

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

May 21, 2013

The Rhode Island Ethics Commission held its 6th 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, May 21, 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 Robert A. Salk

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 and Gary V. Petrarca.

At 9:02 a.m. the Chair opened the meeting. The first order of

business was the approval of minutes of the Open Session held on April 23, 2013. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was

VOTED: To approve minutes of the Open Session held on April 23, 2013.

AYES: Edward A. Magro; Robert A. Salk; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.; Deborah M. Cerullo; 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:

Reverend David F. Shire, a member of the Health Services Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Health Services Council's consideration of Care New England Health System's application to merge with Memorial Hospital, given his various connections to Butler Hospital, a Care New England Health System operating unit.

Staff Attorney Stewart presented the Commission Staff

recommendation. The Petitioner was present. Staff Attorney Stewart noted an amendment to the last paragraph of page two of the draft advisory opinion. She stated that there are approximately 200 Individual Members of the Corporation of Butler Hospital. The Petitioner asked the Commission if the answer would be different if he declined any compensation from the research study. Chair Cheit replied that his question could be addressed in an advisory opinion if his circumstances change, but right now it is hypothetical.

In response to Commissioner Cerullo, Staff Attorney Stewart stated that it is reasonably foreseeable that Butler will be financially impacted by Care New England's ("CNE") merger with Memorial Hospital because all of the hospitals operated by CNE will be directly impacted by the success or failure of the merger and the allocation of assets to hospitals after the merger. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to Reverend David F. Shire, a member of the Health Services Council.

*** Commissioner Heffner arrived at 9:11 a.m.**

The next advisory opinion was that of:

James M. Callaghan, Esq., a Narragansett Town Council member, requesting an advisory opinion as to whether the Code of Ethics prohibits him from simultaneously serving as a Bail Commissioner/Justice of the Peace for the Town of Narragansett.

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

VOTED: To issue an advisory opinion, attached hereto, to James M. Callaghan, Esq., a Narragansett Town Council member.

The final advisory opinion was that of:

Giorgio S. Gencarelli, a member of the Westerly Zoning Board, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Zoning Board's consideration of Copar Quarries of Westerly, LLC and Westerly Granite Co., Inc.'s appeal of the Westerly Zoning Official's Cease and Desist Order, given that his former daughter-in-law is an abutter to the quarry under review.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Per Vaage, Esq. was present on behalf of the Westerly Zoning Board. In response to

concerns related to the impact on the Petitioner's grandchildren from Commissioner Salk and Chair Cheit, Staff Attorney Stewart replied that the issue before the Zoning Board is not related to whether the abutters' quality of life is impacted by the quarry. She further stated that although the Petitioner's grandchildren are members of his family under Regulation 5004, as minors, they are not parties or participants in the matter before the Zoning Board.

Chair Cheit stated that he agreed that the legal interpretation was reasonable but was still concerned that there was an appearance of impropriety. Commissioner Cerullo also expressed concern about appearance issues and questioned whether the financial impact upon the mother would impact the children. Staff Attorney Stewart replied that while there is a direct financial impact upon the mother (the Petitioner's former daughter-in-law), her children are one step removed and, thus, the impact is indirect. She added that the issue before the Zoning Board is limited to whether there was intent to abandon the use of the property as a quarry, not how the operations of the quarry affect the abutters. Chair Cheit stated that the Zoning Board's decision will nevertheless impact the Petitioner's former daughter-in-law and her children as abutters. Commissioner Heffner stated that, from the perspective of estate planning, any financial impact upon the Petitioner's minor grandchildren is extraordinarily remote and there is no certainty that they would ever inherit this property.

Discussion ensued about whether the Petitioner is biased against his former daughter-in-law or in favor of his minor grandchildren. Commissioner Butler noted that the Petitioner's former daughter-in-law is not appearing before the Zoning Board. Attorney Vaage stated that the draft opinion correctly and succinctly describes the matter before the Zoning Board. He added that although the Zoning Board may receive public comment on this matter, it cannot consider evidence related to the impact of the quarry on the abutters, it can only consider whether there is sufficient evidence to rebut the presumption of abandonment.

