

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

**January 11, 2011**

**The Rhode Island Ethics Commission held its 1st meeting of 2011 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 11, 2011, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**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**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo\*, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini 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 December 21, 2010. Additional time is required for staff to finalize the draft minutes. 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 December 21, 2010.**

**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 Brenden T. Oates, a member of the Smithfield School Committee. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Legal Counsel Alves recused. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Brenden T. Oates, a member of the Smithfield School Committee.**

**The next advisory opinion was that of Gordon R. Bouchard, R.N., B.S.N., Director of Nurses at the Rhode Island Department of Corrections. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Commissioner Cheit**

asked why the pharmaceutical companies would give the Petitioner a free dinner if they had no interest in his official duties. The Petitioner responded that he realizes that the pharmaceutical companies' goal is to increase prescriptions by physicians. The Petitioner said that the dinners include nurses even though they cannot prescribe medications. He also stated that not all of the informational dinners sell a particular product. In response to Commissioner Cheit, the Petitioner explained that registered nurses are not allowed to prescribe medications.

In response to Chair Binder, the Petitioner stated that he is aware of other protocols in the medical community that prohibit nurses from attending dinners sponsored by pharmaceutical companies. He explained that some dinners offer CEUs, CMEs—which are for physicians—both or neither for attending the dinner. In response to Commissioner Cheit, the Petitioner represented that he would pay for a dinner if he were interested in the topic. The Petitioner stated that he is unsure if he is in a position to promulgate a policy regarding pharmaceutical company sponsored informational dinners for the staff that he manages. Commissioner Cheit expressed that perhaps it would be best if public employees did not accept free dinners from pharmaceutical companies. The Petitioner said that he understood that, although attendance by a nurse at an informational dinner sponsored by a pharmaceutical company may not be prohibited, it did have an appearance of impropriety. Commissioner Cheit said that this should be prohibited.

**In response to Chair Binder's reference to correspondence from the DOC's Medical Director, the Petitioner expressed his belief that Dr. Fine has a philosophical objection to DOC medical staff's attendance at such dinners. The Petitioner stated his belief that, whereas a physician would not be able to attend given their power to prescribe prescription medication, the situation would be different for a nurse. He explained that when he presents a patient to a physician via telephone he only provides the patient's vital signs and symptoms.**

**In response to Chair Binder, the Petitioner stated his belief that Lifespan has a policy prohibiting nurses from attending such dinners because Lifespan buys their prescription drugs directly from the drug companies, while the DOC purchases their medications from a pharmacy located in Pennsylvania. He explained that he requested the opinion because the Medical Director, after attending a Commission educational seminar, informed the medical staff that they could not attend such dinners. Commissioner Cheit stated that there is an appearance of impropriety. He indicated that state employees should not be able to take gifts from commercial parties. Chair Binder and Commissioner Magro agreed. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler, it was**

**VOTED: To issue an advisory opinion to Gordon R. Bouchard, the Director of Nurses at the Rhode Island Department of Corrections.**

**AYES: Frederick K. Butler**

**NOES: Deborah M. Cerullo SSND, J. William W. Harsch, Edward A. Magro, Ross Cheit and Barbara R. Binder.**

**Due to a lack of five (5) affirmative votes, the draft advisory opinion was not approved.**

**The next advisory opinion was that of Christopher J. Pucino, Esq., an Assistant Solicitor for the Town of Coventry. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Magro and duly seconded by Commissioner Harsch, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Christopher J. Pucino, Esq., an Assistant Solicitor for the Town of Coventry.**

**The next advisory opinion was that of John Spier, a member of the Block Island Housing Board. Staff Attorney Gramitt presented the Commission Staff recommendation. Staff Attorney Gramitt informed that the Petitioner could not be present due to the difficulty of travel from Block Island in January. In response to Commissioner Cerullo, Staff Attorney Gramitt stated that his discussions with the Petitioner did not address every type of issue that could involve other contractors and subcontractors on Block Island. He explained that**

he discussed circumstances which could arise in a matter by matter evaluation of potential conflicts. He noted that the Petitioner is familiar with the Code of Ethics, having previously served on the Block Island Zoning Board.

