Rhode Island's Ethics Laws: Constitutional and Policy Issues

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State governments nationwide have struggled for many years with the problem of maintaining high ethical standards for public officials. On the national level, recent inquiries into GOPAC[1] and Whitewater have demonstrated how political considerations can affect Congressional efforts to police the conduct of either its own members or of officials in the executive branch.

Rhode Island's approach to this perennial problem has been to create a non-partisan Ethics Commission with unique powers. While most other states have created Ethics Commissions through statute that confer powers akin to administrative agencies,[2] Rhode Island is one of only six states that have taken the bold step of establishing their ethics commissions through constitutional amendments.[3] What is more, our constitutional amendment confers upon the Rhode Island Ethics Commission powers that exceed those of any other ethics commission in the country.[4]

In granting these unprecedented powers to the Ethics Commission, the voters of Rhode Island have commenced an experiment that has significant constitutional implications, particularly in such areas as separation of powers and due process. The Rhode Island Supreme Court already has heard several challenges to the commission's authority. Further challenges lie ahead as the commission considers significant revisions to its code of ethics.

This article seeks to review the constitutional and policy issues arising from this experiment. By way of background, it will first consider the history of the constitutional amendment (Part I). It will then analyze the salient features of the new commission and court decisions that have rejected all facial challenges to the commission based upon the separation of powers doctrine (Part II), but have held specific commission actions to exceed the commission's constitutional powers (Part III). Finally, it will consider policy and constitutional issues that must be decided in the future (Part IV).

I. THE BACKGROUND TO THE 1986 CONSTITUTIONAL AMENDMENT

Before there was an Ethics Commission, there was a Conflict of Interest Commission.[5] Though not strictly an executive branch agency (for example, commissioners were appointed by both the legislative and the executive branches), the Conflict of Interest Commission was subject to the same checks and balances as any administrative agency. Most importantly, its regulatory authority was limited by duly enacted legislation. When it attempted, through a regulation, to impose reporting requirements beyond those contained in its implementing legislation, the Rhode Island Supreme Court struck down the regulation as invalid.

However, by the time of the 1986 Constitutional Convention, the Conflict of Interest Commission was considered not powerful enough to fight corruption in this state. The convention's delegates saw the problem this way:

> **Delegate Gelch:** [T]he tragedy of what we have to do here is that we have to leave the implementation of a code of ethics to the [fox] guarding the chicken coop because once again, it's the old statement we all love our legislature, but we don't — when we look at the whole legislature, we don't trust the legislature.
> * * *
> **Delegate Lacouture:** Maybe some of our concerns can be resolved if instead of relying on the structure to come up with the code of ethics or the prohibition — let this commission do that.
> **Delegate Millette:** You know, that's a new idea and I like it . . . [W]e would direct that a new code of ethics be developed . . . , and put the responsibility on the Conflict of Interest Commission instead of on the state legislature. Now that takes the fox away from the chickens.[7]

The delegates proposed a constitutional amendment that would create the Ethics Commission and empower it to

> adopt a code of ethics including, but not limited to, provisions on conflicts of interest, confidential information, use of position, contracts with government agencies and financial disclosure.[8]

Rhode Island voters ratified this constitutional amendment, and the current Ethics Commission resulted.

II. SEPARATION OF POWERS ISSUES

As the comments of the framers of the Constitutional amendment suggest, the Ethics Commission's mission was bound to conflict with previous legislative prerogatives. In fact, the Ethics Commission has accumulated a unique combination of powers to accomplish its mission. These include:

1. The power to write laws that define offenses punishable by removal from office, fines and misdemeanor criminal penalties;
2. The power to enforce those laws, including the power to conduct investigations;
3. The power to adjudicate cases that it

has decided to bring, subject only to severely limited judicial review.

