

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

**March 22, 2011**

**The Rhode Island Ethics Commission held its 5th 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, March 22, 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:**

**Ross Cheit, Vice Chair Deborah M. Cerullo SSND**

**J. William W. Harsch, Secretary Edward A. Magro**

**James V. Murray Mark B. Heffner\***

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

**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 Vice Chair opened the meeting. The first order of**

**business was a motion to approve the minutes of the Open Session held on March 22, 2011. Vice Chair Cheit noted a correction on page 8. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To approve minutes of the Open Session held on March 22, 2011, as corrected.**

**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 Denise L. Stetson, the Richmond Town Planner. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present.**

**\*Commissioner Heffner arrived at 9:04 a.m.**

**Upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously,**

**VOTED: To issue an advisory opinion, attached hereto, to Denise L. Stetson, the Richmond Town Planner.**

**The next advisory opinion was that of Donald R. Grebien, the Mayor of the City of Pawtucket. Frank Milos, Esq. was present for the**

**Petitioner. Staff Attorney Stewart presented the Commission Staff recommendation. In response to Commissioner Butler, Staff Attorney Stewart stated that the language relating to seeking further guidance from the Commission was included based upon the Petitioner's representation that if something were to change he would seek further guidance. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously,**

**VOTED: To issue an advisory opinion, attached hereto, to Donald R. Grebien, the Mayor of the City of Pawtucket.**

**The next advisory opinion was that of Patrick Kelley, a member of the Newport School Committee. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Gramitt advised that the matter had been continued from the last meeting due to the Commission's questions regarding the sister-in-law relationship. He informed that he did some research outside of the Code of Ethics and found that some dictionaries include a wife's brother's wife as a sister-in-law. He reported that he also found an article indicating that some authorities disagree as to whether it is a familial relation. He indicated that the issue is whether the Commission wishes to include within its definition of family two individuals who are not otherwise related but happened to marry sisters. He questioned whether the term is sufficiently clear on its own or, if not, whether the Code makes it sufficiently clear.**

**Commissioner Lynch voiced his opinion that the term sister-in-law is pretty clear. He stated that in a prior opinion relating to an uncle relationship, which had been cited by Staff, the Commission did not look into whether the individual had married into the family or not. He indicated that he did not see a distinction between the instant facts and the prior opinion. He expressed support for including this relationship within the definition of sister-in-law. In response to Commissioner Cerullo, the Petitioner confirmed that his spouse's brother's spouse lives with the brother as a family unit. Commissioner Cerullo stated that her issue is centered around it being a family/household unit and there being a financial impact on that unit.**

**Staff Attorney Gramitt replied that the family unit is not specifically covered by Regulation 5004. He stated his belief that the Commission would need to address it on a case by case basis depending on the facts, such as whether there are shared bank accounts or commingling of funds that would necessarily impact the family member. In response to Vice Chair Cheit, Staff Attorney Gramitt informed that in a complaint context a defense could be that the individual is not the Petitioner's sister-in-law or that a reasonable person would not have known that she was his sister-in-law under the Code. He stated that the Code is a penal statute and must be strictly construed. In response to Vice Chair Cheit, Staff Attorney Gramitt recalled that the Commission's discussion in 2007 related to wanting to draw a line at relationships created by only one marriage.**

**Legal Counsel Alves advised that if the Commission wants to deviate from its prior interpretation in the 2007 opinion it should do so by regulation for clarity. Commissioner Lynch inquired what would have to be changed given that the regulation already covers sister-in-law. Legal Counsel Alves suggested defining the relationship so there is no question. Staff Attorney Gramitt suggested that there could be a subsection specifically defining all in-law-relationships. Commissioner Lynch suggested that the Commission utilize the commonly accepted definition of sister-in-law, noting that Black's Law Dictionary states that a spouse's brother's spouse is sometimes referred to as a sister-in-law. In response to Commissioner Heffner, Staff Attorney Gramitt stated that if the present matter had come to him as a complaint he would have recommended that probable cause does not exist based upon the issuance of Advisory Opinion No. 2007-49.**

**Commissioner Heffner expressed that people coming before the Commission expect clarity. He stated that Staff has raised good points and Commissioner Cerullo's financial analysis should be discussed. He noted that, under these facts and circumstances, he is uncomfortable with approving the draft opinion. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Cerullo to adopt the draft opinion, there was discussion. Commissioner Cerullo stated that she respects the precedent of the Commission's prior analysis, but her concern relates to the economic**

unit. She recognized that this might not be the place to interpret the regulation differently, so at this time she would support the draft opinion. However, she urged the Commission to consider action in a regulatory framework with respect to the economic unit. Commissioner Magro indicated that he is torn because he can see both sides to the issue. He expressed that he would have less trouble with it in a complaint context because it is not clear; however, the Commission can make it clear in an advisory opinion.

