

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

February 14, 2012

The Rhode Island Ethics Commission held its 2nd meeting of 2012 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, February 14, 2012, 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

Deborah M. Cerullo SSND, Vice Chair John M. LaCross

J. William W. Harsch, Secretary James V. Murray

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:01 a.m. the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on January 10, 2012. Upon motion made by Commissioner Harsch

and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To approve the minutes of the Open Session held on January 10, 2012.

ABSTENTION: James V. Murray

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:

Campbell D. Field, Esq., a member of the Westerly Town Council, a municipal elected position, requesting an advisory opinion regarding whether he may appear before the Westerly Planning Board, the Westerly Zoning Board and/or the Westerly Town Council to oppose the proposed development of property directly abutting his personal residence.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner informed that his wife is no longer the treasurer of the Neighborhood Association, a change of circumstances which occurred after this opinion was drafted. He stated that he was advised by the Town Solicitor to seek an advisory opinion. Commissioner Heffner asked

whether the Petitioner considered the Code of Ethics before speaking at a public forum before the Planning Board in January. The Petitioner stated that he did not know if the Code of Ethics applied, but he believed that he should be allowed to appear based upon his status as an abutter. He informed that before the Planning Board he cited certain zoning regulations and argued that the proposed development was an inappropriate use.

In response to Commissioner Heffner, Staff Attorney Stewart stated that Regulation 7003, the public forum exception, permitted the Petitioner's appearance before the Planning Board to speak in a public forum on a matter that directly affects him as an abutter. She further stated that the Petitioner is instructed to refrain from appointing or reappointing any member to the Planning or Zoning Boards until the RV Park development is resolved. In response to Chair Cheit, Staff Attorney Gramitt explained the matter would be resolved when nothing is pending before any of the town boards and the time for appeal has expired. The Petitioner added that none of the Town Council members had a problem with him recusing from the Planning and Zoning Board appointments. Upon motion made by Commissioner Murray and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Campbell D. Field, Esq., a member of the Westerly Town Council.

The next advisory opinion was that of:

Daniel W. Patterson, a member of the Exeter Town Council, a municipal elected position, who in his private capacity is a licensed firearms dealer, requesting an advisory opinion regarding whether he may participate in the Town Council's discussion and vote on a resolution asking the General Assembly to change the state law regarding municipal licensing of concealed weapons.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner stated that the DiGregorio commentary was a list of questions provided in writing to the Exeter Town Council at the January meeting. He added that the Town Solicitor advised him not to answer the questions but to seek an advisory opinion. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Daniel W. Patterson, a member of the Exeter Town Council.

The next advisory opinion was that of:

Thomas A. Rose, Jr., a member of the East Providence City Council, a municipal elected position, requesting an advisory opinion regarding whether the Code of Ethics prohibits his work as a part-time tow truck

operator for a business that is both owned by his father and on the City's police tow list.

Staff Attorney DiLibero presented the Commission Staff recommendation. The Petitioner was present. Commissioner LaCross asked the Petitioner to clarify the timing of his father's purchase of the towing company. The Petitioner stated that he has been on the City Council since December 2010 and that his father purchased a majority share of A. Towing on January 3, 2012. He added that the previous owner of A. Towing still has a minority share.

Staff Attorney DiLibero stated that the Petitioner's status as an employee, rather than as the owner of a company that contracts with the City, renders Regulation 5014 inapplicable. In response to Commissioner LaCross, the Petitioner stated that he receives a small payment for his services as a member of the City Council but does not receive any payment for his services as assistant mayor. Commissioner LaCross stated that he believes it is a conflict for a City Council member's father to own a towing company on the police tow list.

Staff Attorney DiLibero noted that A. Towing is paid by the individual motor vehicle owners whose cars are towed. She said that A. Towing does not receive payments from the City. Chair Cheit noted that the City and A. Towing are linked because the City authorizes all of the

companies on the police tow list. Commissioner Cerullo stated that A. Towing would not have towed those cars but for the City's action placing them on the tow list.

Commissioner LaCross inquired as to whether the City Council has ever reduced the number of vendors on the police tow list. The Petitioner said that such a proposal was brought by the Mayor and the number of vendors was reduced from six (6) to five (5). Commissioner LaCross inquired how much time the Petitioner spends towing cars for A. Towing. The Petitioner stated the he works forty (40) hours a week as a property manager of an eighteen (18) unit apartment complex; he also works for Rose Furniture and works for A. Towing about fifteen (15) to eighteen (18) hours a week. He informs that the majority of his income comes from being a property manager. He added that A. Towing will not tow any City vehicles.

