

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

January 26, 2010

The Rhode Island Ethics Commission held its 2nd meeting of 2010 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, January 26, 2010, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**Barbara R. Binder, Chair Edward A. Magro
Ross Cheit, Vice Chair 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 Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross and Gary V. Petrarca.

At 9:00 a.m., the Chair opened the meeting. The first order of business was a motion to extend time to approve minutes of the Open Session held on January 12, 2010. Upon motion made by

Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously

VOTED: To extend time to approve minutes of the Open Session held on January 12, 2010.

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 Lucien E. Benoit, a member of the North Smithfield Town Council. Staff Attorney DeVault presented the Commission staff recommendation. The Petitioner was present. The Petitioner represented that whether the development is approved or denied will not impact his property value given that he cannot obtain a building permit under town ordinances without road frontage. He advised that the Council will only be acting to settle the litigation and the value of his property will not be impacted.

In response to Chair Binder, the Petitioner stated that there is no financial advantage for the developer to put a road in because he cannot get additional lots. In response to Commissioner Cerullo, he explained that he is not in a position to obtain a variance under the strict town rules. In response to Commissioner Cheit, he indicated that he contacted the appraiser and asked him to provide some evidence as to whether or not his property would be impacted. He

represented that he had no prior relationship with the appraiser, who he has not yet paid for his services. The Petitioner informed that he cannot speak as to the appraiser's use of the terminology "preliminary study." Commissioner Cheit expressed his belief that the letter does not rebut the presumption of impact on the Petitioner's property. In response to Commissioner Cheit, the Petitioner explained that he previously recused from considering the development when it was before the Planning Board, where he could have tried to leverage the plan to provide him with road frontage.

In response to Commissioner Lynch, the Petitioner stated that the other Benoit properties reflected on the plat map are owned by his family members. In response to Commissioner Cheit, the Petitioner acknowledged that the appraisal letter refers to all of the Benoit properties. He clarified that his existing residence is located at AP 14, lot 166. Commissioner Cheit commented that the letter is very vague and does not even reference lot numbers. Commissioner Lynch noted that the letter states that the land is not for residential use, but the Petitioner actually lives there. Commissioner Cheit advised that the Petitioner needs a more specific letter. Chair Binder agreed. Commissioner Lynch suggested that if the appraiser clears up the situation with additional information, he might be persuaded. Chair Binder stated that there is not sufficient evidence to rebut the presumption at this time, but the Commission will continue the matter for two weeks to allow the Petitioner to return with additional information.

The next advisory opinion was that of Peder Schaefer, Chief of the Division of Municipal Finance at the Rhode Island Department of Revenue. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Cerullo, the Petitioner stated that it would be up to the League Director to determine whether to even offer him the job since he would be prohibited from appearing before the Department of Revenue. He clarified that presently the League consists of a Director alone so, if he were to be hired as the Associate Director, his boss would handle any matters on which he needed to recuse. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Peder Schaefer, Chief of the Division of Municipal Finance at the Rhode Island Department of Revenue.

At 9:27 a.m., upon motion made by Commissioner Cheit and duly seconded by Commissioner Cerullo, 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 extend time for approval of minutes of Executive Session held on January 12, 2010.

**b.) In re: Kevin Carter,
Complaint No. 2009-2**

**c.) In re: James Botvin,
Complaint No. 2009-7**

**d.) In re: Stephen Durkee,
Complaint No. 2009-6**

**e.) In re: Robert D. Hallal,
Complaint No. 1989-42**

f.) Motion to return to Open Session.

The next order of business was a motion to seal minutes of the Executive Session held on January 26, 2010. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously

VOTED: To seal minutes of the Executive Session held on January 26, 2010.

Chair Binder reported that the Commission took the following actions in Executive Session by unanimous vote: 1) extended time to approve minutes of the Executive Session held on January 12, 2010; 2)

enlarged time to complete investigation of In re: Kevin Carter, Complaint No. 2009-2; 3) initially determined that In re: James Botvin, Complaint No. 2009-7, states facts sufficient to constitute a knowing and willful violation of the Code; 4) initially determined that In re: Stephen Durkee, Complaint No. 2009-6, states facts sufficient to constitute a knowing and willful violation of the Code; and 5) approved a settlement in the matter of In re: Robert D. Hallal, Complaint No. 1989-42.

