

# **MINUTES OF THE OPEN SESSION**

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

**January 8, 2013**

**The Rhode Island Ethics Commission held its 1st meeting of 2013 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, January 8, 2013, 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 M. LaCross**

**John D. Lynch, Jr., Secretary James V. Murray**

**Mark B. Heffner**

**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, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:10 a.m. the Chair opened the meeting. The first order of business was the approval of minutes of the Open Session held on**

**December 4, 2012. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Heffner, it was**

**VOTED: To approve minutes of the Open Session held on December 4, 2012.**

**AYES: John D. Lynch, Jr.; Mark B. Heffner; Ross Cheit.**

**ABSTENTIONS: John M. LaCross; 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:**

**James Bennett, the Director of Economic Development for the City of Providence, requesting an advisory opinion regarding his ability to serve as a non-voting ex officio member of the ProvPort Board of Directors, and concerning whether ProvPort may pay for the Petitioner's travel expenses relative to the economic development of the Port of Providence.**

**Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present along with Deputy City**

**Solicitor Adrienne Southgate. The Petitioner stated that this advisory opinion request arose because ProvPort recently received grant funding for infrastructure improvements, which he anticipates will result in increased work for him related to marketing the use of the port. He also asked if this advisory opinion permitted him to serve as the Executive Director of the Providence Redevelopment Agency (“PRA”), which he already oversees. Staff Attorney Gramitt replied that, to the extent that an issue is not addressed in the advisory opinion, the Petitioner cannot rely on the discussion at the hearing and would have to request another advisory opinion which can be heard at the next meeting. Chair Cheit stated that it was not clear from the Petitioner’s letter what his questions relative to the PRA were.**

**In response to Commissioner Heffner, Staff Attorney Gramitt stated that if ProvPort was a City department it could pay for the Petitioner’s travel on behalf of the City, but that is not the case here. Deputy City Solicitor Southgate stated that ProvPort is part of a larger umbrella organization and is a separate and distinct entity that is not the alter ego of the City. Chair Cheit said that ProvPort’s separate status is why ProvPort may not pay for the Petitioner’s travel expenses. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to James Bennett, the Director of Economic Development for the City of**

**Providence.**

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

**Robert C. Schultz, Jr., P.E., P.L.S., the Deputy Utilities Director – Engineering for the City of Newport, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from representing the City of Newport before the Rhode Island Department of Health, given that he was previously employed by the Rhode Island Department of Health.**

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

**VOTED: To issue an advisory opinion, attached hereto, to Robert C. Schultz, Jr. P.E., P.L.S., the Deputy Utilities Director – Engineering for the City of Newport.**

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

**Thomas P. Tighe, a member of the Jamestown Town Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Town Council's consideration of two grievances related to the Jamestown Police Department's**

**collective bargaining agreement, given that he is the former Chief of the Jamestown Police Department.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Commissioner LaCross stated that he knows the Petitioner by virtue of his position as Police Chief in Barrington and noted that he consulted with Staff Attorney Gramitt regarding whether recusal was required. Chair Cheit stated that because they are not business associates the only question was whether Commissioner LaCross could be fair and impartial. Commissioner LaCross stated that he could be fair and impartial and did not recuse.**

**In response to Commissioner Lynch, the Petitioner stated that when he retired he entered into a separate agreement with the town regarding his post-retirement health insurance. In response to Chair Cheit, the Petitioner stated that he could be fair and impartial in reviewing these grievances notwithstanding his former employment as Chief. Upon motion made by Commissioner Lynch and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Thomas P. Tighe, a member of the Jamestown Town Council.**

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

**Christine A. Rossi, a member of the East Providence City Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from serving as the City Council's representative member on the East Providence Police and Fire Pension Fund Board, given that her husband is a retired East Providence Police Officer.**

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

**VOTED: To issue an advisory opinion, attached hereto, to Christine A. Rossi, a member of the East Providence City Council.**

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

**Richard J. Fagnant, an alternate member of the Woonsocket Zoning Board, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Zoning Board's consideration of a dimensional variance application, given that he previously did business with the applicant.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner stated that there was bad will between him and Mr. Fernandes' general manager. However, the Petitioner stated that**

he could be fair and impartial if participating in the Zoning Board's review of Mr. Fernandes' zoning application. He added that his first obligation was to the city. Upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Richard J. Fagnant, an alternate member of the Woonsocket Zoning Board.

