

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

April 23, 2013

The Rhode Island Ethics Commission held its 5th 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, April 23, 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 Edward A. Magro
Mark B. Heffner* James V. Murray
John M. LaCross Robert A. Salk**

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 9:03 a.m. the Chair opened the meeting. The first order of business was the introduction of and administration of the oath of

office to new Commissioner Dr. Robert A. Salk. Chair Cheit administered the oath of office to Commissioner Salk.

The next order of business was the approval of minutes of the Open Session held on March 19, 2013. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was

VOTED: To approve minutes of the Open Session held on March 19, 2013.

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

ABSTENTIONS: John M. LaCross; Robert A. Salk.

The next order of business was the Director's Report. Executive Director Willever reported that there are six (6) complaints, four (4) advisory opinions and one (1) litigation matter pending. He also stated that thirteen (13) APRA requests were granted since the last meeting and all were fulfilled within one (1) day.

The next order of business was a discussion of a statute of limitations on ethics violations and the consideration of preliminary language regarding potential regulatory proposals to adopt a limitations period. Senior Staff Attorney D'Arezzo stated that, pursuant to the Commission's direction, the staff has drafted three (3)

options: Option A provided that a complaint must be filed no later than ten (10) years from the date of the alleged violation of the Code; Option B was the same as Option A, but it further provided for a two (2) year repose period following the last date the Respondent was subject to the Code; and Option C built upon Option B by adding a discovery provision.

Senior Staff Attorney D'Arezzo stated that the staff had two (2) concerns related to these options. With respect to Option B, she questioned how the language would be interpreted in the event that an official leaves office for more than two (2) years and then is re-elected, as commonly occurs with Town Council service, or if the person subsequently holds another public position prior to the expiration of the limitations period. With respect to Option C, she noted that the staff's research of statutes with similar "reasonable diligence" language revealed that all of those statutes are causes of action that accrue to a specific individual, where they know or should have known that they suffered a harm. In contrast, she stated that the Code of Ethics provides for a cause of action based upon public rights in which the complainant is not a party in interest to the proceedings.

Senior Staff Attorney D'Arezzo noted that the earliest meeting for a public hearing would be June 4, 2013, which would allow for the requisite thirty (30) day public notice and comment period. Chair Cheit responded that the staff's concern about the repose language

may be an argument in support of Option A. He clarified that the repose provision refers to leaving public service under the Code of Ethics and would not include leaving state or municipal service for federal service.

* Commissioner Heffner arrived at 9:12 a.m.

Legal Counsel Alves advised that the Commission should discuss which options it would like to initiate rulemaking on. Commissioner Murray stated that all the options were viable and that he would benefit from receiving public comment on all three (3) options. Chair Cheit also suggested initiating rulemaking on all three (3) options. Legal Counsel Alves stated that the Commission could move forward on all three (3) options and would have some latitude to edit terms based on public comment.

In response to Chair Cheit, Senior Staff Attorney D'Arezzo stated that with respect to Option C, the staff's research revealed that all of these types of discovery statutes involve personal causes of action. She added that Ethics Commission complaints are different because there is no specific plaintiff and it would be difficult to determine when a public citizen should have been on notice.

Upon motion made by Commissioner Magro and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To initiate rulemaking with Options A, B and C.

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 S. Bennett, the Director of Economic Development for the City of Providence, requesting an advisory opinion regarding whether the Code of Ethics prohibits the City from paying for his travel expenses relative to the economic development of the Port of Providence with funds donated to the City by ProvPort, the non-profit corporation that operates the Port of Providence.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present along with Assistant City Solicitor Adrienne Southgate, Esq. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously

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

The next advisory opinion was that of:

The Retirement Board of the Employees' Retirement System of the State of Rhode Island requesting an advisory opinion concerning the ability of certain individual members to participate in discussions and decision-making, or to receive confidential information, regarding lawsuits against the Retirement Board and other state officials that are pending in the Rhode Island Superior Court.

Staff Attorney Gramitt presented the Commission Staff recommendation. Michael P. Robinson, Esq., was present on behalf of the Retirement Board. Mr. Robinson expressed the Retirement Board's appreciation of the Commission and Staff Attorney Gramitt's work on this matter. He stated that the Retirement Board unanimously voted to seek this advisory opinion. Upon motion made by Commissioner Heffner and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to the Retirement Board of the Employees' Retirement System of the State of Rhode Island.

The final advisory opinion was that of:

Anthony L. Santilli, Jr., the Building and Zoning Official for the Town of Narragansett, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from applying for a variance and a

special use permit from the Narragansett Zoning Board of Review.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Heffner, the Petitioner explained the standard process for obtaining this type of zoning relief. He stated that he needs to apply to the Planning Board to assess conformity with the comprehensive plan and then the Zoning Board for approval of the variance and special use permit. He stated that his role in general would occur at the Zoning Board meeting if he was asked to interpret the ordinance. He noted that in the event of his recusal the solicitor or members of Planning staff would be able to answer questions for the Zoning Board.

In response to Commissioner Murray, the Petitioner stated that he built the house in 2011 and had another municipality perform the inspections. He stated that at the time he wanted to maximize the size of his house on the lot and was left with a smaller deck, which he would now like to enlarge.

