

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

February 19, 2013

The Rhode Island Ethics Commission held its 3rd 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, February 19, 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 Mark B. Heffner**

Deborah M. Cerullo SSND, Vice Chair Edward A. Magro

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

Frederick K. Butler

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 9:00 a.m. the Chair opened the meeting. The first order of

business was the approval of minutes of the Open Session held on January 29, 2013. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cerullo, it was

VOTED: To approve minutes of the Open Session held on January 29, 2013.

AYES: James V. Murray; Deborah M. Cerullo; Edward A. Magro; 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:

Nathan T. Calouro, a member of the Bristol Town Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Town Council's appointment of a new harbormaster and revision of the harbormaster's job description, given that his brother is currently serving as interim harbormaster and is also one (1) of nineteen (19) applicants for the permanent harbormaster position.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present along with Nancy Letendre, Assistant Solicitor to the Town of Bristol. Solicitor Letendre stated that the Town Council advertised this position prior to the Petitioner's election to the Town Council.

*** Commissioner Lynch arrived at 9:05 a.m.**

Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was

VOTED: To issue an advisory opinion, attached hereto, to Nathan T. Calouro, a member of the Bristol Town Council.

AYES: James V. Murray; Deborah M. Cerullo; Edward A. Magro; Frederick K. Butler; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.

Commissioner Lynch stated that he abstained because he arrived after the discussion of this matter.

The next advisory opinion was that of:

Allen Rivers, a member of the Woonsocket Zoning Board of Review, requesting an advisory opinion regarding whether the Code of Ethics

prohibits his participation in the Zoning Board's reconsideration of a variance application, given his business associate's past appearance as a remonstrant in that matter and the possibility that his business associate may appear again during the public comment portion of the variance hearing.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present.

**** Commissioner Heffner arrived at 9:07 a.m.**

In response to Commissioner Cerullo, the Petitioner replied that Mr. Michaud is a member of the Zoning Board. Staff Attorney Stewart clarified that whether or not Mr. Michaud is permitted to participate, this advisory opinion relates to whether the Petitioner is required to recuse. In response to Commissioner Cerullo, Staff Attorney Stewart replied that this was not a hypothetical situation because Mr. Michaud may be able to speak before the Zoning Board under the public forum exception. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Allen Rivers, a member of the Woonsocket Zoning Board of Review.

The final advisory opinion was that of:

Scott R. Schmitt, a member of the Cumberland Town Council, requesting an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating when an attorney, who is also his tenant, represents another person before the Town Council.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that he disagreed with the advisory opinion's recommendation and that he would like to discuss ways that he could participate in these matters. He informed that, out of the seven (7) Council members, he is the most likely to vote against Mr. Partington. He stated that Mr. Partington's lease is with his wife, and he has no involvement other than being a joint owner of the property.

In response to Commissioner Heffner, Staff Attorney Stewart replied that the attorney is not prevented from appearing before the Town Council, rather the Petitioner is required to recuse when this attorney appears. Chair Cheit stated that the Petitioner might have received a different outcome if the Commission made case by case determinations regarding business relationships, but noted that the current law does not allow his participation. The Petitioner stated that the situation reminded him of a blind trust because he has no say in the day to day operations of that rental property. He asked if there was anything he could offer to do to change the outcome, such as transferring the ownership of this unit. Chair Cheit replied that this is all hypothetical now. He stated that if his circumstances were really

different, he could seek an advisory opinion at later time. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Scott R. Schmitt, a member of the Cumberland Town Council.

The next order of business was a 2013 Legislative Update. Staff Attorney Gramitt stated that he regularly identifies bills that impact the Commission and reports to the Commission prior to taking any action. He stated that House Bill 5385 was provided to the Commission prior to the meeting. He summarized that this Bill concerned campaign contributions and would require any person or business hired by the state to file a disclosure with the Ethics Commission related to any political contributions made to a state elected official in the past four (4) years. He stated that the Bill is problematic as it is currently drafted. For example, he questioned whether “hired” would include contracts for goods and whether the Bill should also require disclosure of campaign contributions to candidates for state elected office. He concluded that, as written, the Commission would have no power to enforce this disclosure requirement and suggested that the disclosures be filed with the agency that has authority to enforce the statute.

