

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

May 3, 2011

The Rhode Island Ethics Commission held its 7th 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, May 3, 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, Chair Mark B. Heffner

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

James V. Murray John M. LaCross

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 and Dianne L. Leyden; and Commission Investigators Peter J. Mancini and Gary V. Petrarca.

At 9:00 a.m. the Chair opened the meeting. The first order of business was recognition of former Chairperson Barbara R. Binder.

Chair Cheit expressed the Commission's appreciation for former Chair Binder's six years of leadership. Former Chair Binder thanked the Executive Director, Staff and Commissioners with whom she served.

The next order of business was a motion to approve minutes of the Open Session held on April 19, 2011. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Murray, it was unanimously

VOTED: To approve minutes of the Open Session held on April 19, 2011.

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 George R. Charette, a Gloucester Planning Board member. Staff Attorney Gramitt presented the Commission Staff recommendation prepared by Staff Attorney Stewart. The Petitioner was present. The Petitioner represented that he has severed his ties with Jay Forgue and does not intend to do any other work for him. Upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to George R.

Charette, a Gloucester Planning Board member.

The next advisory opinion was that of Kathleen Wilson, a Portsmouth Planning Board member. Staff Attorney Gramitt presented the Commission Staff recommendation prepared by Staff Attorney Stewart. The Petitioner was not present. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Kathleen Wilson, a Portsmouth Planning Board member.

The next advisory opinion was that of Stephen P. Calenda, a Warren Zoning Board member. Staff Attorney Gramitt presented the Commission Staff recommendation prepared by Staff Attorney Stewart. The Petitioner was not present. Chair Cheit stated that he is troubled by the draft's citation to the dictionary and noted that it does not matter what the dictionary indicates because the relationship is not covered by the regulation. Staff Attorney Gramitt advised that he had suggested including the definition because it might be helpful in understanding what the Petitioner had meant when he described the relationship. Chair Cheit expressed that the dictionary is not a legal source. Commissioner Lynch stated that sometimes it might be necessary to go by the plain and ordinary meaning, which would be found in the dictionary.

Commissioner Heffner stated that the Commission might want to look at familial relationships via the laws of intestacy or consult with a genealogist. He suggested that the Commission adopt a touchstone for looking at such relationships going forward. Commissioner Murray expressed his opinion that inclusion of the dictionary definition does not dilute the opinion. Commissioner Heffner indicated a touchstone that includes a visual depiction would be helpful for future usage. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Stephen P. Calenda, a Warren Zoning Board member.

At 9:29 a.m. upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, 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 April 19, 2011.

**b.) In re: John Winfield, Jr.,
Complaint No. 2010-6**

**c.) In re: Samuel C. Kinder,
Complaint No. 2011-1**

d.) Motion to return to Open Session.

The Commission returned to Open Session at 10:20 a.m. The next order of business was a motion to seal minutes of the Executive Session held on May 3, 2011. Upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To seal minutes of the Executive Session held on May 3, 2011.

Chair Cheit reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on April 19, 2011; 2) continued the matter of In re: John Winfield, Jr., Complaint No. 2010-6, for two weeks; and 3) initially determined that In re: Samuel C. Kinder, Complaint No. 2011-1, alleges sufficient facts to constitute a knowing and willful violation of the Code of Ethics. All votes taken in Executive Session were unanimous.

The next order of business was a Legislative Update. Staff Attorney Gramitt advised that there is nothing to report at this time.

The next order of business was a Staff Report and Commission

discussion regarding the awarding of public contracts that do not adhere to an open and public bidding process. Senior Staff Attorney D'Arezzo summarized the discussion of the issue that took place at the last meeting, which had concluded with an inquiry as to other statutory violations that would also violate the Code of Ethics. She indicated that conduct violating the Code may constitute a violation of other statutes, such as a quid pro quo under 5(g) and criminal bribery. However, she noted that there are different standards and different requisite elements for each offense; whereas, here a violation of the State Purchasing Act would constitute a violation of the Code based upon identical facts and under the same civil administrative standard.

Chair Cheit stated that he is not entirely persuaded that dual jurisdiction is controlling, but he is persuaded that it is a complicated statute and it may be redundant to take action if it is already being enforced. In response to Chair Cheit, Director Willever stated that he does not recall referring any cases to the Department of Administration during his tenure. Senior Staff Attorney D'Arezzo informed that violations of the Purchasing Act would violate sections 5(a), (d), (h) and Regulation 5004 if the contract were awarded to a family member, business associate or private employer. In response to Chair Cheit, she stated that the Commission did prosecute former Governor DiPrete for his awarding of state contracts that did not adhere to the required process to campaign contributors, although the Supreme Court ultimately held that a prohibited quid pro quo was

not established. Commissioner Murray expressed that this is an area in which the Commission would not want to get involved. Chair Cheit stated that the Commission wanted to see if getting involved could help but it seems like it would open up more problems than it would solve.

The next order of business was the Director's Report. Executive Director Willever reported that there are five advisory opinions and five complaints pending. He stated that the Commission received three formal APRA request since the last meeting, all of which were granted. He stated that the Staff has been working with the new administration on many matters, including the lease and budget, and issues relating to technology arose in those discussions. He reported that he and Senior Staff Attorney D'Arezzo testified before the House Finance Committee last week regarding the budget, at which time they expressed the Commission's preference for staying in its current location. Director Willever informed that a budget and lease update would be provided at the next meeting. Commissioner Heffner requested that the update detail comments as to the mission criticalness of the present space and what other alternatives have been proposed or presented.

In response to Commissioner Murray, Senior Staff Attorney D'Arezzo stated that the Providence Journal's reporting of the lease costs was not in context. She clarified that the discussion of the percentage of the budget attributable to the lease referred to the operating budget,

not the total budget. She informed that total operating costs are less than \$170,000 annually, which is largely comprised of rent and utilities. Director Willever informed that an estimated 85% of the budget is comprised of salaries and benefits.

Staff Attorney Gramitt provided a technology update. He reported that a recent financial disclosure discussion between Director Willever and the Director of the Department Administration (DOA) has resulted in an offer of DOA support for an online filing initiative. He informed that the Commission Staff has begun working with the DOA and DOIT to achieve online filing, with the assistance of RI.GOV, with the long term goal of having online filing available for next year's financial disclosure cycle. Staff Attorney Gramitt stated that the Staff will return to the Commission for discussion regarding public access to Statements.

In response to Chair Cheit, Staff Attorney Gramitt advised that there is no statutory requirement for the Statements to be notarized, but they must be sworn Statements. He noted that RI is subject to the Uniform Electronic Transactions Act and that the issue is whether it is sufficient to allow the electronic signature under the pains and penalties of perjury, as other jurisdictions do. Commissioner Heffner commented on the process of providing the Commissioners' meeting materials in hardcopy and suggested that the information be made available electronically. Staff Attorney Gramitt indicated that the materials can be sent to the members via email, either in addition to

or in lieu of a hardcopy. In response to Commissioner Heffner, Staff Attorney Gramitt informed that the hearing room is being wired for internet access and members will be provided with a password. Chair Cheit noted that Brown University uses Google Docs and he would welcome the opportunity to be able to read the materials from his laptop.

The next order of business was New Business. Chair Cheit stated that there would likely be a Regulation Subcommittee meeting after the next Commission meeting on May 17th.

At 10:58 a.m., upon motion made by Commissioner Harsch and duly seconded by Commissioner Heffner, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

Harsch

J. William W.

Secretary