Commissioner Salk questioned whether there was another way to seek this relief, given his role as the zoning official. Staff Attorney Stewart stated that this is different from most hardship exception requests because this Petitioner is not a public official who can resign and wait a year to seek zoning relief given his status as a long-term municipal employee. She stated that although there is still

concern about influence, the hardship exception requires this public advisory opinion process and helps to lessen the conflict.

The Petitioner stated that he did not anticipate any objections from his neighbors. He stated that he was waiting to receive this advisory opinion before submitting his applications. Chair Cheit stated that he did not think the cost of public service should ever be that a public employee for the zoning board could not make a change to his deck. Upon motion made by Commissioner Heffner and duly seconded by Commissioner LaCross, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Anthony L. Santilli, Jr., the Building and Zoning Official for the Town of Narragansett.

The next order of business was an adjudicative hearing in the matter of In re: Gordon Rogers, Complaint No. 2012-1. The hearing was stenographically recorded and a transcript of the proceeding is available at the Commission Offices. Commission Prosecutor Nicole B. DiLibero represented the People of the State of Rhode Island. The Respondent, Gordon Rogers, was present along with his attorney Timothy F. Kane, Esq.

The parties presented the Commission with two joint stipulations pre-marked as Joint Exhibit 1 and Joint Exhibit 2. Joint Exhibits 1 and 2 were admitted as full exhibits. Commission Prosecutor

DiLibero gave an opening statement and played four (4) video recordings included in Joint Exhibit 1. [Reporter's note: The Commission took a brief recess from 10:07 a.m. to 10:12 a.m. related to the audio visual equipment.] Both parties gave closing arguments. The Commission questioned the Prosecution and the Respondent.

At 11:15 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Salk, it was unanimously

VOTED: To go into Executive Session to deliberate the matter of In re: Gordon Rogers, Complaint No. 2012-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(4).

[Reporter's note: The Commission took a brief recess at 11:15 a.m. and then reconvened at 11:20 a.m. to begin deliberations in Executive Session.]

The Commission reconvened in open session at 12:10 p.m. The Commission first considered motions relative to whether the Respondent violated the Code of Ethics. Upon motion made by Commissioner Magro and duly seconded by Commissioner Heffner, it was

VOTED: That there is a preponderance of the evidence to find that the Respondent, Gordon Rogers, while a member of the Foster Town Council, represented himself before the Foster Town Council on

March 22, 2012, in violation of R.I. Gen. Laws § 36-14-5(e).

AYES: Mark B. Heffner; Edward A. Magro; John M. LaCross.

NOES: James V. Murray; Robert A. Salk; Ross Cheit.

[There was no finding of a violation on this motion.]

Upon motion made by Commissioner Salk and duly seconded by Commissioner Magro, it was

VOTED: That there is a preponderance of the evidence to find that the Respondent, Gordon Rogers, while a member of the Foster Town Council, represented himself before the Foster Town Council on April 12, 2012, in violation of R.I. Gen. Laws § 36-14-5(e).

AYES: Mark B. Heffner; Edward A. Magro; John M. LaCross; Robert A. Salk; Ross Cheit.

NOES: James V. Murray.

After finding that the Respondent violated the Code of Ethics on April 12, 2012, the Commission voted to impose a penalty. Upon motion by Commissioner Heffner and duly seconded by Commissioner Magro, it was

VOTED: To impose a civil penalty of \$250.

AYES: Mark B. Heffner; Edward A. Magro; John M. LaCross; Robert A. Salk; Ross Cheit.

NOES: James V. Murray.

At approximately 12:13 p.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Heffner, it was unanimously

VOTED: To go into Executive Session, to wit:

(a) Motion to approve minutes of Executive Session held on March 19, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

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

The Commission reconvened in Open Session at approximately 12:16 p.m. The next order of business was a motion to seal the minutes of the April 23, 2013, Executive Session. Upon motion made by Commissioner Magro and duly seconded by Commissioner Heffner, it was unanimously

VOTED: To seal the minutes of the April 23, 2013, Executive Session.

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

1. Unanimously voted, with two (2) abstentions, to approve the minutes of the Executive Session held on March 19, 2013.

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

Ayes: Mark B. Heffner; Edward A. Magro; James V. Murray; Ross Cheit.

Abstentions: John M. LaCross; Robert A. Salk.]

2. Unanimously voted to authorize a full investigation in the matter In re: Tina Jackson, Complaint No. 2013-4.

The next order of business was New Business and general comments from the Commission. Chair Cheit noted that the adjudication today once again involved the receipt of incorrect advice from a solicitor. Executive Director Willever stated that he discussed this issue at a meeting with the Government Lawyers Committee. He informed that Staff Attorney Gramitt, in his role as Education Coordinator, provides numerous Code of Ethics training sessions each year. Commissioner Magro suggested drafting a General Advisory Opinion regarding whether it is a knowing and willful violation of the Code if a public official relies on the erroneous advice of counsel. Chair Cheit directed staff to put this matter on an upcoming agenda for discussion. Staff Attorney Gramitt informed that he would be giving a

CLE for solicitors with David Curtin on May 29, 2013.

At 12:21 p.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Heffner, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

John D. Lynch, Jr.

Secretary