Commissioner Lynch stated that, while the issue is clear to him, it should be a point of business for the Commission to change the regulation. Vice Chair Cheit stated that it should be put on the agenda for the Commission to address. On the original motion, it was

**VOTED:** To issue an advisory opinion, attached hereto, to Patrick Kelley, a member of the Newport School Committee.

**AYES:** Deborah M. Cerullo SSND, J. William W. Harsch, Frederick K. Butler, Mark B. Heffner, James V. Murray, John D. Lynch, Jr. and Ross Cheit.

**NOES:** Edward A. Magro.

Vice Chair Cheit noted that he voted to approve the draft based upon the prior opinion and the fact that the Commission will be addressing

the issue. He stated that the Petitioner has safe harbor but the Commission might change its interpretation in the future.

The next advisory opinion was that of Jared R. Nunes, a member of the Rhode Island House of Representatives. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner informed that he has a second inquiry as to whether he would be prohibited from bidding as a subcontractor to a prime contractor for the state given that he would not be paid by the state. Staff Attorney Gramitt noted that the inquiry was not part of the original request and should be addressed separately.

The Petitioner advised that he had told Staff that he would provide a list of the contracts his company bid on and received from the DOT over the last five years but he left it at his office. In response to Vice Chair Cheit, Staff Attorney Stewart indicated that the language of Regulation 5007 is clear and that those separate contracts, which were bid on and completed, were not held at the time of his election. She stated that they are factually distinct from the snowplowing contract. Commissioner Heffner commented that he sees it as a distinction without a difference based upon the frequency and history of prior DOT work. He expressed his disagreement with the draft analysis, which he believes ignores the regulation. He indicated that this would be one more deterrent for members of the General Assembly who are trying to make a living and seek to do business as they did prior to their election.

**Staff Attorney Gramitt advised that the Staff's analysis rests on a distinction between the continuing independent contract for snowplowing and new, independent contracts for other work going forward. He analogized that if the Petitioner were an adjunct professor at RIC prior to his election he could continue in that capacity, even though there would be a new contract each academic year. Staff Attorney Gramitt noted that the prior contracts for DOT work involved different projects. Vice Chair Cheit commented that it would be helpful to have the list. The Petitioner advised that his company grosses between 2.5 and 3.5 million dollars annually. Given that most DOT contracts are over \$500,000, he represented that his company can only handle two or three per year. He indicated that they bid on three or four DOT contracts per year for the past five or so years.**

**In response to Vice Chair Cheit, Staff Attorney Stewart stated that she did not deem the Petitioner to be a general contractor for the DOT as part of her analysis. The Petitioner stated that last year they did not solicit bids for DOT work. He represented that during the prior year they performed a few thousand dollars worth of work on a DOT contract in North Kingstown as a subcontractor to the prime contractor. He stated that they did not technically work for the DOT because they were paid by the prime contractor. In response to Commissioner Lynch, the Petitioner stated that they were contacted regarding the snowplowing list back in August. Commissioner**

**Cerullo questioned whether being a contractor for that one purpose would be cause him to be deemed a contractor for other purposes. Commissioner Magro commented that the bidding process for each is completely different, noting that there is no decision-making involved regarding the snowplowing. Vice Chair Cheit indicated that there might not be any decision-making involved with subcontract work either. Vice Chair Cheit suggested that the matter be continued to the next meeting to allow staff to review the list information.**

**At 10:03 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 approve minutes of Executive Session held on March 8, 2011.**

**b.) In re: Maria Vallee,  
Complaint No. 2010-9**

**c.) In re: Joseph S. Larisa, Jr.,  
Complaint No. 2010-12**

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

**The Commission returned to Open Session at 10:53 a.m. Vice Chair Cheit reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on March 8, 2011; 2) approved a second extension of time in In re: Maria Vallee, Complaint No. 2010-9; and 2) voted that probable cause exists in In re: Joseph S. Larisa, Jr., Complaint No. 2010-12. All votes taken in Executive Session were unanimous.**

**The next order of business was a motion to seal minutes of the Executive Session held on March 22, 2011. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on March 22, 2011.**