Commissioner Cheit expressed concern that the opinion was so general as to be nearly useless because almost anything would require a case by case evaluation. Staff Attorney Gramitt stated that the Petitioner represented that he and the Town believed that the Board needed someone from the construction trade; thus, the issue is really whether the Petitioner can be on the Board. He also stated that the Petitioner indicated that he made this request on his own initiative and not because someone else raised the issue of a potential conflict.

Commissioner Cheit acknowledged that it was reasonable for this Petitioner not to attend the meeting given the infrequency of Block Island ferries in the winter and the upcoming snow storm. He suggested that Executive Director Willever look into having teleconferences with petitioners in such cases of hardship. After discussion about remaining questions for the Petitioner, Commissioner Cheit suggested that they vote to adopt the opinion and instructed Staff Attorney Gramitt to emphasize that the Petitioner needs to carefully consider each matter that comes before him and seek future advice from the Commission. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it

**was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to John Spier, a member of the Block Island Housing Board.**

**The next advisory opinion was that of Carol Guimond, a member of the Tiverton Planning Board. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Carol Guimond, a member of the Tiverton Planning Board.**

**RECUSAL: J. William W. Harsch.**

**The next advisory opinion was that of Stephen J. Hughes, a member and Chairman of the Tiverton Planning Board. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Stephen J. Hughes, a member and Chairman of the Tiverton Planning Board.**

**The next advisory opinion was that of Patricia Cote, a member of the Tiverton Planning Board. Staff Attorney Stewart presented the**

**Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Mago, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Patricia Cote, a member of the Tiverton Planning Board.**

**The next advisory opinion was that of Frank DiMauro, a member of the Tiverton Planning Board. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Frank DiMauro, a member of the Tiverton Planning Board.**

**At 9:53 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 extend time to approve minutes of Executive Session held on December 21, 2010.**

**b.) In re: John Winfield, Jr.,**

**Complaint No. 2010-6**

**c.) In re: Maria G. Vallee,**

**Complaint No. 2010-9**

**d.) Status Update:**

**Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission,**

**Supreme Court No. 10-280-M.P.**

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

**The Commission returned to Open Session at 10:05 a.m. The next order of business was a motion to seal the minutes of the Executive Session held on January 11, 2011. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on January 11, 2011.**

**Chair Binder reported that the Commission took the following actions in Executive Session: 1) extended time to approve minutes of the Executive Session held on December 21, 2010; 2) granted a first extension of time in the matter of In re: John Winfield, Jr., Complaint No. 2010-6; 3) granted a first extension of time in the matter of In re: Maria G. Vallee, Complaint No. 2010-9; and 4) received a status**

**update on Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission, Supreme Court No. 10-280-M.P. All votes taken in Executive Session were unanimous. Additional time is required for staff to finalize the draft Executive Session minutes from December 21, 2010.**

**\*Senior Staff Attorney Katherine D'Arezzo arrived at 10:10 a.m.**

**The next order of business was a discussion regarding the Treatment of Members of Umbrella Unions and Professional Organizations. Chair Binder focused on the need to change the definition of "business associate." She stated that she would not want to end up with language that would include relationships involving general advocacy, such as between a doctor and a medical society, where the person is not receiving individual services from the organization. Commissioner Harsch noted that the focus is public negotiations, and he indicated that the Commission typically sees this situation with municipal school boards. He questioned whether it is really a fiction to treat the local as a distinct entity because all are members of the umbrella organization. He questioned whether the Commission should recognize locals which are distinguished from the statewide organization.**

**Commissioner Cheit stated that the Commission started addressing the issue through advisory opinions that did not protect and preserve the status of locals. Commissioner Harsch inquired if the Commission is going to finish chipping away at the issue.**

