

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

November 17, 2009

The Rhode Island Ethics Commission held its 17th 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 17, 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 Deborah M. Cerullo SSND

Ross Cheit, Vice Chair Edward A. Magro

J. William W. Harsch, Secretary John D. Lynch, Jr.*

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, Peter J. Mancini and Gary V. Petrarca.

At 9:03 a.m., the Chair opened the meeting. The first order of business was approval of minutes of the Open Session held on

November 3, 2009. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously

VOTED: To approve minutes of the Open Session held on November 3, 2009.

ABSTENTIONS: James V. Murray and Barbara R. Binder.

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 James A. Briden, Esq., the East Providence City Solicitor, on behalf of the Crescent Park Carousel Commission. Attorney Briden was present. Staff Attorney DeVault presented the Commission Staff recommendation.

***Commissioner Lynch arrived at 9:05 a.m.**

Attorney Briden advised that it has yet to be determined whether the current lease will be renewed or if the City will have it go out to bid for a longer lease term. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Murray to adopt the draft opinion, there was discussion. Commissioner Cerullo requested clarification as to the decision whether there would be a potential future lease or if the current lease would be extended. She expressed

her concern regarding an appearance of impropriety. Attorney Briden indicated that he discussed the issue with City Manager Richard Brown and informed that, while one objective would be to have a longer lease, it is speculative at this time. He stated that the current lease with Blount could be renewed, noting that the lease for the 2009 season was essentially the same as the prior year's. In response to Commissioner Cerullo, Attorney Briden stated that, to the best of his knowledge, the Carousel Commission received a check and a letter from Blount, which had had a good season and wanted to make a donation.

In response to Commissioner Harsch, Attorney Briden stated that he did not know if Blount had made prior donations, but he believed it to be a unique instance of a substantial donation of \$5,000. Commissioner Harsch indicated that he would like to know whether there had been comparable past donations. Commissioners Harsch and Murray withdrew the motion. Commissioner Harsch asked that the matter be continued so that Attorney Briden could obtain an answer to his question. In response to Commissioner Lynch, Staff Attorney DeVault stated that such information would not change the analysis. Commissioner Harsch expressed that the information could change the analysis due to an appearance of impropriety. Staff Attorney DeVault noted that the appearance of impropriety does not constitute a violation of the Code. Commissioner Harsch commented that he would not vote to adopt an opinion if there were an appearance of impropriety.

Legal Counsel Conley advised of his familiarity with the enabling legislation for the Carousel Commission, which is separate from the Carousel's 501(c)(3) entity. He noted that while, historically, some members of the Carousel Commission have been officers of the 501(c)(3), which carries out fundraising activities, it has not always been the case. He suggested that the entity to which the donation is made might be dispositive here. Commissioner Harsch inquired whether the donation is being made to the 501(c)(3) entity. Commissioner Lynch noted that the request letter states that the donation is to the Carousel Commission. Staff Attorney DeVault advised that there would be no issue if the donation were made to the non-profit. Attorney Briden represented that the check was made payable to the Crescent Park Carousel Commission.

Tracy Johnson, Secretary to the Carousel Commission, arrived and informed that the check had erroneously been made out to the Carousel Commission when it should have been made out to the Preservation Commission or the Carousel itself. She indicated that the Carousel Commission did not cash the check because it was uncertain as to whether Blount could make the donation. She suggested that some people in the city wish that Blount were not there. In response to Commissioner Cerullo, Ms. Johnson stated that she is referring to smaller players who are not doing that well. In response to Chair Binder, Staff Attorney DeVault advised that if the original check were withdrawn and a new check were made out to the

non-profit, there would be no issue for the Commission to address. Chair Binder stated that the Commission would not adopt the draft opinion and suggests that the check be re-issued to the non-profit corporation. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Magro, it was unanimously

VOTED: To not adopt the draft advisory opinion.

The next advisory opinion was that of John J. Tassoni, Jr., a legislator serving in the Rhode Island Senate. The Petitioner was present. Staff Attorney Gramitt advised that the Petitioner has agreed that he cannot do business with state agencies but that the list, by design and in practice, is used by municipalities and private parties to find mediators and arbitrators. Staff Attorney Gramitt stated that he confirmed that information with the Division of Purchasing, which indicated that the list is mostly utilized by municipalities. Staff Attorney Gramitt offered an amendment to the draft opinion that the Petitioner represents that he will not seek or accept such employment with state agencies, but that he wishes to be on the list to seek or accept such employment with municipalities and other non-state entities. He advised that the Petitioner may remain on the list with the understanding that he cannot seek or accept employment with state agencies.

The Petitioner informed that he never wanted to do work for the state. In response to Commissioner Murray, the Petitioner confirmed that, if

he were to mediate for a municipality, each party pays one-half and the state does not pay. He stated that the MPA list only sets a price for everyone on the list. Chair Binder questioned whether the process by which the Petitioner was appointed to the list was a ministerial function or if it involved selective criteria. Staff Attorney Gramitt stated that the decision to place him on the list was made by the Division of Purchasing and that he examined the situation as a revolving door issue. In response to Commissioner Cerullo, the Petitioner informed that that there is no pressing nature to his request, other than the ability to work if someone calls him. Commissioner Cerullo expressed that she would prefer to see a new draft opinion, given the amendments.