**The next order of business was a Legislative Update. Staff Attorney Gramitt informed that House Resolution 5410, which would restore the Ethics Commission's jurisdiction over members of the General Assembly, is scheduled for a hearing before the House Judiciary Committee on March 30th. He stated that he testified at a similar hearing last year and would provide the same testimony this year if so directed by the Commission. By consensus, the Commission directed Staff Attorney Gramitt to attend and provide testimony.**

**Staff Attorney Gramitt also updated the Commission on House Bill**

5127, introduced by Representative Joseph M. McNamara. He informed that this bill is also scheduled for a hearing before the House Judiciary Committee on March 30th. In response to Vice Chair Cheit, Staff Attorney Gramitt stated that he would be available to speak at that hearing as well, generally addressing concerns with the current statutory language, which appears overbroad. In response to Commissioner Heffner, Staff Attorney Gramitt indicated that the intent of the bill is not clear and perhaps discussion with the sponsor would be beneficial. Commissioner Heffner suggested that, because he will already be there to testify as to House Bill 5410, Staff Attorney Gramitt testify that the intent is not clear, give a brief illustration of its over breadth, and indicate his willingness to work with its sponsor. Commissioner Cerullo inquired if the Commission could address any over breadth by adopting a regulation interpreting the statute. Vice Chair Cheit expressed that the Commission would have difficulty implementing a regulation without information as to the intent. Commissioner Heffner agreed.

The next order of business was Commission discussion of cheating on examinations administered by public entities. Senior Staff Attorney D'Arezzo noted that this matter previously had been raised under New Business with a request for Staff to look at how other jurisdictions address the issue. She provided the example of former Providence Police officers who, although implicated in a promotional test cheating scandal nearly ten years ago, were able to maintain their municipal pensions because they were not convicted of criminal

wrongdoing. She noted that yesterday the City of Providence rectified the issue by amending the language of its ordinance allowing for revocation of retirement benefits for dishonorable service.

Senior Staff Attorney D'Arezzo advised that she posted a discussion forum on the COGEL website requesting information as to whether other jurisdictions have statutes or regulations specifically addressing cheating on publicly administered examinations. In the alternative, she inquired whether jurisdictions have prosecuted such cases under general provisions analogous to sections 5(c) and 5(d). She reported that she received no response to the posting. She also informed that she reviewed statutory and regulatory provisions in the following jurisdictions: Massachusetts; Connecticut; Pennsylvania; Arkansas; Los Angeles; Washington; Seattle; Ohio; Kentucky; Texas; Florida; Delaware; Maryland; Maine; Alabama; Colorado; Hawaii; Indiana; Georgia and New York. Of those twenty jurisdictions, she stated that none had provisions specifically addressing the issue.

Senior Staff Attorney D'Arezzo informed that most jurisdictions had analogs to sections 5(c) and 5(d) of the Code, under which certain factual scenarios involving cheating presently could be prosecuted, such as a public official or employee using test guides or answer keys obtained in the course of their official duties to cheat on a promotional exam or assist a family member, business associate or private employer to do so. Vice Chair Cheit recognized that sections

**5(c) and 5(d) would not bring all forms of cheating under the Code of Ethic, only those instances where confidential information was misused.**

**\*Commissioner Heffner left at 11:16 a.m.**

**Vice Chair Cheit expressed a desire to keep this issue on the agenda. He suggested that Staff review Providence's new ordinance to see if there is some language that could be incorporated into the Code of Ethics.**

**Vice Chair Cheit also discussed the fact that the Code lacks a statute of limitations. Senior Staff Attorney D'Arezzo advised that, although the Code does not contain a statute of limitations, as a civil administrative agency, the Commission arguably would apply a ten year statute. Vice Chair Cheit expressed concern that a clear time limit should be codified. Executive Director Willever responded that it is a policy issue, where in the past some Commissioners have advocated for shorter statutes, based on evidentiary issues, while others have advocated for longer terms, allowing for an elected official's term to end before filing an ethics complaint. Vice Chair Cheit stated that the Commission should further discuss the issue.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are four complaints and four advisory opinions pending. He stated that the Commission received**

two formal APRA request since the last meeting and both were granted. He noted that financial disclosure statements will be mailed out soon and considerable Staff resources will be focused on processing and filing received statements.

The next order of business was New Business. Commissioner Cerullo reported that the Subcommittee has been working diligently and will be reporting on its efforts to the full Commission, perhaps at the next meeting.

At 11:23 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously

VOTED: To adjourn.

submitted,

Respectfully

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Harsch

J. William W.

Secretary