As mentioned above, power 1 is unique to the commission, both compared to other Rhode Island agencies and to other ethics commissions nationally.[9] If Rhode Island voters are dissatisfied with overreaching by any other administrative agency (or if the voters in any other state are dissatisfied with their ethics commissions), they can petition their legislators to scale back its jurisdiction or, alternatively, elect legislators who will. The Rhode Island Ethics Commission is immune from such a check.

Also, the Ethics Commission is among a select group of government agencies which have the right to retain their own, independent counsel. See R.I. Gen. Laws § 36-14-9(a)(2). Thus, while other state government agencies obtain representation from the Attorney General and thus are subject to policy input from that office in litigated matters, the same is not true for the Ethics Commission.

This combination of powers is concentrated further because of the commission's limited size. This causes individuals to perform several tasks normally performed by more than one person in other agencies. For example, while other agencies (such as the Department of Environmental Management) have independent hearing officers, ethics commissioners are responsible for all determinations of probable cause and final adjudications.

The Ethics Commission's powers are further concentrated by the commissioners' part-time status, which encourages their dependence upon the full-time executive director. All of the following powers are in this one person's hands:

1. Overseeing the commission's daily affairs, which presumably includes assisting commission members with regard to day-to-day administrative matters;
2. Drafting proposed revisions to the Code of Ethics for the Commission's consideration and approval;
3. Overseeing all investigations and prosecutions;
4. Presenting probable cause recommendations to the same commission members he assists with administrative matters;
5. Presenting prosecutions to the commission.

For the first several years of the commission's existence, the problem was only theoretical. Mandated by constitutional amendment to adopt implementing legislation,[10] the General Assembly also enacted a substantive code of ethics for the commission to enforce, as if the commission were just another administrative agency.[11] At first, the commission agreed to enforce the code enacted by the General Assembly. During the late 1980s, the General Assembly amended the code of ethics through legislation and the commission interpreted the code through regulation without conflict.

Since that time, separation of powers issues have arisen in several cases. In each case, the Rhode Island Supreme Court has made clear that the composition and operation of the Ethics Commission does not offend constitutional separation of powers principles.

In 1991, the commission announced hearings on proposed amendments to the code of ethics pursuant to the Administrative Procedures Act.[12] Among the proposed amendments were Regulations Nos. 36-14-5006 and 36-14-5007, which sought to impose a one-year waiting period upon the appointment of certain public officials to new government positions. These provisions introduced substantial additional regulation of public officials' actions beyond those contained in the code of ethics previously enacted by the General Assembly. After the commission enacted these regulations, the governor challenged them in court.

When asked to render an advisory opinion, the Rhode Island Supreme Court upheld the constitutionality of the commission's action.[13] After concluding that the constitutional amendment was intended to confer upon the commission the authority to enact its own code,[14] the court considered whether the commission's authority was consistent with constitutional notions of separation of powers.

The court upheld the commission's constitutionality against two challenges. First, the court held that the commission's power to enact its own code of ethics did not infringe upon the General Assembly's legislative power, as protected by the Guaranty Clause of the United States Constitution.[15] In particular, the court noted that the commission was subject to several of the "usual checks and balances associated with our tripartite form of government,"[16] including the procedural constraints of the Administrative Procedures Act,[17] the General Assembly's power to regulate the composition of the commission, and the General Assembly's power to define the penalties that attach to a violation of the code of ethics.[18]

Also, the Supreme Court upheld the commission's action against a challenge that the commission unconstitutionally combined the power to legislate, enforce and adjudicate the law with regard to ethics.[19] In reaching this ruling, the court observed that other administrative agencies had similar powers, and that these powers had been upheld upon judicial review.[20]

In a 1993 advisory opinion[21] the court considered (among other issues) a challenge by the commission to substantive ethics legislation enacted by the General Assembly. Following the commission's enactment of the "revolving door" regulations that were upheld in the 1992 Supreme Court advisory opinion,[22] the General Assembly enacted its own "revolving door" legislation.[23] These provisions both extended the scope of the commission's "revolving door" ban for elected and appointed officials,[24] and exempted certain officials (namely legislators and senior policymaking positions) from the ban altogether. Citing these inconsistencies, the commission argued that the statutes unconstitutionally impinged upon the commission's prerogative to draft a substantive code of ethics. The Supreme Court did not formally decide the conflict, but stated the following:

