

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

March 9, 2010

The Rhode Island Ethics Commission held its 5th 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, March 9, 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 John D. Lynch, Jr.

Ross Cheit, Vice Chair Deborah M. Cerullo SSND

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

Frederick K. Butler

Also present were Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross, Peter J. Maninci and Gary V. Petrarca.

At 9:05 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on February 23, 2010. Upon motion made by Commissioner Lynch

and duly seconded by Commissioner Butler, it was

VOTED: To approve minutes of the Open Session held on February 23, 2010.

ABSTENTIONS: J. William W. Harsch and Mark B. Heffner.

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 Richard G. Aubin, Jr., a member of the Central Falls City Council. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was not present.

Staff Attorney DeVault proposed an amendment to the advisory opinion that would include the general caveat that the opinion solely addresses the application of the Code of Ethics. In response to Commissioner Cheit, Staff Attorney DeVault stated that while she is unsure how many other municipalities follow a similar procedure, she knows that similar facts in regard to no-bid processes have arisen in at least one other advisory opinion regarding vehicle repairs and towing. In response to Commissioner Harsch, Staff Attorney DeVault stated that the Petitioner's expectation of inheriting his father's business would not alter the staff analysis.

Upon motion made by Commissioner Harsch and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Richard G. Aubin, Jr., a member of the Central Falls City Council.

The next order of business was a Public Hearing as to Proposed Regulatory Amendments. The Chair inquired if anyone had signed up to make public comment. John Marion of Common Cause Rhode Island and Beverly Clay of Operation Clean Government presented oral comment. Staff Attorney Gramitt responded to the comment provided. A stenographic transcript of the proceedings is available at the Commission Offices.

The first proposed regulatory amendment considered was to Regulation 1006 – Finding of Probable Cause. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler that there is a need for the adoption of the amended regulation, there is no alternative approach that would be as effective and less burdensome to affected persons, and the regulation does not overlap or duplicate any other state regulation, nor is there any indication that the amended regulation would have any impact on small businesses, it was then unanimously

VOTED: To make the finding, pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq., that the need for the

adoption of the proposed amendment to Regulation 1006 exists and to adopt the amended Regulation 1006.

The next proposed regulatory amendment considered was to Regulation 1011 – Informal Disposition. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Harsch that there is a need for the adoption of the amended regulation, there is no alternative approach that would be as effective and less burdensome to affected persons, and the regulation does not overlap or duplicate any other state regulation, nor is there any indication that the amended regulation would have any impact on small businesses, it was then unanimously

VOTED: To make the finding, pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq., that the need for the adoption of the proposed amendment to Regulation 1011 exists and to adopt the amended Regulation 1011.

The next proposed regulatory amendment considered was to Regulation 1003 – Initial Determination of Complaint. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Harsch that there is a need for the adoption of the amended regulation, there is no alternative approach that would be as effective and less burdensome to affected persons, and the regulation does not overlap or duplicate any other state regulation, nor is there any indication that the amended regulation would have any impact on

small businesses, it was then unanimously

VOTED: To make the finding, pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq., that the need for the adoption of the proposed amendment to Regulation 1003 exists and to adopt the amended Regulation 1003.

The next proposed regulatory amendment considered was to Regulation 36-14-12001 –Preliminary Investigations. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler that there is a need for the adoption of the amended regulation, there is no alternative approach that would be as effective and less burdensome to affected persons, and the regulation does not overlap or duplicate any other state regulation, nor is there any indication that the amended regulation would have any impact on small businesses, it was then unanimously

VOTED: To make the finding, pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq., that the need for the adoption of the proposed amendment to Regulation 36-14-12001 exists and to adopt the amended Regulation 36-14-12001.

The next proposed regulatory amendment considered was to Regulation 1009 - Subpoena. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Harsch that there is a need for the adoption of the amended regulation, there is no

alternative approach that would be as effective and less burdensome to affected persons, and the regulation does not overlap or duplicate any other state regulation, nor is there any indication that the amended regulation would have any impact on small businesses, it was then unanimously

VOTED: To make the finding, pursuant to the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq., that the need for the adoption of the proposed amendment to Regulation 1009 exists and to adopt the amended Regulation 1009.

At 9:50 a.m., upon motion made by Commissioner Cerullo 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 February 23, 2010.

b.) Motion to return to Open Session.

The Commission returned to Open Session at 9:51 a.m.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session

held on February 23, 2010 by unanimous vote with one abstention by Commissioners Harsch; 2) unanimously voted to return to Open Session.

The next order of business was a review of the Commission's regulatory authority. Staff Attorney Gramitt informed that, in response to Commissioner Heffner's prior request, he has provided a copy of the Rhode Island Supreme Court's 1992 Advisory Opinion to the Governor, as well as a brief memorandum discussing the pertinent language. In response to Commissioner Heffner, Staff Attorney Gramitt stated that the Commission shares concurrent legislative authority with the General Assembly and that either body can enact substantive ethics law and that the only time an issue would arise would be if there were a conflict. He stated that the 1992 Advisory Opinion suggests that the Commission would prevail in such an instance. He further stated that his use of the term "cooperative" in his memo was meant to refer to cooperation between the Commission and the Assembly prior to legislation being adopted by the General Assembly and that in the past the Commission has worked cooperatively with the General Assembly to discuss what the concerns of the Commission may be with any specific bill and that the General Assembly has been receptive to this thus far. In response to Commissioner Heffner, Staff Attorney Gramitt stated there has not been pushback from the General Assembly but, rather, that when there is turnover in the membership of the Legislature, he performs the educational function of discussing

the 1992 Advisory Opinion with the new membership. Commissioner Heffner stated that he finds this process appropriate.

The next order of business was a legislative update. Staff Attorney Gramitt stated that the Speaker of the House has introduced a Resolution to be put on the November ballot to clarify the 1986 Constitutional Ethics Amendment and that Senator Lenihan has introduced an identical bill on the Senate side. The Senate has also introduced a resolution to allow the Senate to investigate ethics violations on its own, specifically, those portions removed from the Commission's jurisdiction by the Irons decision, including sections 5(a), 5(d), 7(a), and 7(b). In response to Chair Binder, Staff Attorney Grammit stated that when the Speaker sponsors something, there is a good chance that it will pass on the House side. In response to Commissioner Heffner, Staff Attorney Grammit stated that he would draft a letter to the sponsors of Senate Bill 2051 to advise them that the Commission is reviewing its own regulatory options regarding union members and their business association(s) with labor organizations to which their dues flow.

The next order of business was discussion regarding the search for new Legal Counsel. Chair Binder stated that the Personnel Subcommittee would meet Friday to review resumes.

The next order of business was the Director's Report. Executive Director Willever advised that there are ten complaints and one

advisory opinion pending. He reported that there is one appeal pending.

The next order of business was New Business proposed for future Commission agendas. Chair Binder stated that the Commission wanted to look at Executive Director Willever's job description and asked that it be obtained for the next meeting. She also stated that she wants the Commission and Staff to continue the discussion regarding the possible renaming or renumbering of Complaints. She also asked what the process is when the Executive Director rejects a complaint and stated that the policy should be formalized. Finally, Commissioner Cerullo asked that the Commission be refreshed on what is on the list of "open" issues pending before the Commission. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary