

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

July 21, 2015

The Rhode Island Ethics Commission held its 9th meeting of 2015 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, July 21, 2015, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair M. Therese Antone

John D. Lynch, Jr., Vice Chair Frederick K. Butler

Robert A. Salk, Secretary Marisa A. Quinn

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Education Coordinator/Staff Attorney; Staff Attorneys Teresa Giusti 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:

Approval of minutes of the Open Session held on June 16, 2015.

Upon motion made by Commissioner Quinn and duly seconded by Commissioner Lynch, it was

VOTED: To approve minutes of the Open Session held on June 16, 2015.

AYES: Marisa A. Quinn; M. Therese Antone; Frederick K. Butler; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.; Robert A. Salk.

The next order of business was:

Advisory Opinions.

The advisory opinions were based on draft advisory opinions prepared by 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:

Michael C. Swistak, a member of the Jamestown Planning

Commission, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in the Planning Commission's consideration of the Jamestown Fire Department's fire station development plan review application given that, in his private capacity, he is the co-insurance broker of a group life insurance policy written for the benefit of the members of the Jamestown Fire Department ("JFD").

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Quinn, the Petitioner stated that the Fire Chief and Deputy Chief decide from which insurance broker they will purchase the group life insurance policy. He explained that it is possible that the JFD could attempt to terminate their life insurance policy with him if he voted against the fire station development plan. However, he states that as a local business owner, every decision he makes on the Planning Commission could influence potential future clients. In response to Chair Cheit, Staff Attorney Stewart stated that the staff focused more on whether the Petitioner's actions in approving or disapproving the JFD application would result in a direct financial impact to himself. Here, she stated, that any retaliation by the JFD for an unfavorable Planning Commission decision is speculative and hypothetical. Upon motion made by Commissioner Antone and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Michael C.

Swistak, a member of the Jamestown Planning Commission.

The next advisory opinion was that of:

Michael Cochran, a member of the Jamestown Planning Commission, requesting an advisory opinion as to whether the Code of Ethics prohibits him from participating in the Jamestown Planning Commission's consideration of the Jamestown Fire Department's fire station development plan review application, given that he is also a volunteer firefighter with the Jamestown Fire Department.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Commissioner Quinn stated that it could be difficult for the Petitioner to be completely objective given his status as a volunteer firefighter for the JFD. Chair Cheit concurred, but he stated that the Ethics Commission's focus is on the regulation of financial conflicts. Commissioner Butler stated that people should recuse from participating when they feel they cannot be impartial, even without a conflict under the Code of Ethics. The Petitioner admitted that there is more camaraderie amongst the firefighters than the members of the Planning Commission. However, he stated that he can contribute valuable knowledge to the Planning Commission's evaluation of this application. He also stated that the Planning Commission's review is limited to its regulations, and he thinks he can objectively assess the JFD's application. Upon motion made by Commissioner Salk and duly seconded by Commissioner

Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Michael Cochran, a member of the Jamestown Planning Commission.

The next advisory opinion was that of:

Geoffrey A. Marchant, the Director of the Community Development Consortium, requesting an advisory opinion regarding whether he can participate in the Consortium's approval of payments to the Washington County Community Development Corporation, given that he is a member of the Washington County Community Development Corporation's Board of Directors.

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

VOTED: To issue an advisory opinion, attached hereto, to Geoffrey A. Marchant, the Director of the Community Development Consortium.

The next advisory opinion was that of:

Catherine DeNoia, a member of the Westerly Planning Board, requesting an advisory opinion regarding whether the Code of Ethics

prohibits her from participating in the Planning Board’s consideration of a major land development application for a proposed postsecondary education campus to be located at 17 Canal Street in Westerly, given that she is a member of the Board of Directors of Greater North End Community Development, Inc., and representatives of that organization will likely provide public comment during the public hearing for that application.

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

VOTED: To issue an advisory opinion, attached hereto, to Catherine DeNoia, a member of the Westerly Planning Board.

[*Commissioner Butler recused from participating in the Commission’s consideration of Catherine DeNoia’s advisory opinion.]

The next advisory opinion was that of:

Bruce Ogni, a member of the Lincoln Town Council, requesting an advisory opinion regarding whether the Code of Ethics prohibits him and his spouse from participating in the Town’s “50/50 Sidewalk and Curb Replacement Fund Program,” available to all homeowners in the

Town, whereby the Town pays for half of the cost of replacing the curbing and sidewalks on a residential property.

Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Quinn and duly seconded by Commissioner Antone, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Bruce Ogni, a member of the Lincoln Town Council.

The next order of business was:

Director's Report.

Executive Director Willever reported that there were six (6) complaints and one (1) advisory opinion pending. He stated that ten (10) APRA requests were granted since the last meeting, all of which were completed within one (1) business day. He also acknowledged, with appreciation, the Commissioners who had to change their plans to be here today. He stated that the next meeting is scheduled for August 18, 2015.