> We have determined that the commission has the concurrent power to enact ethics laws. . . .The regulations complement the statute which broadens their application to a larger group of individuals. An individual could be found to have violated the regulations while being in compliance with the statute. The statute and the regulations are not inconsistent but are compatible. The General

Assembly has properly enacted the statute under its concurrent jurisdiction in the ethics arena.[25]

In other words, the court held that the General Assembly has the power to regulate conduct *beyond* that specified by the commission's regulations; however, the court did not decide whether the General Assembly could *exempt* from regulation an area addressed by the commission.

In **DiPrete v. Morsilli**,[26] the court considered a different "separation of powers" challenge to the commission's action. In that case, former Governor DiPrete challenged the commission's adjudication because "commission members ceased to function as impartial triers of fact."[27] Though the court chided the commission for undescribed "gratuitous comments," it did not believe "that the behavior of the commission members rose to a level that jeopardized DiPrete's due-process rights." The court also reaffirmed prior holdings that the constitution permits "the resolution of investigating, inquisitorial, and adjudicative roles in a single administrative body."[28]

To conclude, the Rhode Island Supreme Court has consistently affirmed, against facial separation of powers challenges, the Ethics Commission's power to enact a substantive code of ethics, and to enforce that code through the investigation, prosecution and adjudication of instances of alleged misconduct.

III. SPECIFIC LIMITATIONS UPON THE COMMISSION'S POWERS

As indicated above, the Rhode Island Supreme Court has upheld the commission's powers against a facial challenge on the basis of separation of powers. However, the court has reserved the prerogative to review commission actions in those areas in which other branches of state government have supremacy over the commission.

There have been numerous court cases in which the respondents have challenged procedures employed by the commission. These cases have a common theme. In each, the respondent seeks enforcement of a procedural right as defined by a legislative statute, which right the commission denies, either through its interpretation of a statute or through its own regulation. As will be demonstrated, the common theme to all of these cases is a tension between the legislature, the courts and the Ethics Commission as to

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which body has the authority to define the procedures used by the commission.

Although the voters, through the enactment of the constitutional amendment, empowered the Ethics Commission to "adopt a code of ethics," there has been debate ever since as to the extent of that grant of power. In **Advisory II, supra**, the Supreme Court stated that the Ethics Commission had the authority to adopt a "substantive code of ethics," in which standards of conduct are defined. However, in that same opinion, the Supreme Court also stated that the commission was subject to the legislatively enacted Administrative Procedures Act, and that it was the prerogative of the legislature, not the commission, to define the penalties that would attach to violations of the code. Also, the court held that the legislature had the power to define the composition of the commission.

In the court cases that have followed, respondents have challenged procedures employed by the commission that conflicted with two of the three checks upon commission power just described, namely the legislature's authority to define procedural rules for commission proceedings, and the legislature's power to define the composition of the commission. We consider each area in turn.

A. PROCEDURAL RIGHTS OF RESPONDENTS

In two different cases, courts have held that the legislature, and not the Ethics Commission, has the final say as to the procedural rights of respondents to ethics complaints.

In **Doe v. R.I. Ethics Commission** (Doe I),[29] the Ethics Commission attempted to "interpret" into a nullity certain due process protections afforded respondents to ethics complaints. Under the procedures in force at the time, respondents were entitled to an evidentiary hearing on the issue of probable cause.[30] If the commission found probable cause, the respondent was entitled to discovery prior to a hearing on the merits under commission rules that would "provide for the prompt and early exchange of relevant information and otherwise protect each party from unfair surprise during the course of the proceedings."[31] The commission implemented this provision through Regulation 36-14-3009(2), which permitted respondents to "review and copy all evidence relative to the case contained in

the commission file upon payment of copying costs set by the commission . . ."

