

# **MINUTES OF THE OPEN SESSION**

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

**September 11, 2012**

**The Rhode Island Ethics Commission held its 12th 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, September 11, 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 Edward A. Magro**

**Frederick K. Butler\* James V. Murray**

**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 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 approval of minutes of the Open Session held on**

**August 21, 2012. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was**

**VOTED: To approve minutes of the Open Session held on August 21, 2012.**

**AYES: James V. Murray; Edward A. Magro; Ross Cheit.**

**ABSTENTIONS: Deborah M. Cerullo; Mark B. Heffner.**

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

**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:**

**John X. Donahue, a member of the Health Services Council, a state appointed position, requesting an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in the Health Services Council's consideration of a certificate of need application filed by Westerly Hospital, given that he formerly worked for Butler Hospital as an independent consultant regarding a different certificate of need application previously filed by Westerly Hospital.**

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

**VOTED: To issue an advisory opinion, attached hereto, to John X. Donohue, a member of the Health Services Council.**

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

**Kenneth Parrilla, a member of the Westerly Town Council, requests 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 his mother-in-law's property is no longer included in the sewer expansion plans.**

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

**VOTED: To issue an advisory opinion, attached hereto, to Kenneth Parrilla, a member of the Westerly Town Council.**

**The next order of business was discussion of and potential vote on**

**Common Cause Rhode Island's request to initiate rulemaking relative to the disclosure of travel/gifts. Staff Attorney Gramitt stated that this matter was continued from the last meeting for further discussion. He summarized the five (5) regulatory options provided to the Commission for its consideration today: Option 1 is the same version that was presented to the Commission at the last meeting, applying only to out-of-state travel, having no monetary reporting threshold and utilizing the "reason to believe" burden of proof; Option 2 builds on Option 1, adding a \$100 threshold for reporting, changing the burden of proof to "more likely than not" and clarifying that this determination considers the totality of the circumstances; Option 3 is the same as Option 2, but with a \$250 threshold; Option 4 expands the disclosure beyond out-of-state travel to include any gifts that a public official would not have received but for their public office, having a value of \$100 or more; and Option 5 is the same as Option 4, but with a \$250 reporting threshold. He noted that Options 4 and 5 are similar to the old statutory disclosure requirement prior to the amendment when the "interested person" language was added in the mid-2000's.**

**Staff Attorney Gramitt advised that if the Commission decides to go into rulemaking on this regulation it would be necessary to advertise the thirty (30) day comment period as soon as possible in order to be able to make changes to the 2012 financial disclosure form before it is sent to the printer.**

**In response to Chair Cheit, Legal Counsel Alves informed that rulemaking procedures permit the Commission to move forward on several regulatory options at once. He stated that there is some flexibility once rulemaking commences and the Commission is not locked into the exact language proposed as long as the changes are the logical outgrowth of the original proposal and the public has a fair opportunity to comment on what the Commission ultimately adopts.**

**Commissioner Butler stated that he was not in favor of going back to the broad reporting requirements of the past as proposed in Option 4.**

**He commented that this request for rulemaking focused on a public interest in junkets and, therefore, the monetary reporting threshold should be significant and there should be clear trigger language indicating which gifts/travel need to be disclosed, such as “out-of-state.” He stated that the regulation should be drafted to avoid inadvertent violations and the burden of over reporting. He noted that he preferred the “more likely than not” burden of proof, the bright line designation of out-of-state travel and a more significant monetary threshold. He stated that he would be in favor of discussing a few regulatory options in rulemaking.**

**Commissioner Heffner sought clarification of the policy interest and argument as to why the Commission should draft a rule singling out what they were colloquially calling junkets verses other types of gifts.**

**He questioned whether the Commission should do this or leave it to the press to bring the information to the public. He also noted that**

there is less of a need for reporting of in-state junkets because the local press is more likely to cover it.

Chair Cheit stated that concerns about the policy interest could be more fully developed in a public hearing as part of rulemaking. He noted that the APA requires the Commission to find a need for a rule in order to promulgate a new regulation. He stated that Common Cause's proposal was intentionally targeted and noted that Options 4 and 5 are much broader than the original request. He concurred with Commissioner Butler that the regulation should have a bright line trigger and a high threshold.

Commissioner Murray stated that he also concurred with Commissioner Butler's suggestion for a bright line rule. He stated that he would be interested in learning more during rulemaking and that the Commission should consider multiple options. Commissioner Magro also concurred with Commissioner Butler's logic for a bright line and not too low of a threshold.

Chair Cheit observed that, based upon this discussion, Options 1, 4 and 5 will not move forward given that they lack either a bright line trigger or a monetary threshold. Commissioner Cerullo agreed and stated that she likes the "more likely than not" burden of proof and would be comfortable moving forward with Options 2 and 3. Upon motion by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously

**VOTED: To proceed with rulemaking on Option 2 and Option 3.**

**The next order of business was a discussion regarding statutes of limitations for ethics violations. Senior Staff Attorney D'Arezzo informed that this matter was continued for further discussion from the last meeting. She stated that her research memorandum was provided to the Commission again, noting that of the twenty-two (22) other state jurisdictions she reviewed sixteen (16) had a statute of limitations. She informed that at the last meeting there was consensus that the Commission could adopt a statute of repose and discussion focused on a three (3) to four (4) year limitation period along with a two (2) year limitation after the official leaves office.**

**Commissioner Murray stated that although the ten (10) year civil statute of limitation applies, it seems to be too long given the concerns of due process and the burdens of prosecuting old cases. He commented that the Massachusetts and Connecticut statutes of six (6) years seem reasonable. He stated that he was reluctant to also enter rulemaking on this matter after just commencing rulemaking for the travel/gift disclosure.**

**Executive Director Willever stated that it would be easier to focus on one rulemaking matter at a time. He stated that the statute of limitations could wait until the travel/gift disclosure rulemaking concludes given that it has not been a historic problem, there is no**

**current case or controversy and there is the ten (10) year statute in place. Chair Cheit agreed and directed Staff to place this matter on the agenda once the travel/gift disclosure rulemaking has concluded.**

**Discussion ensued on identifying a need for a statute of limitations less than ten (10) years. Commissioner Butler stated that the oldest case the Staff could recall was nearly five (5) years old. In response to Commissioner Butler, Senior Staff Attorney D'Arezzo confirmed that it is standard operating procedure for the Staff to review the past five (5) years of financial disclosure records.**

**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.**

**At approximately 9:49 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 August 21, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 9:50 a.m. Chair Cheit reported that the Commission took the following action in Executive Session: Voted to approve the minutes of the Executive Session held on August 21, 2012.**

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

**AYES: James V. Murray; Frederick K. Butler; Edward A. Magro; Ross Cheit.**

**ABSTENTIONS: Deborah M. Cerullo; Mark B. Heffner.]**

**The next order of business was New Business and general comments from the Commission. Chair Cheit stated that the Commission would have elections for all three (3) officers at the next meeting. He noted that he is willing to continue as Chair. Commissioner Cerullo stated that she cannot attend the next meeting but that she is willing to continue to serve as Vice Chair. Chair Cheit noted that the Commission needs a new Secretary.**

**Commissioner Murray asked for a moment of silence in recognition that today is September 11th. There was a moment of silence.**

**At 9:55 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

---

**Ross Cheit**  
**Chair**