

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

June 5, 2012

The Rhode Island Ethics Commission held its 8th 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, June 5, 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 John D. Lynch, Jr.

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

Frederick K. Butler

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; 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 9:06 a.m. the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held

on May 1, 2012. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was

VOTED: To approve the minutes of the Open Session held on May 1, 2012.

AYES: Edward A. Magro; John D. Lynch, Jr.; J. William W. Harsch; Ross Cheit.

ABSTENTIONS: Frederick K. Butler

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:

Peter C. Naumann, a senior environmental scientist at the Rhode Island Department of Environmental Management, a state employee position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from working as a Technical Service Provider for the Rhode Island Natural Resources Conservation Service upon his retirement from state employment, anticipated on June 30, 2012.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by

Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Peter C. Naumann, a senior environmental scientist at the Department of Environmental Management.

The next advisory opinion was that of:

Caswell Cooke, Jr., a member of the Westerly Town Council, a municipal elected position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Town Council's consideration of a resolution to fund a sewer expansion to the Misquamicut Beach area, given that he is employed as the part-time Executive Director of the Misquamicut Business Association.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Caswell Cooke, Jr., a member of the Westerly Town Council.

At approximately 9:17 a.m., upon motion made by Commissioner

Lynch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To go into Executive Session, to wit:

a) Motion to approve minutes of Executive Session held on May 1, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

b) In re: Gordon Rogers, Complaint No. 2012-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

c) Annual discussion and review re: Legal Counsel's contract, pursuant to R.I. Gen. Laws § 42-46-5(a)(1).

The Commission reconvened in Open Session at approximately 9:26 a.m.

The next order of business was a motion to seal the minutes of the June 5, 2012 Executive Session. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To seal the minutes of the June 5, 2012 Executive Session.

Chair Cheit reported that the Commission took the following actions in Executive Session:

1) Unanimously voted, with one abstention, to approve the minutes of the Executive Session held on May 1, 2012.

[Reporter's Note – The vote was as follows:

AYES: J. William W. Harsch; Edward A. Magro; John D. Lynch, Jr.; Ross Cheit.

ABSTENTIONS: Frederick K. Butler.]

2) Initially determined, by unanimous vote, that In re: Gordon Rogers, Complaint No. 2012-1, alleges sufficient facts to constitute a knowing and willful violation of the Code of Ethics.

3) Discussed Legal Counsel's contract.

The next order of business was discussion of and a potential vote regarding Legal Counsel's contract. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To renew Legal Counsel's contract for another year.

The next order of business was consideration of a request for rulemaking from Common Cause Rhode Island. Staff Attorney Gramitt explained that Commission Regulation 36-14-1026 provides for petitions to initiate rulemaking. He informed that John Marion,

Executive Director of Common Cause Rhode Island, initiated this request and has requested the opportunity speak to the Commission. He stated that the Commission has the discretion to allow comment from Mr. Marion.

With respect to procedure, Staff Attorney Gramitt informed that the Commission has two options: it could decide not to consider this matter any further or it could direct the staff to prepare regulatory options for the Commission's consideration. At a later date, after reviewing possible regulatory options, the Commission could then decide whether or not to enter formal rulemaking. In response to Commissioner Harsch, Staff Attorney Gramitt stated that the staff is prepared to go forward with research and drafting regulatory language at the Commission's direction.

Mr. Marion stated that about six (6) months ago there was a press report that the Senate Majority Leader received a trip to Argentina that was paid for by the Senate Presidents' Forum. He stated that it was very difficult to find out any information about Senate Presidents' Forum and, as such, it was hard to determine if it was an interested person under the Code. He also informed that the national office of Common Cause recently filed a complaint with the IRS against the American Legislative Exchange Council ("ALEC"), alleging, among other things, that ALEC has paid for legislators' travel expenses. In both situations, ALEC and the Senate Presidents' Forum are entities that are not necessarily interested persons under the Code. However,

he contended that gifts in the form of travel were only given to legislators because of the office that they held.

Mr. Marion noted that the current financial disclosure form has a gift disclosure question that is out of date and scheduled to be revised this year. He suggested revising that question to require disclosure of gifts from non-interested persons that were received by a public official by virtue of their official position. He proposed limiting the disclosure requirement to elected officials and gifts over twenty-five dollars (\$25), although he noted that he would not be opposed to a different monetary threshold. He stated that the purpose is to advance transparency, identify big ticket items and publicly identify the donors. Mr. Marion informed that he submitted a second letter regarding a similar disclosure requirement in South Carolina, to which he attached the disclosure forms of South Carolina's Governor and Speaker of the House. He noted that South Carolina's law had been in place for almost a decade.

Commissioner Harsch stated this was an issue of continuing invisibility and that he would like the Commission to move forward on this regulation request. Commissioner Butler, referring to the South Carolina disclosure forms, expressed concern that public officials would be reporting every little gift by assuming that it was given because of their elected office. Commissioner Lynch agreed and suggested possibly limiting disclosure to travel and meals. Mr. Marion responded that food and travel could be a reasonable first

step for disclosure. He stated that his goal was to require disclosure when an official is given a substantial gift only because they are a public official.

Chair Cheit stated that this disclosure would not remedy the problem that public information is not readily available about certain donor entities, such as the Senate Presidents' Forum. Mr. Marion responded that the Commission could create a rule that puts the burden on the public official/recipient to prove that the donor entity is not an interested party. He noted, however, that this could be something to do in the future after considering and reviewing the results of a few years of reporting.

In response to Commissioner Lynch, Mr. Marion stated that he did not know if South Carolina's law resulted in an increase in the filing of complaints but that it was something he would look into. Commissioner Lynch commented that limiting disclosure only to elected officials may be too small, noting that there are other appointed officials who could be receiving gifts from similar entities. Mr. Marion agreed that there are many major decision makers in state government but suggested that elected officials were a good starting point. In response to Commissioner Harsch, Mr. Marion stated that he selected a twenty-five dollar (\$25) threshold to be consistent with the current gift regulation.

Chair Cheit, Commissioner Magro and Commissioner Lynch all stated

that looking into this was a good idea. Chair Cheit instructed the staff to provide drafts of alternatives at the next meeting. He directed the staff to consider: 1) who would be subject to disclosure, only elected officials or should it be broader; 2) whether the monetary threshold should be twenty-five dollars (\$25) or higher; and 3) what the standard should be for identifying a gift that would be required to be reported. He stated that it is difficult to intuit a donor's motives solely from the action of giving a gift to a public official. He also noted that this state has a part-time legislature and it can be difficult to discern whether a gift was given because of their public office or other profession.

The next order of business was the Director's Report. Executive Director Willever reported that there are five (5) complaints, three (3) advisory opinions, and one (1) litigation matter pending. He also stated that twelve (12) APRA requests were granted since the last meeting.

The next order of business was New Business and general comments from the Commission. Chair Cheit stated that Robert's Rules of Order require a unanimous consent of the Commission to change the order of the agenda. He stated that if there are objections, then the agenda can be changed by a two thirds vote. However, he informed that he would only change the agenda if there was unanimous consent from the Commission.

Chair Cheit stated that at the next meeting there will be a discussion of the availability of the General Officers' and General Assembly members' financial disclosure statements on the Commission's website. He noted that due to the change in the form of online filings, the old statements have been taken down. Before posting the 2011 statements, he wanted to inform the Commission that they will discuss at the next meeting whether or not their own financial statements should also be posted on the website.

At 10:02 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn.

submitted,

Respectfully

Harsch

J. William W.

Secretary