In **Doe I**, the commission attempted to deny the respondent access to a tape-recorded witness statement, claiming that, under their "interpretation" of the regulation, only written statements, and not tape-recorded statements were "evidence."[32] The Supreme Court rejected this distinction, based upon the commonly accepted definition of "evidence" as applied elsewhere in statutory and common law.[33]

A similar issue of "interpretation" arose in a recent Superior Court ruling. Under amended procedures enacted by legislation, respondents to ethics complaints were given the statutory right to

> examine and make copies of all evidence in the possession of the Commission relating to the complaint

prior to a hearing held by the commission on the issue of probable cause.[34] If probable cause is found, then a full adjudicative hearing on the merits follows.

As its "interpretation" of this statutory provision, the commission enacted Regulation 1008(a), which provides as follows:

> No discovery between the Executive Director or designees and the Respondent shall be permitted prior to the issuance of the Commission's Finding of Probable Cause, provided, however, that this limitation on discovery shall in no way limit the authority of the Commission or staff to conduct its investigation or to subpoena required documents or witnesses as reasonably necessary. . . .

When several respondents sought to examine and copy the commission's evidence prior to the probable cause hearing, the commission refused, citing Regulation 1008(a). When the case went to court, the commission argued that Regulation 1008(a) was a valid "interpretation" of the statute. The commission argued that it satisfied § 36-14-12(c)(4) by providing respondents with a copy of the prosecutor's "investigative report," in which he characterizes all of the evidence he believes supports a finding of probable cause. How-ever, as respondents argued, the report contained only a characterization of evidence favorable to the prosecutor, and did not contain any mention whatever of unfavorable documents or information in the prosecutor's possession. As it did in **Doe I**, the commission argued to the court that, in its power to "interpret" the statute, it had determined that those unfavorable documents were not "evidence," and thus the commission had no statutory obligation to disclose them to the respondents.

The Superior Court (Israel, J.) held as follows:

> At the invitation of the parties, this Court has examined the investigative reports and recommendations in the cases of certain of these plaintiffs. After careful review of these investigative reports, the Court can observe that the respondents can have no way of knowing whether the respective prosecutor's summaries of depositions, in whole or in part, statements and interviews, are complete, accurate and justify the conclusions drawn by the prosecutor from those depositions, statements or interviews.

In the same opinion, Justice Israel also stated:

> The statutory procedure, which does require certain specific activity by the Commission before a respondent may be brought to trial, demonstrates that an accused person does have a constitutionally-protected right, under the Constitution of the United States and the Constitution

of this state, against false or frivolous accusation whether by a complainant or the Commission's prosecutor.

* * *

The issue in this case is whether or not, once such an entitlement to protection has been established by state law with regard to a person's reputation, may a state agency constitutionally deprive any person of that entitlement by construing it away. The Court concludes that it may not, notwithstanding the deference that the Court is required to accord construction of statutes by agencies charged with the enforcement of these statutes.[36]

Like any other non-prevailing litigant, the commission had the legal right to appeal. However, despite stating in its court papers that a holding against it would "grind things to a complete stop," the commission's counsel said after Justice Israel's ruling that "[w]e have to learn to live with the judge's order, but in a way that doesn't grind things to a halt."[37] The executive director also indicated that the commission would not appeal Justice Israel's ruling "because doing so would put enforcement actions on hold for months."[38]

Given the potential operation of collateral estoppel as a result of Justice Israel's unappealed ruling,[39] the commission's decision not to appeal would appear to be a sign that due process rights would receive greater protection in the future. However, in the same newspaper interview, the commission's counsel revealed that, instead of appealing Justice Israel's ruling, the commission was considering other avenues of relief, including "whether it has the authority to rewrite the law regarding evidence."[40] As noted below, the commission's proposed new code attempts this avenue of relief.