Chair Binder announced that the discussion of and second vote on proposed General Commission Advisory (GCA) 2009-3: Participation in Union Actions by Public Officials who are Union Members, would be continued to the next meeting.

The next order of business was review and discussion of proposed regulatory amendments. Staff Attorney Gramitt summarized the proposed amendments. He advised that the proposed amendment to Regulation 1006, Probable Cause, removes the Complainant's right to attend the probable cause hearing, consistent with application of the public rights doctrine. He informed that the proposed amendment to Regulation 1011, Informal Disposition, likewise eliminates the Complainant's right of attendance and clarifies that settlement proceedings are confidential. He stated that the proposed amendments to Regulation 1003, Initial Determination, and Regulation 12001, Preliminary Investigations, adds policy language suggested by Legal Counsel to clarify that the Commission is not engaging in a

review of the merits at this stage of proceedings.

Staff Attorney Gramitt indicated that the Staff believes that Regulation 1009, Subpoena, historically has been misread and it has suggested this amendment to clarify that the affidavit does not have to be reviewed by a Commissioner. He stated that the subpoena would issue just as in a civil case and, as noted in the last sentence, the Commission may also issue subpoenas.

Chair Binder inquired whether it is necessary to have a Commissioner issue a subpoena, noting that in many agencies it is done by the Executive Director. Staff Attorney Gramitt stated that, irrespective of which attorney is designated to prosecute a case, all subpoenas issue from the Executive Director. Chair Binder suggested insulating the Commissioners from the process entirely. Staff Attorney Gramitt noted that there could be a time when the Commission would want to require attendance of a witness at adjudication. He distributed another draft amendment to Regulation 1009 which addresses the issue. In response to Commissioner Lynch, he stated that it does not impact the Respondent's ability to issue a subpoena. Upon review, Chair Binder indicated that she likes the second draft better.

In response to Chair Binder, Staff Attorney Gramitt advised that the Code does not set forth a formal procedure to quash subpoenas. He noted that in the past motions to quash have been filed with the

Commission and, upon their denial, the parties proceed to Superior Court. Commissioner Cheit suggested that the amendment specify that the Commission's issuance of subpoenas is at the trial stage. In response to Commissioner Cerullo, Legal Counsel Conley advised that the Commission's issuance of a subpoena prior to adjudication would be problematic. Staff Attorney Gramitt informed that he would amend the last line to reflect that the Commission's issuance is at the adjudicative stage. Chair Binder requested that the amendments be advertised for hearing.

Staff Attorney Gramitt advised that, pursuant to the Administrative Procedures Act, the Commission must submit the proposals to the Governor's Office and the Small Business Advocate for review. He also noted that the Commission can notice the proposed amendments on the Secretary of State's website, rather than advertising them in The Providence Journal, which will result in significant savings. He summarized the requirements for the public comment period and hearing and noted that the amendments would take effect twenty days after being filed with the Secretary of State. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To approve the proposed regulatory amendments for hearing.

The next order of business was a Legislative Update. Staff Attorney

Gramitt informed that House Bill 7090 would add a revolving door type of restriction to prohibit any Department of Administration or Executive branch employee from leaving their position and either lobbying for or being employed by any state agency until a new governor is elected. He noted that the Commission previously has found similar legislation to be overbroad. He indicated that if it were scheduled for a hearing he would attend if necessary to voice any overbreadth concerns.

Staff Attorney Gramitt advised that Senate Bill 2051 is right on point with the union issue and the proposed GCA 2009-3 and has been introduced by individuals normally associated with the unions. He stated that it would amend the definition of “business associate” such that a dues-paying member of a bargaining unit to a labor union is a business associate of the bargaining unit. However, he noted that the member would not be a business associate of the state or national umbrella organization unless the member is an officer or director of the umbrella organization or is receiving individual services from that umbrella organization. He indicated that this is consistent with the Commission’s current interpretation but suggested that “individual services” could use further definition. Chair Binder observed that there seems to be some common ground on this issue.

The next order of business was the Director’s Report. Executive Director Willever reported that there are six complaints and three

advisory opinions pending. He informed that two formal APRA requests have been granted since the last meeting and there is one Superior Court appeal pending. He noted that APRA requests typically increase during election years.

The next order of business was New Business proposed for future Commission agendas. Chair Binder asked that proposed GCA 2009-3 be placed on the next agenda for discussion and a second vote.

At 10: 12 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary