

## **MINUTES OF THE OPEN SESSION**

### **OF THE RHODE ISLAND ETHICS COMMISSION**

**June 19, 2012**

**The Rhode Island Ethics Commission held its 9th 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 19, 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    Frederick K. Butler**

**Deborah M. Cerullo SSND, Vice Chair Mark B. Heffner**

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

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Nicole B. DiLibero and Amy C. Stewart; 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 a motion to approve minutes of the Open Session held on June 5, 2012. Upon motion made by Commissioner Butler and**

**duly seconded by Commissioner Heffner, it was**

**VOTED: To approve the minutes of the Open Session held on June 5, 2012.**

**AYES: J. William W. Harsch; Frederick K. Butler; Ross Cheit.**

**ABSTENTIONS: James V. Murray; Deborah M. Cerullo; Mark B. Heffner.**

**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:**

**Michael E. Dillon, a member of the Foster Town Council, a municipal elected position, requesting an advisory opinion as to whether he may appear before the Foster Zoning and Planning Boards relative to establishing a residential compound on his personal property, given his authority, as a member of the Town Council, to appoint and/or re-appoint members of the Foster Zoning and Planning Boards.**

**Staff Attorney DiLibero presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it**

**was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Michael E. Dillon, a member of the Foster Town Council.**

**The next advisory opinion was that of:**

**Brian Andrade, a prospective Commissioner for the Johnston Housing Authority, a municipal appointed position, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from serving as a Commissioner while he is also a Section 8 landlord in Johnston.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Christopher Lambert, Esq., was present on behalf of the Johnston Housing Authority. In response to Commissioner Cerullo, Mr. Lambert stated that both the Johnston Housing Authority and Rhode Island Housing administer Section 8 housing choice vouchers under the supervision of HUD, but noted that the agencies are entirely separate. He informed that the voucher is for the tenant, not the property, and that this transfer to Rhode Island Housing should have no impact upon the tenant. Upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Brian**

**Andrade, a prospective Commissioner for the Johnston Housing Authority.**

**The next advisory opinion was that of:**

**Kenneth Parrilla, 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, at present, his mother-in-law's property is included in the current sewer expansion plans.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Commissioner Murray stated that he was troubled by the Staff's recommendation not to apply the class exception. Chair Cheit agreed. Staff Attorney Stewart stated that it is possible that the Petitioner's mother-in-law may not be impacted at all if the main sewer line is not installed on the upper portion of Winnapaug Road, from Airport Road to Shore Road.**

**Chair Cheit stated that this sub-class of property owners on Winnapaug Road could be its own class. He directed the Staff to gather more information regarding the number of property owners living on Winnapaug Road between Shore Road and Airport Road that**

are currently included in the sewer expansion plan. Commissioner Butler agreed. Staff Attorney Stewart informed that the Petitioner has been recusing and will continue to recuse. Chair Cheit instructed the Staff to clarify the facts and continued this advisory opinion to the next meeting for reconsideration.

The next advisory opinion was that of

Michael Fine, M.D., the Director of the Department of Health, a state appointed position, requesting an advisory opinion regarding whether the Code of Ethics prohibits his daughter from being hired as an intern in the Division of Infectious Disease and Epidemiology within the Department of Health.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney Stewart stated that she spoke to the Petitioner directly in preparation for this advisory opinion. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Michael Fine, M.D., Director of the Department of Health.

At approximately 9:34 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 June 5, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 9:36 a.m.**

**The next order of business was a motion to seal the minutes of the June 19, 2012 Executive Session. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To seal the minutes of the June 19, 2012 Executive Session.**

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

**1) Voted, with three abstentions, to approve the minutes of the Executive Session held on June 5, 2012.**

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

**AYES: J. William W. Harsch; Frederick K. Butler; Ross Cheit.**

**ABSTENTIONS: James V. Murray; Deborah M. Cerullo; Mark B.**

**Heffner.]**

**The next order of business was consideration of a request for rulemaking from Common Cause Rhode Island – Disclosure of Gifts. Staff Attorney DiLibero summarized the proposed regulations. First, she stated that there are two options for who the regulation would cover: 1) all public officials and employees who are required to file a yearly financial disclosure statement; or 2) all state and municipal elected officials. Second, she informed that there are three options for what types of gifts would have to be disclosed: 1) any gift with a value over \$25; 2) any gift, specifically including travel and/or travel-related expenses with a value over \$25; or 3) any gift of travel and/or travel related expenses without any monetary limitation. Third, she stated that the regulation proposal requires these types of gifts to be disclosed if a reasonable person would believe that the donor would not have offered or given the gift but for the official's or employee's public office or position.**