Commissioner LaCross reiterated that he is uncomfortable with this situation. In response to Commissioner Cerullo, Staff Attorney DiLibero stated that both Regulation 5002, in his capacity as an employee of A. Towing, and Regulation 5004, because A. Towing is owned by his father, require the Petitioner to recuse from City Council matters involving A. Towing.

Commissioner Cerullo asked the Petitioner if there is a need for A. Towing to re-apply for a place on the police tow list given the change in ownership, with his father being the new majority owner. The

Petitioner said that A. Towing would only have to re-apply if there is a complete change in ownership and that he would recuse from that matter. At this time, he stated that there is no need to re-apply because Mr. Coogan is still a minority owner. He said that his father owns ninety-nine (99) shares and Mr. Coogan owns one (1) share of A. Towing.

In response to Commissioner Harsch, the Petitioner stated that any tow company that is licensed in the City and meets the City Council's requirements, is eligible to apply to the City Council to be on the tow list. He stated that one (1) tow company was removed from the tow list because of fines with the Public Utilities Commission ("PUC") and complaints to police from customers. He said that A. Towing has no fines with the PUC. In response to Commissioner LaCross, he acknowledged that his father had an address correction issue with the State Police.

Commissioner LaCross asked the Petitioner how many vehicles he tows for his father daily. The Petitioner replied that he towed one (1) yesterday and one (1) on Saturday, and that he tows about fourteen (14) vehicles a month. In response to Chair Cheit, Staff Attorney DiLibero confirmed that the Petitioner is required to recuse from City Council matters involving his towing competitors as well. She added that she was made aware that the State Police, unlike the City, do require a new application when a change in ownership of a towing company occurs. She informed that, to her knowledge, A. Towing

was at this point removed from the State Police towing list. In response to Commissioner Cerullo, Staff Attorney DiLibero stated that even if the Petitioner's father owned one hundred percent of the company, he would still have to recuse; it would not change the analysis.

Upon motion by Commission Murray, duly seconded by Chair Cheit, there was discussion. Commissioner Murray stated that he shared Commissioner LaCross' concerns and was uncomfortable because he saw a serious appearance of impropriety issue here, but noted his reluctance to vote no based upon appearances alone. He stated that the central issue here, as in any advisory opinion, is whether this is a violation of the Code.

The Petitioner stated that only some of the fourteen (14) tows that he performs each month are for the City; some are for private customers who find the company on their own. He said that A. Towing performs about one (1) tow every other day for the City. He said the last City tow was on Saturday and that the tow he did yesterday was for a private individual. He said that A. Towing maybe tows eighteen (18) cars a month for the City and that he personally tows five (5) or six (6) a month.

Legal Counsel Alves stated that Advisory Opinion 2010-12 addresses a similar fact pattern. In response to Commissioner Heffner, Staff Attorney Gramitt stated that there is nothing in the Code that says

that an employee of an independent contractor is also considered an independent contractor of the city. Commissioner Heffner said that it would be a slippery slope to extrapolate from owners to employees. He said that he sees nothing in the four-corners of the regulations that requires him to vote no on this advisory opinion. He added that the other issues are left to the voters in the City of East Providence.

Chair Cheit noted that the current minority owner of A. Towing was a former City Council member. He added that the Petitioner's request letter states that his father had no ownership in A. Towing when he first asked for this advisory opinion. The Petitioner said that is correct. In response to Commissioner Murray, Legal Counsel Alves stated that in the event that this advisory opinion is not approved, and the Petitioner engages in this conduct, it is unlikely that it will result in a violation of the Code. Chair Cheit noted that such a result is possible any time the Commission disapproves an advisory opinion based on an appearance of impropriety.

The Petitioner stated that he will be paid by A. Towing based upon the number of Tows he performs and that he will receive a 1099 tax form. The Petitioner confirmed to Chair Cheit that A. Towing will not have to re-apply to be on the tow list until the last 1% of ownership is transferred. Upon motion previously made by Commissioner Murray and duly seconded by Chair Cheit, it was

VOTED: To issue an advisory opinion, attached hereto, to Thomas A. Rose, Jr., a member of the East Providence City Council.

AYES: J. William W. Harsch; Mark B. Heffner; James V. Murray.