B. THE COMPOSITION OF THE COMMISSION

The actions of a past executive director of the commission came under review in **DeAngelis v. R.I. Ethics Commission**, 636 A.2d 967 (R.I. 1995). DeAngelis was named in an ethics complaint in 1991. The law in effect at the time required, in order for a penalty to be imposed, that a minimum of five commissioners who attended all hearings in their entirety vote in favor of the penalty. Effective July 21, 1992, the legislature relaxed the voting requirement to a majority of commission members. However, the legislature limited these provisions to prospective application.[41] The Supreme Court described what happened next as follows:

> In light of the governor's failure to appoint additional members to the former commission, the executive director of the commission decided upon an innovative scheme to avoid the clear provisions of the statute. He wrote to each of the complainants and suggested that they withdraw their previously filed complaints and immediately refile them as new complaints with the new commission.[42]

The Supreme Court did not approve of this scheme, holding:

> The attempt by the executive director of the commission to evade the mandatory terms of the statute by the transparent device of persuading the complainants to withdraw and refile their complaints was an ill-disguised effort to set the statute at naught and disregard its terms. It can scarcely be argued that the commission is empowered to revise or ignore the statute to accommodate a prosecution which does not come within the reach of its terms.[43]

Thus, the Supreme Court held that

the Ethics Commission did not have the legal authority to intrude upon the legislative prerogative of defining the composition of the commission for prosecutions undertaken at any given time. As was true in **John Doe II**, courts have blocked the Ethics Commission's efforts to override the authority of the legislature in areas *other than* the content of a substantive code of ethics.

IV. FUTURE ISSUES

With the promulgation of a new, proposed code of ethics, and with certain litigation now pending in the Superior Court, several issues regarding the extent of the commission's powers remain to be resolved. We now consider three such issues, namely procedural rights in conflict with established legislation, definition of penalties and interaction with the Attorney General.

A. PROCEDURAL RIGHTS

Despite the decision not to appeal the adverse ruling in **John Doe II**, the commission does not appear ready to defer to the legislature with respect to the due process rights of those named in ethics complaints. Proposed Code § 12(c)(4) revisits the issue of a respondent's right to review materials prior to a probable cause determination. The new language reads as follows:

> Prior to the Commission's review and consideration of the issue of probable cause, the respondent shall be entitled to examine and make copies of all reports, documents, exhibits or other information submitted to or consideration [sic] by the Commission members as part of their review and determination of probable cause, including the investigative report of the executive director or designee.

As previously indicated, the only "evidence" that the prosecutor submits to the commission on the issue of probable cause is the investigative report. Thus, Proposed Code §12(c)(4) purports to overrule the statute[44] in favor of the "interpretation" that was rejected by Justice Israel's unappealed ruling.

If the commission adopts this provision, it is likely that the Supreme Court will have to review this issue in the future, probably in the context of a civil rights action brought under 42 U.S.C. § 1983 by a respondent to an ethics complaint. If the Supreme Court rules that the Ethics

Commission cannot deprive individuals of their due process rights, then the General Assembly (whose legislation the commission seeks to nullify through "interpretation") may well have to appropriate tax dollars to pay for the prevailing party's legal fees.[45]

B. DEFINITION OF PENALTIES

As mentioned above, the Supreme Court held that the legislature retained the prerogative to define the penalties that attach to violations of the code of ethics. Notwithstanding that ruling, the Ethics Commission has challenged legislative supremacy in this area in two different provisions of the new proposed code of ethics.