**Commissioner Cerullo recounted her understanding of the issue, which began with a consensus to draft a regulation for consideration and public comment. Thereafter, there was a consensus to enlarge the issue to also address professional organizations. She expressed her desire to see movement on the issue, even if it means limiting it to the original issue. She indicated her support for providing another opportunity for suggestions on how to address the second issue, but not at the expense of moving the first issue along.**

**In response to Commissioner Cheit, Commissioner Magro stated that by issuing a GCA the Commission would be doing more than providing general advice, it would be changing direction. Chair Binder noted that the Commission first did so with the opinion issued to Diane Nobles, who herself raised the concerns about which the Commission had been thinking. Commissioner Cheit expressed his belief that the Commission should not adopt a regulation singling out unions but should address the issue through advisory opinions. He stated that he is unconvinced that the unions are a special problem that is not also posed by professional associations and chambers of commerce. Chair Binder stated that perhaps the bright line is where an association provides you with individual services. She indicated that she also believes that there is a bigger picture to address at the same time, not just an issue relating to unions.**

**Commissioner Magro noted that a consistent set of facts comes up with these advisory opinions and it is not the unions being targeted.**

**Commissioner Cheit observed that it had been noticed on the agenda as a union issue until he objected to the language. Commissioner Magro stated that the Commission has not decided to target unions. Commissioner Cerullo agreed and echoed that it is a set of facts that is repeatedly presented to the Commission. She indicated that the Commission wants to come up with a fair way of addressing the issue, rather than doing so in individual opinions which do not provide safe harbor and put individuals at risk of being subject to a complaint. She stated that she was in favor of issuing a GCA but the Commission chose to address it via regulation. She also indicated that how the issue was framed in language on an agenda should not characterize the Commission's activities. She stated that the Commission is not targeting unions, but she recognized that the set of facts consistently appearing before the Commission has involved them. Commissioner Cerullo expressed that it is worth trying to frame the issue to address other professional associations, but she is not sure that it would be worth doing so at the expense of the issue that has been on the agenda for so long.**

**Commissioner Cheit noted that the issue has been on the agenda for a long time because the Commission has not found a good way to address it, as it is a complex issue. He voiced his view that it is not just a union issue. He noted that testimony before the Commission pointed out that it would also apply to chambers of commerce. Commissioner Cerullo suggested figuring out the next best step, which might be to revise the definition of business associate. Chair**

**Binder suggested looking at language in a prior Senate bill, found at Tab N, Option C in the background materials, which focused on the receipt of individual services, and how it could be expanded to include trade organizations. Chair Binder asked that Executive Director Willever assign the issue to a staff member and suggested establishing a subcommittee to discuss the matter with staff.**

**Commissioner Harsch expressed support for establishing a subcommittee with a deadline, as the target keeps moving and meeting attendance varies. He noted that some members not present at today's meeting have expressed an interest in the issue. Chair Binder stated that a subcommittee would be helpful to keep on task and requested volunteers. Commissioners Cerullo, Magro and Harsch volunteered.**

**The next order of business was a discussion of R.I. Gen. Laws § 36-14-5(h), prohibited activities regarding entering into contracts with state or municipal agencies. Chair Binder noted that the issue arose at the last meeting after an informal resolution of the complaint against Vincent Polisen, where members questioned the fact that the person receiving the municipal contract was in violation of the Code but the person who awarded the contract was not. Senior Staff Attorney D'Arezzo informed that the staff has had general concerns regarding section 5(h), including to whom it applies and its breadth. She explained that the prohibition applies to persons subject to the Code, their family members and business associates, and any**