The next order of business was:

Discussion and potential amendment of civil penalty schedule for Financial Disclosure Complaints.

Staff Attorney Gramitt stated that, in response to a request from the Commission at the last meeting, the Commission was provided with copies of the civil penalty schedule (“schedule”) for staff-initiated financial disclosure non-filing complaints. He informed that each year Commission staff initiates around five (5) to twenty (20) complaints for the failure to timely file annual financial disclosure statements. He stated that the Commission adopted the current schedule in 2002 and 2003, whereupon the Commission authorized its staff to settle non-filing complaints according to the schedule and without bringing the settlement to the Commission for approval. He advised that the current schedule authorizes staff, upon receipt of complaint, to settle for \$500, with the civil penalty increasing up to a maximum of \$1500 post-probable cause. He stated that the schedule also authorized the Commission prosecutor to make downward departures from the schedule in unique circumstances such as financial hardship.

Chair Cheit stated that he was sorry that Commissioner Murphy was not present because it was he who asked for this to be on the agenda. He stated that he believes that more cases might settle if the penalty for settlement within receipt of the complaint was lowered to \$100 or \$200.

In response to Commissioner Butler, Staff Attorney Gramitt stated that the decision to lower the civil penalty rests on what the

Commission believes the purpose of non-filing complaints should be.

He explained that, if the goal is to use the non-filing complaints as a tool to reach 100% compliance, then the Commission might consider lowering the initial penalty. On the other hand, he stated that, if the goal is primarily to punish those who failed to comply or make an example of them, then maybe the penalty should not be lowered. He added that he believed a lower penalty for settlement upon receipt would likely encourage more people to settle much faster.

Chair Cheit stated that the purpose of the non-filing complaints is to increase compliance, and he favored lowering the initial penalty for settlement upon receipt. Conversely, Commissioner Quinn noted that a significant penalty, such as \$500, could be an incentive for people to file so that they do not incur such a high penalty. Chair Cheit noted that the schedule would only be low initially, and then would increase if the complaint is not promptly resolved.

Commissioner Lynch suggested including the amount of the potential penalty in the reminder notice. Commissioner Salk concurred and suggested a fine of \$100 for settlement within seven (7) days of receipt and then the penalty would increase. Commissioner Antone stated that she was in favor of lowering the penalty. Commissioner Butler stated that he was in favor of lowering the penalty, given that \$500 is a lot of money and the goal is to increase compliance. He suggested waiting to vote until the next meeting when the staff can present an option or two for the Commission to consider. Commissioner Antone also stated that she would appreciate some

staff input. Chair Cheit directed Commission staff to provide one or two options for an amended fine schedule at the next meeting.

The next order of business was:

Executive Session.

At 9:46 a.m., upon motion made by Commissioner Antone and duly seconded by Commissioner Salk, it was unanimously

VOTED: To go into Executive Session, to wit:

1.Motion to approve the minutes of the Executive Session held on June 16, 2015.

2.In re: Johanna Harris, Complaint No. 2014-9, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

3.In re: Ronald J. Areglado, Complaint No. 2015-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 10:06 a.m. Upon motion made by Commissioner Antone and duly seconded by Commissioner Salk, it was unanimously

VOTED: To seal the minutes of the Executive Session held on July 21,

2015.

The next order of business was:

Report on Actions Taken in 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 June 16, 2015.

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

AYES: Marisa A. Quinn; M. Therese Antone, Frederick K. Butler; Ross Cheit.

ABSTENTIONS: John D. Lynch, Jr.; Robert A. Salk.]

2.Unanimously voted (6-0) to approve an Informal Resolution & Settlement in the matter of In re: Johanna Harris, Complaint No. 2014-9.

3.Unanimously voted (6-0) to initially determine that the facts alleged in In re: Ronald J. Areglado, Complaint No. 2015-5, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized an investigation.

The next order of business was:

Advisory Opinions.

Chair Cheit stated that the last petitioner had arrived during Executive Session. The final advisory was that of:

Colonel Steven G. O'Donnell, the Commissioner of the Department of Public Safety and Superintendent of the Rhode Island State Police, requesting an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting a gift from the University of New Haven.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that he requested the opinion out of an abundance of caution. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Quinn, it was unanimously*

VOTED: To issue an advisory opinion, attached hereto, to Colonel Steven G. O'Donnell, Commissioner of the Department of Public Safety and Superintendent of the Rhode Island State Police.

[*Commissioner Antone recused from participating in the Commission's consideration of Colonel O'Donnell's opinion.]

The final order of business was:

New Business

There being none, at 10:12 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Quinn, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

Robert A. Salk
Secretary