The first provision relates to the commission's power to impose penalties upon classes of persons not covered by prior legislation. In proposed section 5.17, the commission seeks to impose a penalty of up to $25,000 upon those who file frivolous ethics complaints. While the policy behind such a provision can be justified, the simple fact is that the legislature did not provide for such a penalty; therefore, the commission may not have the authority to create one. In fact, the commission's executive director has admitted as much, and has indicated that this provision will likely be withdrawn.[46]

Also, the commission proposes to confer upon itself the ability to write public letters of reprimand to respondents even though no finding of probable cause has been made. Proposed Code, § 12(d). Such a public action could cause significant harm to a public official's good name, and it would take place before the official would have an opportunity to defend himself or herself against the charges. Action of this kind by the commission could therefore violate the respondent's constitutional right against false or frivolous accusation, as described by Justice Israel in an unappealed ruling.

C. INTERACTION WITH THE ATTORNEY GENERAL

As mentioned above, the Ethics Commission is one of the rare state agencies that has legislative authority to retain its own counsel. Nevertheless, the Attorney General recently took the position that parties suing the Ethics Commission were required, under R.I. Super. t.R.Civ.P. 4(d)(4), to serve process upon the Attorney General as an interested party. In this way, the Attorney General ought to maintain its prerogative to take

a position in matters affecting this particular state agency.

This issue arose in a recent Superior Court decision involving the same **John Doe II** plaintiffs described above. In that case, the plaintiffs had not perfected service upon the Attorney General until after the ruling by Judge Israel denying the commission's motion to reconsider. As a result, the Attorney General moved to dismiss, claiming that plaintiffs' failure to effect timely service was a jurisdictional defect.[47]

In denying the motion, the Superior Court (Williams, J.) held that actions against the Ethics Commission did not require service upon the Attorney General as the legislature had empowered the Ethics Commission to retain the services of independent counsel under R.I. Gen. Laws § 36-14-9(a)(2). While an appeal of this decision is still possible, the trial court's ruling is not only supported by the statute, but is also consistent with the policy of independence embodied by the constitutional amendment. The result of the ruling is that one more structural check upon other government agencies, namely the involvement of the Attorney General in litigation, does not apply to the Rhode Island Ethics Commission.

A second issue in which the interaction between the commission and the Attorney General's office has arisen is in the area of double jeopardy. In a pending prosecution of former Governor DiPrete, the defendant sought dismissal of the criminal bribery charges because he already has been tried and penalized before the commission on ethics charges involving similar (but possibly not identical) conduct. The Superior Court denied the motion to dismiss, largely based upon the fact that the specific actions alleged in the criminal indictment are different from those upon which the ethics prosecution were based.[48]

From this writer's perspective, it is likely that the Supreme Court will affirm on this ground; however, the question remains whether a subsequent criminal prosecution for the exact same conduct previously punished through an Ethics Commission investigation is barred under the constitutional protection against double jeopardy. The seminal United States Supreme Court case on double jeopardy in a criminal/civil dual prosecution is **United States v. Halper.**[49] By its own language **Halper** limits double jeopardy to "the rare case . . . where a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused."[50] Therefore, one would expect that Ethics Commission penalties that were proportionate to the harm caused would not create double jeopardy problems for the Attorney General. However, the issue has not been decided, and there is a factual possibility, under this reading of **Halper**, that a conflict could arise.[51] At any rate, the **DiPrete** case suggests the need for the Ethics Commission to coordinate its work with the Attorney General, rather than just operate independently of this coordinate law enforcement agency.[52]

V. CONCLUSION

There is much uncertainty regarding how, in the long run, the Ethics Commission will co-exist among the three branches of state government. At this time, however, one thing is clear: when Rhode Island created an "independent" Ethics Commission through constitutional amendment, the resulting agency's clashes with the other branches of state government have led to significant dislocation of traditional separation of powers principles.

