Arezzo stated that individual Executive Session minutes, which are not sealed, are maintained to satisfy this requirement and are available to the public upon their approval by the Commission. She advised that the individual minutes reflect who was present, what information was presented to the Commission for consideration, and how each member voted on the issue. She stated that she recently met with representatives of the Attorney General's Open Government Unit to review the Commission's practices, which she indicated are in compliance with the OMA. She noted that if the Commission does not meet to approve the minutes within two weeks of the votes, the Staff's draft minutes are available as a record of the votes.

Vice Chair Cheit expressed his opinion that the Commission owes it

to the public attending the meeting to provide this information upon returning to Open Session. Commissioner Heffner concurred. In response to Commissioner Heffner, Senior Staff Attorney D'Arezzo stated that, while the Staff has not performed any specific research on the issue, it has generally observed that public bodies do not provide this level of disclosure. However, she noted the Staff's recent observation of a small municipal body which did engage in such practice. In response to Commissioner Lynch, she clarified that the public would be able get the information as to how each member voted on each issue at the next meeting, upon approval of the individual Executive Session minutes. Commissioner Lynch commented that he sees no reason to make them wait. Vice Chair Cheit asked that the matter be noticed for the next meeting to allow Chair Binder to participate.

The next order of business was the Director's Report. Executive Director Willever reported that there are eight complaints, five advisory opinions and one preliminary investigation pending. He stated that there have been no formal APRA requests since the last meeting. He reported that the Education Program has been very busy and referenced recent presentations by Staff Attorneys D'Arezzo and Gramitt, for which he received positive feedback.

The next order of business was New Business proposed for future Commission agendas. Vice Chair Cheit reiterated that the Commission will discuss the reporting of Executive Session votes at

**the November 17th meeting.**

**Staff Attorney DeVault informed that, pursuant to R.I. Gen. Laws 36-14-13(b), for every two members who recuse, the quorum requirement is reduced by one. Legal Counsel Conley advised that the Commission may reconvene in Executive Session with four members present to consider In re: Patrick C. Lynch.**

**\*Commissioners Harsch, Heffner and Lynch recused and left the meeting.**

**The Commission reconvened in Executive Session to consider In re: Patrick C. Lynch, Complaint No. 2009-3. This matter was considered and is reflected in separate minutes, attached thereto.**

**The Commission returned to Open Session at 11:08 a.m., without the presence of Commissioners Harsch, Heffner and Lynch. The next order of business was a motion to seal minutes of the Executive Session held on November 3, 2009. Upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on November 3, 2009.**

**Vice Chair Cheit reported that the Commission unanimously voted to**

**dismiss Complaint No. 2009-3, In re: Patrick C. Lynch, which does not allege facts sufficient to constitute a knowing and willful violation of the Code of Ethics. He stated that the Commission adopted the Staff's Initial Determination Report, which is now public.**

**At 11:10 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

---

**J. William W. Harsch**  
**Secretary**