**Staff Attorney DiLibero informed that the regulation proposal also includes an optional definition section that provides eight (8) examples of circumstances that would lead a reasonable person to believe that a donor would not have given a gift but for an official's public office or position. Commissioner Harsch noted that there have been a significant number of cases where gifts of travel were accepted. Chair Cheit stated that gifts of travel may have been accepted because they were not given by an interested person as**

defined in the Code.

Discussion ensued about the \$25 threshold and whether the disclosure should be limited to travel and lodging expenses. The Commission expressed concern over minor disputes regarding whether something is valued at \$24 or \$28. Chair Cheit noted that Common Cause was not opposed to a threshold higher than \$25. Commissioner Butler expressed concern that a \$25 threshold might result in the over reporting of insignificant gifts. Chair Cheit agreed that \$25 was too low. He suggested that there should either be a higher monetary threshold or no monetary value, instead requiring disclosure of certain categories of gifts, such as travel and lodging.

Chair Cheit clarified that this proposal would require disclosure of gifts that do not necessarily implicate the Code because the gifts are not from interested persons. He stated that this is a first step towards greater transparency, which has its own value, and could perhaps lead to further regulation after a few years of reporting can be reviewed. John Marion, of Common Cause Rhode Island, stated that this disclosure is necessary because, currently, this information is only made available to the public if voluntarily released by the public official or through an enterprising reporter. Executive Director Willever added that the purpose of transparency is consistent with Rhode Island Constitution, Article III, section 7, which requires persons subject to the Code to respect the public trust; be open, accountable and responsive; and not use their position for private

gain or advantage.

Discussion ensued as to the difficulty of ascertaining the donor's intent for giving the gift, given the fact that Rhode Island has a part-time legislature and each legislator may have private employment. Based upon hypothetical scenarios where the donor's intent could be unclear to the recipient, Chair Cheit suggested drafting an alternative that does not turn on the donor's motive, perhaps limiting disclosure to gifts of travel expenses related to public office.

Commissioner Cerullo stated that it would help if the proposed regulations were framed with a clearer purpose: transparency in and of itself or a potential violation of the Code. She stated that she agreed that a \$25 threshold was too low but stated that it was good for the gift regulation. Mr. Marion stated that he was not proposing any changes to the current gift regulation.

Discussion ensued as to whether the proposed disclosure requirement must relate to enforcement of the Code and whether it is the purpose of the Commission to be the repository of disclosure. Commissioner Butler stated that it is a violation of the Code if you neglect to include something on your annual financial disclosure statement. He questioned whether it would be a violation under this regulation to neglect to report such a gift. The Commission also discussed the purpose of financial disclosure statements, noting that

**it is both for transparency and enforcing violations of the Code.**

**Chair Cheit clarified that Regulation 5009 remains in force. He added that he appreciated Common Cause's cautious approach by requesting a rule requiring disclosure instead of requesting an outright ban. Commissioner Harsch stated that if a rule like this was in effect, a number of people might think twice about going on these free trips. Chair Cheit agreed and stated that disclosure requirements can sometimes result in changes in behavior.**

**Chair Cheit instructed the staff to provide refined drafts of alternatives at the next meeting. He directed the staff to consider:**

- 1. Modifying who would be subject to the disclosure requirement by finding a middle ground that is broader than elected officials but narrower than everyone subject to the Code or the financial disclosure requirement. He requested an alternative that includes elected officials, department heads and major decision makers. He suggested referring to lobbying rules which have language aimed at high level positions.**
- 2. Raising the monetary threshold so that it is greater than \$25.**
- 3. He stated that options 2a and 2b seem to be the same.**
- 4. He requested a third option that that does not require ascertaining the donor's intent. For example, the regulation could require a public official to disclose all gifts for travel and/or lodging expenses that are worth more than \$100, perhaps with an exception for gifts from family**

members.