In response to Chair Cheit, the Petitioner stated that he will vote if he is permitted and will recuse if he is required. There were questions about future recusals. Attorney Vaage stated that it is possible that a matter relating to a special use permit for the quarry could come before the Zoning Board in the future and the Petitioner's participation or recusal would be considered at that time. In response to Commissioner Cerullo, the Petitioner stated that if he can participate he will do the right thing based upon the zoning laws. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Giorgio S. Gencarelli, a member of the Westerly Zoning Board.

The next order of business was the Director's Report. Executive

Director Willever reported that there were five (5) complaints, three (3) advisory opinions and one (1) litigation matter pending. He also stated that nineteen (19) APRA requests were granted since the last meeting, eighteen (18) of which were fulfilled within one (1) day.

The next order of business was a Legislative Update. Staff Attorney Gramitt stated that House Bill 5673 relating to an independent audit of 10% of financial disclosure statements, which was proposed by Governor Chafee, was discussed at a hearing of the House Judiciary Committee on May 7, 2013. He informed that he attended the hearing and testified, relaying the Commission's concerns about an independent audit and noting that 10% of the financial statements is a significant amount. He added that Common Cause of RI spoke in support of the Bill but would be satisfied with an in-house audit of financial statements. He also informed that the RI ACLU stated general support and emphasized that the audit should be random. He stated that no one from the Governor's office testified. He advised that the Bill was held for further study and he expects it to continue to be held for this legislative cycle.

At 9:40 a.m., upon motion made by and duly seconded, it was unanimously

VOTED: To go into Executive Session, to wit:

a.) Motion to approve minutes of Executive Session held on April 23,

2013 pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

b.) In re: Frank Sylvester, Complaint No. 2011-2, 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).

e.) Annual discussion and review re: Legal Counsel's Contract. [Reporter's note: Prior to convening in Executive Session, Chair Cheit noted that Legal Counsel Alves received advanced notice of his right to have discussion held in Open Session pursuant to § 42-46-5(a)(1).]

The Commission reconvened in Open Session at approximately 11:17 a.m. The next order of business was a motion to seal the minutes of the May 21, 2013, Executive Session. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Butler, it was unanimously

VOTED: To seal the minutes of the May 21, 2013, Executive Session.

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

1. Voted to approve the minutes of the Executive Session held on April 23, 2013.

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

Ayes: Mark B. Heffner; Edward A. Magro; Robert A. Salk; Ross Cheit.

Abstentions: John D. Lynch, Jr.; Deborah M. Cerullo; Frederick K. Butler.]

2. Did not approve, by a vote of 6 to 1, the Informal Resolution and Settlement in the matter of In re: Frank Sylvester, Complaint No. 2011-2.

3. Unanimously voted to approve Prosecution's Motion to Dismiss in In re: Pamela Fontaine, Complaint No. 2012-2.

The next order of business was the annual discussion and potential vote regarding Legal Council's Contract. The Commission deliberated this matter with Executive Director Willever during executive session. Upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To renew Legal Counsel's contract for another year.

The next order of business was a discussion of advice provided by

Solicitors regarding requirements of the Code of Ethics. Senior Staff Attorney D'Arezzo stated that over the past year, a few respondents in Complaint matters have raised the receipt of incorrect advice from their legal counsel on the requirements of the Code of Ethics as an affirmative defense. At prior meetings, she stated that the Commission expressed concern about this and asked staff to consider possibly drafting a General Commission Advisory Opinion ("GCA") to address it. She informed that Executive Director Willever met with the staff attorneys and investigators to discuss this matter. She stated that the staff is unclear how a GCA would address this issue, given that GCAs apply to a specific set of facts, for example, the application of the nepotism regulation. She stated that Staff Attorney Gramitt is giving a CLE for solicitors on May 29th with David Curtin at the RI Bar Association and he will also be speaking at the Attorney General's Open Government Summit this summer.

Chair Cheit stated that a GCA might be helpful to the layperson to send a clear message that they should check with the Ethics Commission before relying on the advice of solicitors or private counsel. Legal Counsel Alves stated that as a solicitor himself, he would find it helpful when he is asked last minute ethics questions by board members. Chair Cheit asked staff to present issues not yet considered or proposed language for a GCA at a future meeting.

The next order of business was New Business. There being none, at 11:29 a.m., upon motion made by Commissioner Magro and duly

seconded by Commissioner Lynch, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

John D. Lynch, Jr.

Secretary