The final advisory opinion was that of:

Robert T. O'Neill, M.D., a member of the Narragansett Zoning Board, requesting an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on appearing before his own Board to obtain a variance for his personal residence.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney Stewart informed that the Petitioner could not attend the meeting but that he understood that the opinion could be continued to the next meeting if the Commission had questions for him.

In response to Commissioner Heffner, Staff Attorney Stewart stated that the property has been on the market for the past five (5) years. In response to Chair Cheit, she stated that the Petitioner was recently re-appointed to a new term on the Zoning Board. Chair Cheit stated

that the Commission needed to hear from the Petitioner in person because this matter was different from other hardship exceptions. Commissioner LaCross noted that if this advisory opinion was granted it would only be granting permission to apply for the variance, it would be up to the Zoning Board to grant or deny the Petitioner's application. Chair Cheit directed staff to continue this matter to the next meeting when the Petitioner will be available to answer some questions.

The next order of business was the Director's Report. Executive Director Willever reported that there are nine (9) complaints pending, four (4) of which are non-filing. He added that there are three (3) advisory opinions and one (1) litigation matter pending. He also stated that ten (10) APRA requests were granted since the last meeting.

The next order of business was Review of Exemptions pursuant to the R.I. Public/Private Partnership Act, R.I. Gen. Laws § 16-59-26 for a.) Anne De Groot, M.D. and Leonard Moise, Ph.D.; and b.) Patricia A. Burbank, D.N. Sc., R.N. Ted Myatt, Director of Research Compliance at the University of Rhode Island ("URI") and Leonard Moise, Ph.D. were present.

Staff Attorney Gramitt presented the exemptions to the Commission. He informed that the purpose behind the exemptions was to allow university researchers to possess an ownership interest in their

**inventions and intellectual property, or allow the researcher to partner with private business in the marketing or utilization of the invention. This exemption helps state universities attract top quality researchers and grants, and contributes to economic development within the state.**

**Staff Attorney Gramitt explained that the Ethics Commission is not required to take any action today other than reviewing the materials. He stated that the Commission has the ability to require the Board of Governors to reconsider the exemption at a public meeting. He informed that the Commission has previously heard five (5) or six (6) such exemptions and never sent any back to the Board of Governors.**

**Staff Attorney Gramitt stated that there were two (2) separate requests before the Commission today. The first request was for an umbrella exemption for Anne De Groot, M.D. and Leonard Moise, Ph.D who are involved with EpiVax, and conduct research on vaccines and infectious diseases. He stated that the umbrella exemption would not require yearly approval by the Commission but would be regularly reviewed by the Board of Governors to monitor compliance with the scope of the exemption. The second request for Patricia A. Burbank D.N. Sc., R.N., who is a professor in the College of Nursing and owner of Burbank Industries, was for the development of an electronic device for the elderly, called AAVID, to monitor a person's activity and advise users to increase activity levels. Staff Attorney Gramitt**

**stated that he reviewed both applications for exemptions and did not find anything out of the ordinary.**

**Chair Cheit asked for comments or questions from the Commission. There being none, he stated that the Commission would rely on Staff Attorney Gramitt's presentation and pass on the exemptions.**

**At approximately 10:15 a.m., upon motion made by Commissioner Heffner and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**(a) Motion to approve minutes of Executive Session held on November 20, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

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

**(c) In re: Pamela Fontaine, Complaint No. 2012-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**(d) Discussion re status of pending litigation: Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC11-6938, pursuant to R.I. Gen. Laws § 42-46-5(a)(2).**

**The Commission reconvened in Open Session at approximately 10:46 a.m. The next order of business was a motion to seal the minutes of the January 8, 2013, Executive Session. Upon motion made by Commissioner Heffner and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To seal the minutes of the January 8, 2013, 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 November 20, 2012.**
- 2.Unanimously voted, with one abstention, to approve the minutes of the Executive Session held on December 4, 2012.**
- 3.Initially determined, by unanimous vote, that In re: Pamela Fontaine, Complaint No. 2012-2, alleges sufficient facts to constitute a knowing and willful violation of the Code of Ethics.**
- 4.Received an update in the Larisa litigation matter.**

**The next order of business was New Business and general comments from the Commission. In response to Chair Cheit, Executive Director Willever stated that the Staff will be addressing the statute of**

limitations issue at an upcoming meeting. Chair Cheit stated that the presentation should include the information about other jurisdictions discussed at a previous meeting and discuss the Commission's options for moving forward. He stated that the matter should be scheduled for a meeting at which Commissioner Murray will be in attendance.

At 10:56 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Heffner, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

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John D. Lynch, Jr.

Secretary