The next order of business was Discussion of online access to Financial Disclosure Statements. Staff Attorney DiLibero stated that if instructed by the Commission, the General Officers' and General Assembly members' 2011 financial disclosure statements can be posted on the Commission's website. She stated that it is also possible to post the Commissioners' 2011 financial disclosure statements on the website. She added that it would take a more significant amount of time to post the entire population of filers on the Commission's website.

Chair Cheit stated that posting the entire population of filers would only be useful if there was a search function, which is not feasible at this time. He stated that expanding online access to all financial disclosure statements would require additional budgeting. He stated that the Commission has three feasible options to proceed with today: 1) post the General Officers' and General Assembly members' 2011 financial disclosure statements online; 2) post the General Officers', General Assembly members' and Commissioners' 2011 financial disclosure statements online; 3) do not post any financial disclosure statements on the Commission's website. Chair Cheit stated that the question of posting the Ethics Commissioners' statements was raised at a legislative hearing.

Commissioner Harsch stated that he had no objection to putting his

financial disclosure statement on the website. Chair Cheit stated that the General Officers' and General Assembly members' statements were posted originally because of frequent public records requests. Commissioner Butler stated that he did not object to putting his statement on the website either. He added that all statements should eventually be posted online with a search function. Commissioner Murray suggested restoring the General Officers' and General Assembly members' statements and then discussing whether or not to put all financial disclosure statements online.

Commissioner Hefner agreed with Commissioners Butler and Murray. He stated that for appearances sake, the Commissioners' statements should be posted on the website. Chair Cheit agreed. Commissioner Murray stated that he did not see the Commissioners as high targets and noted that these statements contain home addresses and names of family members. Chair Cheit replied that he believed there was no demand for the Commissioners' statements.

Commissioner Cerullo stated that the General Officers' and General Assembly members' statements were posted for a level of convenience. She stated that it looks bad that they are no longer available on the website. She suggested putting a notice on the website that the Commission is considering whether to repost some or all of the financial disclosure statements and would welcome input as to privacy concerns.

**Chair Cheit stated that there are only nine (9) Ethics Commissioners and it would be easy to post their statements. He does not anticipate that additional funding would be approved to post all of the statements as a searchable database. Commissioner Murray noted that three (3) Commissioners were absent from the meeting, including Commissioner LaCross, a Police Chief, who may have concerns about his address being posted on the internet. Commissioner Cerullo stated that she felt there was a difference in privacy between having a public document on file at the Commission offices and posting it in a searchable database on the internet. Chair Cheit stated that all of the financial disclosure statements are public documents but that he understood that it feels different to have the statements readily available on the internet.**

**Based upon agreement from the Commissioners, Chair Cheit directed Staff to put this on the agenda for the next meeting to give the Commissioners more time to think about it.**

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

**The next order of business was New Business and general comments from the Commission. Commissioner Murray proposed considering**

whether or not the Commission should implement a statute of limitations. He suggested looking to see if other Ethics Commissions have time limits or a discovery rule. He stated that there is a due process argument in favor of having a statute of limitations. Chair Cheit agreed and instructed the staff to put it on the agenda for the next meeting.

Commissioner Harsch noted that agenda items should be more specific, such as the ones related to online access to financial disclosure statements and the proposed regulation. He suggested sending an email before the meeting with a heads up that something may be up for a vote. Legal Counsel Alves advised that Chair Cheit may not send emails to the entire Commission as a group; however, Commission Staff may email the Commissioners. Chair Cheit noted that the minutes from the last meeting specifically stated that the Commission would be discussing whether to post their own statements to the website. He acknowledged, however, that the agenda was not as clear. Commissioner Heffner suggested that the agenda more clearly state when the Commission is just considering something and when the discussion could result in a potential vote.

Chair Cheit directed the Staff to include a sample financial disclosure statement in the next meeting packet for the discussion on internet access.

At 10:58 a.m., upon motion made by Commissioner Butler and duly

**seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**Ross Cheit  
Chair**