Footnotes

[1] *GOPAC is the name of a political action committee founded by U.S. House Speaker Gingrich (presumably named for the GOP) which allegedly contributed to his campaign in violation of federal law.* ***Providence Journal****, Dec. 2, 1995, section A at A12 (recounting political issues arising from House Ethics Committee investigation of GOPAC).*

[2] ***See, e.g., Forti v. New York State Ethics Commission****, 75 N.Y.2d 596, 554 N.E.2d 876 (1990) (describing New York's Ethics In Government Act);* ***Parcell v. State****, 228 Kan. 794, 620 P.2d 834 (1980) (describing that state's Governmental Ethics Commission).*

[3] ***Compare*** *R.I.Const., art. 3, § 8* ***with*** *Fla. Const. art. II, § 8; Haw.Const. art. XIV; Mont. Const. art. XIII, § 4; Okla. Const. art. 29; Tex. Const. art. III, §§ 24, 24a.*

[4] *Rhode Island's Ethics Commission is unique in that it has plenary authority to draft its own code of ethics. In other states with constitutionalized ethics commissions, all except for Oklahoma direct the legislature to enact substantive ethics legislation. Oklahoma's Constitution does direct the Ethics Commission to draft a substantive code of ethics; however, that Constitution reserves to the legislature the power to veto any proposal by the commission.* ***Ethics Comm. v. Cullison****, 850 P.2d 1069 (Okla. 1993).*

[5] *R.I. Gen. Laws §36-14-1* ***et seq.****, repealed, 1987.*

[6] ***See Little v. Conflict of Interest Commission*** *of* ***Rhode Island****, 121 R.I. 232, 397 A.2d 884 (1979).*

[7] *Transcript of Ethics Committee Meeting of May 22, 1986, printed in* ***In re Advisory Opinion to the Governor****, 612 A.2d 1, 10 (R.I. 1992).*

[8] *R.I. Const. Art. 3, §8.*

[9] *nn.3-4,* ***supra.***

[10] *Article 15, section 4.*

[11] ***See*** *R.I. Gen. Laws §§ 36-14-5 – 36-14-7.*

[12] *R.I. Gen. Laws Title 42, Chapter 35.*

[13] ***In re Advisory Opinion to the Governor****, 612 A.2d 1 (R.I. 1992) (Advisory I).*

[14] *612 A.2d at 5-14.*

[15] *U.S. Const. art. 4, § 4.*

[16] *612 A.2d at 18,*

[17] *R.I. Gen. Laws § 42-35-1* ***et seq.***

[18] *612 A.2d at 18.*

[19] ***Id.****, at 20-21.*

[20] ***Id., citing Milardo v. Coastal Resources Management Council****, 434 A.2d 266, 271 (R.I. 1981)* ***and Davis v. Wood****, 427 A.2d 332, 336 (R.I. 1981)*

[21] ***In re Advisory from the Governor****, 633 A.2d 664 (R.I. 1993) (Advisory II)*

[22] *Regs. 5006 and 36-14-5007.*

[23] *R.I. Gen. Laws § 36-14-5(n), (o).*

[24] *The regulations were limited to elected and appointed officials who sought employment by the same agency in which they had previously served. The legislation extended the ban to any instance in which an elected or appointed official sought employment in any state government position.*

[25] ***In re Advisory From The Governor,*** *633 A.2d 664, 667-68 (R.I. 1993) (emphasis in original).*

[26] *635 A.2d 1155 (R.I. 1994).*

[27] ***DiPrete,*** *635 A.2d at 1166.*

[28] ***Id.***

[29] *575 A.2d 993 (R.I. 1990).*

[30] *R.I. Gen. Laws § 36-14-12(d)(4) (since amended).*

[31] *R.I. Gen. Laws § 36-14-13(d)(2).*

[32] ***Doe I,*** *575 A.2d at 995.*

[33] ***Id.***

[34] *R.I. Gen. Laws § 36-14-12(c)(4).*

[35] *Opinion of Justice Israel on Defendant's Motion for Reconsideration in* ***John Doe v. R.I. Ethics Commission (Doe II)****, Prov. County Superior Court C.A. No. 95-4258, (transcript, p.8).*