**business entity in which the person subject to the Code, their family members or their business associates have a 10% or greater equity interest or \$5,000 or greater cash value interest. She noted that this application extends to persons who would not know that they were subject to the Code. She indicated that there have been questions as to whether it would be a violation for the family member receiving the contract, who is not otherwise subject to the Code, or for the public official/employee, who may not even know that their family member received a contract. Commissioner Cheit pointed out that in the Menard complaint it was the public official who violated the Code.**

**Senior Staff Attorney D'Arezzo noted that the prohibition applies to the awarding of a contract by any state or municipal agency, not just by the agency of which the person subject to the Code is a member or by which he or she is employed. She provided the example of a state employee with a family member who contracts with a municipality for snow plowing services. She also indicated that there is the question of who has the obligation to provide public notice and disclose financial details with respect to contracts for professional services awarded without competitive bidding.**

**Commissioner Cerullo stated that she would like the Commission to look at the person awarding the contract. Chair Binder expressed that the issue really is no-bid contracts, which would be governed by Department of Administration regulations. Legal Counsel Alves advised that it is also governed by statute. Chair Binder suggested**

that this might be a way to provide a definition to an “appearance of impropriety.” She suggested looking at the state’s statutory and regulatory language for possible adoption. Commissioner Butler cautioned that the Commission cannot fix every problem with application of the Code and questioned extending the Commission’s reach. Commissioner Cerullo stated that the persons awarding such contracts are already covered by the Code.

Commissioner Cheit stated that the Commission should first focus on prohibiting people who are subject to the Code from awarding no-bid contracts. Senior Staff Attorney D’Arezzo stated that, absent the existence of a familial, business associate or private employment relationship, there would be no financial nexus between the person awarding the contract and the recipient. Commissioner Cheit expressed that it is improper to issue no-bid contracts even if there is no financial nexus. He indicated that it could be within the Commission’s authority to determine that such conduct constitutes an appearance of impropriety in violation of the Code. By specifically defining the conduct, he stated that it would avoid the issue of the Court stating that an appearance of impropriety is too slender a reed upon which to rest a violation of the Code. Chair Binder agreed.

Chair Binder suggested looking at existing state statutes and Department of Administration regulations regarding bidding for contracts. Staff Attorney Gramitt inquired whether the Commission would be looking at the awarding of a contract to any particular

person, such as a friend or campaign manager. Chair Binder and Commissioners Cheit and Cerullo expressed that it would apply to contracts awarded to any person. Commissioner Cheit indicated that the Code should prohibit the awarding of no-bid contracts to any person, but should retain exceptions for emergency situations.

Commissioner Harsch raised the issue of enforcement by the Commission, which responds to complaints that are filed with it. Commissioner Cheit noted that in a prior case, involving a local fire district, records were produced reflecting the awarding of no-bid contracts. Commissioner Cerullo stated that the Commission can initiate complaints. Chair Binder concluded the discussion and asked for a staff attorney to be assigned to this issue.

The next order of business was the Director's Report. Executive Director Willever reported that there are six complaints, thirteen advisory opinions and one litigation matter pending. He stated that there were no formal APRA requests since the last meeting.

The next order of business was New Business. Commissioner Harsch inquired whether there will be an answer to correspondence received from the RIACLU at the last meeting. Chair Binder stated her belief that the Commission has addressed the issue, changed its regulations and had Legal Counsel review it. She asked Legal Counsel to review the correspondence and provide his advice at the next meeting. Commissioner Harsch also suggested establishing a

**schedule for the agenda item regarding the treatment of unions and professional organizations. Chair Binder stated that the subcommittee should meet and report back to the full Commission. Commissioner Cheit inquired about the 2011 tentative meeting schedule and noted a probable conflict on February 22, 2011. Executive Director Willever advised that the staff will inquire as to a quorum for the 22nd when contacting the membership in advance of the January 25th meeting. Senior Staff Attorney D'Arezzo indicated that the schedule is tentative and may be altered to address the Commission's needs.**

**At 10:53 a.m., upon motion made by Commissioner Harsch and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**J. William W. Harsch**

**Secretary**