NOES: Deborah M. Cerullo SSND; Ross Cheit; John M. LaCross.

No advisory opinion issued due to a lack of five affirmative votes. At 10:08 a.m. the Commission took a brief recess and reconvened at 10:14 a.m. The final advisory opinion was that of:

Donald R. Grebien, the Mayor of the City of Pawtucket, a municipal elected position, requesting an advisory opinion regarding whether City officials are prohibited by the Code of Ethics from soliciting donations to fund the salary for a new permanent position of Economic Development Director, from private businesses, foundations and individual philanthropists, some of which may be located within, or do business with, the City.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. In response to Chair Cheit, Staff Attorney Stewart acknowledged that while the work of an Economic Development Director (“EDD”) is for a public purpose, soliciting funds to pay the salary of the individual who serves as the EDD, is a private purpose. Chair Cheit stated that the facts in this advisory opinion seemed somewhat hypothetical. Staff Attorney Stewart responded that she sought answers to additional questions regarding the scope of the solicitation: which businesses

would be solicited, how many people would be solicited, and what the solicitation letter might say. She noted that she never received that additional information.

Commissioner Heffner inquired whether it would be permissible, hypothetically, for the Rhode Island Foundation to fund a position such as this. Staff Attorney Stewart responded that it would depend on the facts presented, and such a situation was not before the Commission today. Commissioner Heffner commended the Staff for the analysis in this advisory opinion, which he stated made it easy for the Commission to understand the issues involved in this complex matter.

In response to Chair Cheit, Staff Attorney Stewart stated that she had a good working relationship with the City Solicitor, who represented to her that he understood why the solicitation proposal was disapproved. She added that she encouraged the City Solicitor to seek further advice from the Commission in the event that the City has other ideas for funding this position. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Harsch, it was unanimously

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

At approximately 10:28 a.m., upon motion made by Commissioner

Cerullo and duly seconded by Commissioner Murray, it was unanimously

VOTED: To go into Executive Session, to wit:

a) Motion to approve minutes of Executive Session held on January 10, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

b) Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938, pursuant to R.I. Gen. Laws § 42-46-5(a)(2).

The Commission reconvened in Open Session at approximately 10:32 a.m. The next order of business was a motion to seal the minutes of the February 14, 2012 Executive Session. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To seal the minutes of the February 14, 2012 Executive Session.

Chair Cheit reported that the Commission took the following actions in Executive Session: 1) unanimously voted to approve the minutes of the Executive Session held on January 10, 2012; and 2) discussed but took no action on the litigation matter, Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938.

The next order of business was a Commission review of possible exceptions to Regulation 5002. Staff Attorney Gramitt informed that the amendments passed at the last meeting have since gone into effect and are printed in the new version of the Code presented to the Commission at this meeting. He stated that presently before the Commission were revisions to Regulation 5002(b), focusing on paragraph (b)(1), based upon the Commission's concerns and comments voiced at the last meeting. He reminded the Commission that this version of Regulation 5002 is only for their review because the Commission is not in rulemaking at this time.

Staff Attorney Gramitt stated that Regulation 5002(b)(1) would apply in situations where an affiliated person, of a person subject to the Code, appears before that person's state or municipal agency in a joint meeting or information-gathering workshop, solely in an official capacity, as a duly authorized member or employee of a state or municipal agency. The safety valve is that the exception only applies if that affiliated person has no personal financial interest in the matter under consideration. To address the concern of an attorney presenting argument before an agency, he stated that he deleted "presents evidence or arguments" and added that it only applies in a "joint meeting or information-gathering workshop." He added that "authorize" means that the board directs one of their members to speak on that board's behalf.

Chair Cheit commented that the Code generally uses the words

“direct” or “indirect” to modify financial interest, and noted that here the draft says “personal financial interest.” Staff Attorney Gramitt stated that he felt this was clear, but broader than a direct financial interest. He reasoned that given that this is an exception to the Code, the broader financial link makes it more difficult for the exception to apply.

Commissioner Cerullo asked if votes would be taken at joint meetings and whether or not that is significant. Staff Attorney Gramitt stated that there could be voting at a joint meeting, but it would most likely not change the application of the exception if all the other elements are met. He added that he does not expect this exception to be used very often. Commissioner Cerullo noted, however, that it might be used more often amongst business associates.