[36] *Opinion of Justice Israel,* ***supra****, transcript, pp.6-8.*

[37] ***Providence Journal****, Sept. 20, 1995, section B, at B1, B7.*

[38] ***Id.*** *This comment is surprising in light of the fact that the commission took the full 300 days (including both 60-day extensions) to complete these investigations. Also, the commission could have presented these circumstances to the Supreme Court as part of a request for an expedited appeal.*

[39] ***See Cole v. Charron****, 477 A.2d 959 (R.I. 1984);* ***U.S. v. American Cyanamid Co.****, 794 F.Supp. 61, 63 (D.R.I. 1990).*

[40] ***Providence Journal****, supra.*

[41] *1992 R.I. Pub. Laws, ch. 436, §3.*

[42] ***DeAngelis****, 656 A.2d at 969.*

[43] ***DeAngelis****, 656 A.2d at 970.*

[44] *R.I. Gen. Laws § 36-14-12(c)(4).*

[45] *42 U.S.C. § 1988.*

[46] ***See Providence Journal****, Nov. 17, 1995, section A at A1, A20.*

[47] *The Attorney General also argued that timely service was required because the Superior Court considered the constitutionality of a "statute, ordinance, etc."*

[48] ***See State v. DiPrete****, Cr.A. No. P1/94-1000 A&B.*

[49] ***United States v. Halper****, 490 U.S. 435, 109 S.Ct. 1892 (1989).*

[50] *490 U.S. at 449, 109 S.Ct. at 1902.*

[51] *For example, both the proposed ethics law (Proposed Code § 5.10) and the criminal law (R.I. Gen. Laws § 11-41-27) prohibit state employees from misappropriating public property. Suppose that a state employee takes home for private use a state-issued pen and pad of paper. Under Proposed Code § 5.10(2), the employee could be fined up to $25,000, or even greater amounts if each misappropriated item is considered the basis for a separate charge. If the commission imposed a $5,000 fine and the employee were then prosecuted criminally, the employee could argue that the first, "civil" prosecution was sufficiently punitive to preclude the second, "criminal" prosecution. A court could be persuaded of this argument on the facts presented, as the criminal fine for misappropriation of these items would be limited to $1,000. See R.I. Gen. Laws § 11-41-27 (embezzlement of state property worth less than $100.)* ***See also*** *Proposed Code § 5.10(6) (prescribing full range of penalties for personal use of office telephone to make local call).*

[52] *See R.I. Gen. Laws § 36-14-13(d)(4).* ■

Bar Golfers to Tee Off in August

Anyone interested in a friendly competition should enter the Bar Association annual golf tournament, set for August 15 at Triggs Memorial Golf Course, Providence.

The tournament is open to all lawyers, judges and their guests. Registration begins at noon with a shotgun start at 1:00 p.m. Among the prizes to be presented are low gross and low net as well as closest to the pin, and longest drive. Tee sponsorships are available for anyone interested in advertising on one of the holes.

The registration fee is $85 per golfer or $340 per foursome and includes greens fees, carts, raffle ticket, welcoming gifts and a steak/swordfish dinner. The registration deadline is July 31, 1996. Registration is limited to the first 128 golfers. To register, call Michael Hagopian at 946-9600 or Beth Bailey at 421-5740.

Young Lawyers Sign Up Voters At Mall

Sharon Collins (l) and Laura Pisaturo (r) worked the first shift of the Young Lawyers voter registration drive.

The Young Lawyers Committee sponsored a voter registration drive at Warwick Mall in the spring and had more success than they expected. More than 80 people stopped by the booth in the center of the mall to register or update their voter registrations.

"We are grateful to the lawyers who gave up a portion of their free time on a Saturday to perform a public service," said Mark Sylvia, chairperson of the committee. "The Young Lawyers Committee likes to include public service projects on our agenda and given that this is an election year, this project seemed important and popular."

The committee will hold a second voter registration drive on Saturday, September 7th, again in the Warwick Mall.

1995-1996 Necrology

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*Past President of the Bar Association