In response to Commissioner Heffner, Staff Attorney Gramitt explained that in the rare event that a bill is scheduled for hearing

prior to the full Commission seeing it, he would consult with the Executive Director and the Chair for direction. Chair Cheit stated that if there was no prior Commission meeting he would not instruct Staff Attorney Gramitt to take a particular position at any legislative hearing. However, he stated that it would be appropriate for Staff Attorney Gramitt to attend such a hearing to provide comments as to wording and implementation of a bill. Commissioner Heffner agreed and said that he would be comfortable under those circumstances to have Staff Attorney Gramitt provide feedback to the General Assembly, without taking a position. Staff Attorney Gramitt stated that House Bill 5385 is a new bill that he has not seen before and that, absent further direction, he would go to a hearing but not take a position on the passage of the bill.

Staff Attorney Gramitt also provided the Commission with a copy of House Resolution 5498, which would create a ballot question to restore the Commission's jurisdiction over the General Assembly. He noted that the Senate version was not yet online. He informed that the House Resolution was sponsored by Representative Marcello and the Senate Resolution was sponsored by Senator O'Neill. He stated that the Senate Resolution had nineteen (19) sponsors, which is half of the Senate. He stated that this Resolution was identical to a Resolution last year. He informed that this would be done with small amendments to the Ethics Commission constitutional amendment and the speech and debate clause, following our Supreme Court's instructions in Irons. He stated that his past testimony for this

Resolution conveyed the Commission's position that the people of Rhode Island originally intended the Commission to have jurisdiction over core legislative acts.

The next order of business was the Director's Report. Executive Director Willever reported that there are eight (8) complaints pending, of which one (1) is a non-filing matter. 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 and all were fulfilled within one (1) day. He added that APRA requests are now a performance measure. Chair Cheit stated that APRA is a good performance measure and he commended the Staff's timely processing of these requests.

Executive Director Willever also informed that staff member Suzy Melo has moved on to another position with the Department of Administration. He stated that the position has already been filled and the new employee is expected to start next Monday. He also introduced Adam Thayer, an attorney at a Newport firm, who attended the meeting to observe and learn about the Ethics Commission. He further stated that the Executive Director of the Maryland Ethics Commission will be attending a March Commission meeting.

At approximately 9:42 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To go into Executive Session, to wit:

(a) Motion to approve minutes of Executive Session held on January 29, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

(b) In re: Kimberley Gaffett, Complaint No. 2013-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

(c) In re: Kimberley Gaffett, Complaint No. 2013-2, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

(d) In re: Kimberley Gaffett, Complaint No. 2013-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 9:58 a.m. The next order of business was a motion to seal the minutes of the February 19, 2013, Executive Session. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Murray, it was unanimously

VOTED: To seal the minutes of the February 19, 2013, Executive Session.

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

1. Unanimously voted, with two abstentions, to approve the minutes of the Executive Session held on January 29, 2013.

[Reporters note – The vote was as follows:

AYES: James V. Murray; Edward A. Magro; Deborah M. Cerullo; Mark B. Heffner; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.; Frederick K. Butler.]

2. Unanimously voted to authorize a full investigation in the matter In re: Kimberley Gaffett, Complaint No. 2013-1.

3. Unanimously voted to authorize a full investigation in the matter In re: Kimberley Gaffett, Complaint No. 2013-2.

4. Unanimously voted to authorize a full investigation in the matter In re: Kimberley Gaffett, Complaint No. 2013-3.

The next order of business was New Business and general comments from the Commission. Chair Cheit stated that Mr. Green, who appeared before the Commission for an advisory at the last meeting, commended the Commission and the Staff for its professionalism in the advisory opinion process.

At 10:00 a.m., upon motion made by Commissioner Magro and duly

seconded by Commissioner Butler, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

John D. Lynch, Jr.
Secretary