With respect to paragraph (b)(2), Staff Attorney Gramitt stated that it was similar to the public forum exception. It permits an affiliated person to appear at a public forum to offer comment on a matter of general public interest, provided that all other members of the public have equal opportunity to comment, and further provided that the person offering such comment is not otherwise a party to or participant in such matter, and will not derive a direct monetary gain or suffer a direct monetary loss, or obtain an employment advantage, as the case may be.

Staff Attorney Gramitt described the significance of the (b)(2)

exception by summarizing one of the Coulter advisory opinions. He informed that Mrs. Coulter was a member of the School Committee and there was an issue about merit based pay for School Department employees. Mr. Coulter wanted to appear at the School Committee meeting, a public forum, to speak as a citizen in the town. Mr. Coulter had no financial interest in the matter. This led to the somewhat absurd situation where the wife had to recuse, not from the entire matter, but merely for the duration of her husband's public comment, and then could resume participation in the matter.

Staff Attorney Gramitt clarified that in the event of a recusal from a public meeting the person subject to the Code must fill out the recusal form but is not required to leave the table. However, although not explained in the Code, he stated that the Staff advises public officials recusing from executive sessions to leave the room until that agenda item is over. He stated that he does not see the (b)(2) exception occurring very often and believes that it is drafted to be as narrow as possible. Commissioner Harsch agreed that it was narrowly drafted and properly addressed the Commission's concerns.

Back to the (b)(1) exception, Commissioner Heffner, noting Commissioner Cerullo's comments, stated that he felt that a joint meeting or informational workshop implied that no vote would be taken. Staff Attorney Gramitt replied that a vote could be taken at a joint meeting, if, for example, some sort of compromise was reached

by the two agencies. He stated that at a workshop, a decision might not be made, but the purpose of a workshop is to inform a later decision. Commissioner Cerullo stated that she was uncomfortable with the language “appears before” and suggested “participates” instead. She said that “appears” implies some level of persuasion by the speaker.

Moving forward, Staff Attorney Gramitt stated that the Commission should clarify which situations it is comfortable with. Commissioner Heffner stated that it is significant to him whether a vote or official action is going to occur. He stated that he is also concerned about a person appearing before their spouse’s board in an official capacity, even if there is no personal interest. Staff Attorney Gramitt stated that given the infrequency of this issue, he suggested holding off on a workshop for the Regulation 5002(b) exceptions and letting the Staff present a revised draft at an upcoming meeting.

With respect to the (b)(2) exception, Commissioner Cerullo expressed concern over a situation where a public forum may be closed off to speakers before everyone had an opportunity to speak. Commissioner Harsch commented that in his experience public comment is typically halted to stop the same people from speaking again and again. Staff Attorney Gramitt agreed with Commissioner Harsch, and added that some boards will limit the time that each person can speak, asking people not to be redundant, instead of limiting the number of speakers.

Staff Attorney Gramitt noted that in the Winfield matter, which is awaiting adjudication or settlement, the Commission found that probable cause exists to believe that he violated Regulation 5002. There, Mr. Winfield, a Town Council member, did not recuse when his wife appeared before him and spoke in a public forum on a wind turbine issue for which she was neither an abutter nor had a personal financial interest. He added that this case was still pending and the Commission should consider how it wants to proceed in light of possibly approving exception (b)(2).

Chair Cheit stated that the Commission should consider passage of exceptions (b)(1) and (b)(2) together. He instructed the Staff bring a new proposal to the Commission in the near future, at which time the Commission would decide whether to enter rulemaking again.

The next order of business was the Director's Report. Staff Attorney Gramitt presented the Director's Report in the absence of Executive Director Willever. He stated that the Commission was presented with a new copy of the Code of Ethics today, containing the most recent regulatory amendments. He stated that the online filing website is anticipated and expected to be up and running in March, by the time the financial disclosure statements are mailed. He added that the 2011 financial disclosure statement mailing will include instructions for online filing, as well as a flyer addressing any confusion with Question 10 and the gift regulation. He stated that the Commission

can work on amending Question 10 for the 2012 financial disclosure statement. He also noted that beginning in March there will be adjudications for the five (5) pending non-filing complaints. He informed that Executive Director Willever has a fractured leg but is receiving treatment and is expected to return to the office later this week.

The next order of Business was New Business. Chair Cheit thanked the Staff for the electronic meeting packet. At 11:10 a.m., upon motion made by Commissioner Harsch and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To adjourn.

submitted,

Respectfully

Harsch

J. William W.

Secretary