The Petitioner advised that he had applied online to the Division of Purchasing, which emailed him back requesting letters of recommendation and his resume. He indicated that he waited about a month and a half after submitting those materials, during which time he believes that a background check was conducted. He informed that he received a document in the mail stating that he was accepted as a mediator for the MPA. In response to Commissioner Murray, the Petitioner stated that he has no compulsory authority as a mediator and just acts as a facilitator. He indicated that others on the list may charge more or less than he does.

In response to Commissioner Cerullo, the Petitioner advised that he would not accept work with a municipality that he represents in his

legislative capacity. Commissioner Magro commented that he would also like to see the changes incorporated in writing. Commissioners Lynch and Cheit concurred. Chair Binder indicated that the matter would be before the Commission again in two weeks and suggested that the Petitioner be present to answer any further questions.

At 9:35 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To 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
November 3, 2009.**

**b.) In re: Ronald P. Preuhs Jr.,
Complaint No. NF2009-10**

**c.) In re: Melanie Turner,
Complaint No. 2009-5**

d.) Motion to return to Open Session.

The Commission returned to Open Session at 9:40 a.m. 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 Cerullo and duly seconded by Commissioner Magro, it was unanimously

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

The next order of business was a motion to seal minutes of the Executive Session held on November 17, 2009. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To seal minutes of the Executive Session held on November 17, 2009.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on November 3, 2009; 2) received information that In re: Ronald P. Preuhs Jr., Complaint No. NF2009-10, settled prior to today's meeting; and 3) initially determined that In re: Melanie Turner, Complaint No. 2009-5, alleges sufficient facts to constitute a knowing and willful violation of the Code.

The next order of business was discussion regarding the reporting of individual votes taken in Executive Session. Commissioner Cheit noted that this matter had been discussed at the last meeting in the Chair's absence. In response to Chair Binder, Commissioner Cheit

stated that, while most of the votes would be reported out as being unanimous, in those situations in which there are split votes, it would be reported how each member specifically voted. Chair Binder expressed support for disclosing the number of votes in the affirmative and negative. She asked whether individual members' votes also should be disclosed. Commissioner Harsch commented that when it is disclosed that there is a minority vote the next question is who voted in the minority. Commissioner Lynch expressed that this information is contained in the minutes which will be made public anyhow. Commissioner Cerullo inquired about prior Commissioners' comments regarding a "cooling off period" and the background as to how the Commission got to where it is now regarding reporting votes.

Commissioner Cheit informed that previously there had been a sense that if there were a split vote in Executive Session and the press were present, it would be easier for people to leave the meeting without having to answer questions regarding why they voted a particular way. He suggested that comfort and ease for the Commission in the event of a split vote is not a valid reason not to disclose the votes. Commissioner Harsch agreed and suggested that they take the next step and disclose how each member voted. Commissioners Magro and Lynch commented that the information eventually becomes public. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously

VOTED: To report out the individual votes taken in Executive Session.

The next order of business was approval of the tentative 2010 meeting schedule. In response to Commissioner Cheit, Senior Staff Attorney D'Arezzo informed that the proposed schedule reflects the historical practice of meeting every two weeks, excepting when there are state holidays and during the months of July and August. She noted that the Commission may alter its schedule as needed, with subsequent notice. Chair Binder advised that she and Executive Director Willever had discussed a three-week meeting schedule but decided to maintain the current schedule given the amount of potential regulatory work before the Commission. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To adopt the tentative 2010 meeting schedule.

The next order of business was the Director's Report. Executive Director Willever reported that there are five complaints, four advisory opinions and one preliminary investigation pending. He stated that one formal APRA request has been granted since the last meeting.

The next order of business was New Business proposed for future Commission agendas. Commissioner Cheit inquired whether, based upon the dismissal of a Complaint at the last meeting, there is any

issue regarding a trade association being able to give a public official a gift valued at a higher amount than that allowed under the gift regulation. He stated his understanding that the trade association at issue was not an interested person under the Code, but he questioned why public officials should get hotel and travel expenses paid for by such associations. He expressed that if an official is on state business the state should pay for it. Commissioner Cheit questioned whether other states have regulations which address this issue without stating that the donor has to be an interested person. He stated that if others believe this is an issue, he would ask the Staff to look into other states' efforts to regulate outside of an interested person construct. He reiterated that the Commission's decision in the subject Complaint was right under the Code as written.

Commissioner Harsch voiced support for Commissioner Cheit's suggestion. He stated that he has a lot of difficulty with the analysis that a trade association is not an interested person. Chair Binder also voiced support for the suggestion. Director Willever informed that the Staff would provide the requested information at a future meeting.

At 9:50 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary