PUBLIC INTEGRITY COMMISSION
MINUTES
November 20, 2018
10:00 A.M.

1. Call to Order: 10:05. Present-- William F. Tobin Jr. (Vice-Chair) (Acting Chair); Commissioners: Andrew Gonser, Esq., Andrew Manus, Jeremy Anderson, Esq.; Commission Counsel: Deborah J. Moreau, Esq.

2. Approval of Minutes for September 18, 2018: Moved—Commissioner Gonser; seconded—Commissioner Manus. Vote 4-0, approved.

3. Administrative Items

A. Lobbyist survey regarding ID badges. The Commission discussed the pros and cons of assuming responsibility for the issuance of lobbyist ID badges. Currently, the badges are issued by DMV and the IDs do not expire. Commission Counsel will research prices for ID-making machines and start to draft the appropriate legislation.

B. Candidates that failed to file their Financial Disclosures for 2018 election. The Commission voted to recommend three candidates to the Attorney General's office for failure to file the required Financial Disclosure report. They are: Christopher Mockerman (Rep. 17th District); James A. Purcell (Senate 18th District); Harry Smouse (Rep. 20th District). Moved—Commissioner Manus; seconded—Commissioner Gonser. Vote 4-0, approved.

4. **Motion to go into Executive Session[i] and to Hear Requests for Advisory Opinions, Waivers, Complaints and Referrals:** Moved—Commissioner Gonser; seconded Commissioner Manus. Vote 4-0, approved.

5. 18-32B--City of Lewes Code of Conduct

The Commission originally reviewed and approved the City of Lewes' ("City") Code of Conduct in July 1993. The City, through their attorney, Glenn Mandalas, submitted proposed amendments for PIC's review and approval as required by statute. "Any change to an approved code of conduct must similarly be approved by the State Ethics Commission to continue the exemption from this subchapter." 29 *Del. C.* § 5802(4).

The first revision was considered and rejected by the Commission at the September 18, 2018, meeting. At that meeting the Commission decided that the revision lacked several important components and that the revised Code of Conduct was less stringent than the State Code, which is impermissible. *Id*. Mr. Mandalas submitted a new revision on October 3, 2018, for the Commission's consideration. After reviewing the changes, the Commission decided that the revised City of Lewes Code of Conduct was at least as strict as the State Code of Conduct. Therefore, the revised Code of Conduct was approved.

Moved—Commissioner Manus; seconded—Commissioner Anderson. Vote 4-0, approved.

6. 18-43—Complaint

Procedure

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, ch. 58. 29 *Del. C.* § 5810(a). In October 2018, a sworn Complaint was filed against [a State official] via email and received a hard copy via U.S. Mail several days later. The Complaint

appeared to be notarized in the appropriate format. (29 *Del. C.* § 4328(3)). (*See Hanson v. PIC*, 2012 WL 3860732 (Del. Super. Aug. 30, 2012) (*aff'd PIC v. Hanson*, 69 A.3d 370 (Del. 2013)).

Jurisdiction: The Commission's jurisdiction is limited to interpreting Title 29, Del. C., ch. 58. *See, e.g.,* 29 *Del. C.* § 5808(a) and § 5809(2). It may only act if it has jurisdiction over the party charged and jurisdiction over the complaint's substance.

After deciding the Complaint was properly sworn, the Commission usually examines the Complaint to determine if the allegations are frivolous or fail to state a violation. 29 *Del. C.* § 5809(3); *Commission Rules, p.3, III(A)*. However, unlike a traditional Complaint, this Complaint asked the Commission to [take a specific action] which fell within the Commission's jurisdiction.

Personal Jurisdiction

A State employee is defined as any person who "receives compensation as an employee of a state agency; who serves as an appointed member, trustee, director…of a state agency and who receives or reasonably expects to receive more than $5,000 in compensation for such service in a calendar year." 29 *Del. C.* § 5804(12)(a). [Employee began working for the State [in early 2018]. As such they qualified as a State employee and fell within the Commission's jurisdiction.

Subject Matter Jurisdiction

The Commission can only address alleged violations of "this chapter"-Title 29, ch. 58. 29 *Del. C.* § 5810(h). The Complaint alleged [Employee was reviewing and disposing of matters in which the Employee had a personal interest, creating an appearance of impropriety]. The appearance of impropriety statute is 29 *Del. C.* § 5806(a) which is within the Commission's jurisdiction.

Facts

[Complainant] alleged that the appearance of impropriety would cause the public to question whether [Employee] could perform their official job duties independently and impartially. [Complainant] requested that the Commission [determine whether the Employee was engaged in prohibited conduct].

Action

The Commission determined that the Complaint set forth sufficient facts to upon which to grant [Complainant's] request as it related to the Employee's official duties and to deny the request as it related to Employee's personal activities].

Moved—Commissioner Manus; seconded Commissioner Anderson. Vote 4-0, approved.

7. 18-44 Referral to Attorney General's Office

In October 2018, [a citizen] submitted a Complaint against [a State employee]. [Complainant] alleged that [Employee] was reviewing and disposing of matters involving an acquaintance], creating an appearance of impropriety. The Complainant further asked that the Commission [take a specific action]. The Complaint was first submitted via email and a hard copy followed by U.S. Mail [several days later]. Upon receipt of the email submission, Commission Counsel informed [Complainant] that the matter must remain confidential. On the same day, [Complainant] posted information about the Complaint on [a] website.

One day later, [a media source] published information about the Complaint, its contents, allegations and the name of the [person against whom the Complaint was filed]. [Complainant] was quoted extensively. Over the subsequent weekend, [Complainant] continued to speak to [the media] and also posted information on Facebook. Commission Counsel emailed [Complainant] again explaining that they had violated the confidentiality provisions in the Code of Conduct and that the violation would be presented to the Commission for their review and possible referral to the Attorney General's office for prosecution. [Subsequently, Complainant continued to discuss the Complaint with various media outlets]. Commission Counsel then sent a certified letter to [Complainant] re-stating the law against discussing confidential PIC matters. The return receipt for that letter had not been returned to PIC at the time of the meeting.

APPLICABLE LAWS

A. 29 *Del. C.* § 5808A—Commission Counsel Power and Duties

(a) There shall be a Commission Counsel who shall be the legal representative of the Commission and have the following powers and duties:

> (3) To review information coming to the attention of the Commission relating to potential violations of this chapter.
>
> (4) To investigate information coming to the attention of the Commission that, if true, would constitute a violation of any provision of this chapter and/or to recommend that possible violations of these, or other state and federal laws, be referred by the Commission to the Attorney General or the United States Attorney for investigation and prosecution. Matters may be so referred to the Attorney General or the United States Attorney only upon a determination by at least a majority of the Commission that there are reasonable grounds to believe that a violation may have occurred.

B. 29 *Del. C.* § 5810(h)(1)—Complaints; Hearings; Dispositions

All proceedings relating to a charged violation of this chapter shall be maintained confidential by the Commission unless:

a. Public disclosure is requested in writing by the person charged; or
b. the Commission determines after a hearing that a violation has occurred.

C. 29 *Del. C.* § 5805(e)--Unauthorized disclosure of confidential information

No person shall disclose any information required to be maintained confidential by the Commission under § 5806(d), § 5807(b) or (d), or § 5810(h) of this title.

APPLICATION OF THE FACTS TO THE LAW

Commission Counsel is required to report to the Commission a suspected violation of the Code of Conduct. Counsel brought the matter to the Commission for a determination of whether there were reasonable grounds to believe that [Complainant] had violated the confidentiality provisions of 29 *Del. C*. § 5810(h) and § 5805(e).

Counsel suspected that [Complainant] violated the law by discussing their Complaint with [media outlets and publishing the information on Facebook and other websites]. They were obviously familiar with the State Code of Conduct because they cited specific provisions in their Complaint, as well as in discussions with [the media]. Although not required for a prosecution of this type of violation, [Complainant] demonstrated his knowledge of the Code of Conduct's confidentiality provision when [a media source] reported him as saying "those confidentiality rules only apply once there has been a formal charge and related proceedings."

The law required that the statute be interpreted consistent with the General Assembly's manifest intent. 1 *Del. C.* § 301. If the statute were interpreted as [Complainant] stated, there would be no point in having a confidentiality provision at all. A person could draft a Complaint, publish it and discuss it at length and then submit it to the Commission for further proceedings, all without violating the confidentiality provision.

ACTION

The Commission decided that [Complainant] should be referred to the Attorney General's office for prosecution.

Moved—Commissioner Manus; seconded Commissioner Anderson. Vote 4-0, approved.

8. 18-40 Robert Colton—Personal or Private Interest (Waiver Granted)

Mr. Colton was accompanied by Brennon Fountain from the Department of Agriculture.

STATE OF DELAWARE
DELAWARE STATE PUBLIC INTEGRITY COMMISSION
MARGARET O'NEILL BUILDING
410 FEDERAL STREET, SUITE 3
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-2399

VIA EMAIL **November 30, 2018**

18-40—Robert Colton--Personal or Private Interest
(WAIVER GRANTED)

Hearing and Decision By: *William F. Tobin, Jr. (Vice-Chair) (Acting Chair), Commissioners: Jeremy Anderson, Esq.; Andrew Gonser, Esq.; Andrew Manus*

Dear Mr. Colton,

Thank you for attending the November 20, 2018, Commission meeting. After considering all the relevant facts and circumstances, the Commission decided that it is a conflict of interest for you to be both a State Employee and also a State contractor. The Commission grants the Department of Agriculture a 6 month waiver to work on a solution to your conflict.

I. FACTS

You work for the Delaware Thoroughbred Racing Commission ("DTRC") as a Safety Steward. Your primary job duties are to communicate and coordinate track activities with stewards, the track superintendent, emergency medical technicians, jockeys, exercise riders, trainers and stable employees. As an employee of the DTRC, you report directly to them. However, you are considered a State employee and are paid by the Department of Agriculture.

You are also the Administrator for the Delaware Jockeys' Health and Welfare Fund ("DJH&WF"). You were hired as a contractor and report directly to the Delaware Jockeys' Health and Welfare Benefit Board ("DJH&WBB"). Your job duties include: overseeing the eligibility, enrollment, financial reporting and budgeting for the fund; communicating with the jockeys about health and safety issues; educating jockeys about safety equipment, program benefits, and insurance issues; acts as an industry advocate for health and safety issues. You stressed that you are not hired by the jockeys, do not receive a commission based on the jockey's premiums and the monies in the fund are controlled by the Department of Agriculture. However, as the Administrator of the plan, you are compensated $3000 per month.

You previously represented jockeys before the DTRC and stewards at disciplinary hearings, rule changes and appeals. However, your decision to represent those jockeys was a personal choice and not part of your duties as Administrator of the DJH&WF. Recognizing a potential conflict of interest between those actions and your position as Safety Steward, you stopped representing jockeys at those hearings at the beginning of the 2016 racing season.

You would like the Commission to consider whether your private interest as an Administrator for the DJH&WF creates a conflict of interest with your position working for the DTRC.

II. APPLICATION OF THE FACTS TO THE LAW

1. In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them. 29 *Del. C.* § 5805(a)(1).

A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter." 29 *Del. C.* § 5805(a)(1). As a matter of law, a person has a personal or private interest if any decision "with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent" than others similarly situated or if "the person or a close relative has a financial interest in a private enterprise which would be affected" by a decision on the matter to a greater or lesser degree than others similarly situated. 29 *Del. C.* § 5805(a)(2)(a) and (b). A personal or private interest is not limited to narrow definitions such as "close relatives" and "financial interest." 29 *Del. C.* § 5805(a)(2). Rather, it recognizes that a State official can have a "personal or private interest" outside those limited parameters. It is a codification of the common law restriction on government officials. *See, e.g., Commission Op. Nos. 00-04 and 00-18.* When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd*., No. 304 (Del., January 29, 1996).

You work with jockeys as the Safety Steward and you also enroll them in the benefit plan for which you are the Administrator. It is unlikely that you make decisions as Safety Steward that are directly affected by your role as Administrator of the benefit plan. However, because benefit plans are predicated on risk vs. reward types of analysis and Safety Stewards are to monitor and reduce risk, there could be the potential for conflict. For example, a decision you make as Safety Steward could have a direct or indirect effect on eligibility for benefits under the benefit plan. If you implemented a safety recommendation for jockeys at the horse track, it may be possible that failure to follow those recommendations would affect a jockey's qualification for benefits under the benefit fund. It may also be possible that you could be called as a witness, in

your capacity as Safety Steward, to provide testimony in litigation of claims by a jockey against the benefit fund. As such, the Commission decided you should not continue working in both positions.

The Commission then turned to the issue of whether you or the DA qualified for a waiver of this provision which is discussed below.

2. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust. 29 *Del. C.* § 5806(a).

The purpose of the code is to insure that there is not only no actual violation, but also not even a "justifiable impression" of a violation. 29 *Del. C.* § 5802. The Commission treats that as an appearance of impropriety standard. *Commission Op. No. 07-35*. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997). Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. *See, e.g., Commission Op. No. 97-23* and *97-42.* Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment. 29 *Del. C.* §§ 5802(1) and 5802(3).

Your involvement with jockeys as both a regulator and as a compensated benefit Administrator is likely to raise suspicion among the public that you are engaging in conduct that is contrary to the public trust. At a very minimum, your work as Safety Steward gives you direct access to potential customers for the benefit plan. The jockey's may feel that they have to participate in the benefit plan in order to receive fair and equitable treatment from you in your capacity as Safety Steward. That is not to say you would do so, you are entitled to a strong presumption of honesty and integrity. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd*., No. 304 (Del., January 29, 1996). However, this provision of the Code of Conduct requires only a justifiable impression of a violation and the Commission decided that your dual roles create such an impression.

In deciding if the conduct would raise the appearance of impropriety, the Commission also considered whether the Code would be contrary to the restrictions on misuse of public office. 29 *Del. C.* § 5806(e). One prohibition considered by the Commission under that provision is that the State employee may not use State time or State resources (i.e. computer, fax, phone, etc.) to work on the private interest. You stated that you do not work for your private interest during State work hours.

3. Waiver. 29 *Del. C.* § 5807(a)

A waiver may be granted if there is an "undue hardship" on the applicant or the agency. 29 *Del. C.* § 5807(a). "Undue" means "more than required" or is "excessive." *Commission Op. No. 97-18 (citing Merriam Webster's Collegiate Dictionary, p. 1290* (10th ed. 1992).

You have been the Administrator of the DJH&WF for 11 years. Without going into too much detail, the program was created by you and is virtually a one-of-a-kind benefit plan for Delaware jockeys. Because you created and administered the fund for 11 years, no one else has the same level of experience in identifying and remedying issues that arise with the plan or its members. As such, the Commission decided it would be in the State's interest to grant a six month waiver to the Department of Agriculture to remedy your conflict of interest. Although the Commission cannot dictate a course of action, some agencies with similar conflicts have decided to take the state position and the contractor position and make it one job. Alternatively, other agencies

have converted the contractor position into a casual/seasonal position so that the contractor position becomes a state position, thus eliminating the conflict.

You should know that when a waiver is granted, the proceedings become a matter of public record. This aids the entire public in understanding the factual basis for granting a waiver. That will serve to diminish any public perception that you are circumventing the law.

III. CONCLUSION

Your position as a contractor for the DJH&WF creates a conflict of interest with your State position as Safety Steward. The Commission has granted a six month waiver to allow the agency to remedy the situation.

Sincerely,

/s/ *William F. Tobin, Jr.*

William F. Tobin, Jr.
Acting Chair

Moved—Commissioner Manus; seconded Commissioner Gonser. Vote 4-0, approved.

9. Post-Employment

[Employee] previously worked as [a supervisor] within the Department of Services for Children, Youth and their Families ("DSCYF"). While at DSCYF, [Employee] worked with families and children to assist them in identifying and accessing community based services which would best meet their needs and goals. [Employee] left State employment on October 1, 2017.

[Employee] was offered contractual employment with DSCYF at [a new facility]. The [unit at the new facility] oversaw services for clients who were hospitalized and also helped new clients identify and enroll in outpatient services when released. Her duties related to outpatient services would be limited to making sure patients due to be released had enrolled in suitable programs. [Employee] would also notify a patient's school district of their eligibility to return to school.

[Employee] asked the Commission if her employment as a contractual employee with DSCYF would violate the two year post-employment restriction in the Code of Conduct.

For 2 years after leaving State employment, State employees may not represent or otherwise assist a private enterprise on matters involving the State, if they are matters where the former employee: (1) gave an opinion; (2) conducted an investigation, or (3) were otherwise directly and materially responsible for the matter while employed by the State. 29 Del. C. § 5805(d).

One reason for post-employment restrictions is to allay concerns by the public that ex-government employees may exercise undue influence on their previous co-workers and colleagues. *United States v. Medico,* 784 F.2d 840, 843 (7th Cir., 1986). Nevertheless, Delaware Courts have held that although there may be a subject matter overlap in the State work and the post-employment work, that where a former State official was not involved in a particular matter while with the State, then he was not "directly and materially responsible" for that matter. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004,

J. Terry (Del. Super. June 30, 1995), *aff'd*., No. 304 (Del. January 29, 1996). In *Beebe*, while with the State, an official's responsibilities were to review and make decisions on applications from hospitals to expand their services. It was alleged that he was violating the post-employment law because after he left the State he was representing a hospital on its application. However, the Court found that as to the particular application before his former agency for Nanticoke Hospital, he had not been involved in that matter while with the State, so he was not "directly and materially responsible" for that particular matter.

The Federal Courts have stated that "matter" must be defined broadly enough to prevent conflicts of interest, without defining it so broadly that the government loses the services of those who contemplate private careers after their public service. *Medico* at 843. To decide if [Employee] would be working on the same "matter," Courts have held that it is the same "matter" if it involves the same basic facts, the same parties, related issues and the same confidential information. *Ethical Standards in the Public Sector: A Guide for Government Lawyers, Clients, and Public Officials,* American Bar Association, Section of State and Local Government Law, Publisher; p. 38. Similarly, this Commission has held that the facts must overlap substantially. *Commission Op. No. 96-75 (citing Medico* at 842). See also *Beebe.*

To determine if there is substantial overlap, the duties and responsibilities during State employment are compared to the post-employment activities. Like the matter in *Beebe*, [Employee] worked on the subject matter, access to community treatment services, when working for the State. While both her former position and the contractual position had job duties related to outpatient services, her State position was more client-oriented. In the contract position, her involvement would be limited to making sure clients had enrolled in appropriate programs prior to release. [Employee's] involvement with them would then end. Therefore, the Commission decided there was enough separation between the two sets of job duties that her acceptance of the contractual position would not violate the post-employment restriction.

When asked how she had been made aware of the job opening, [Employee] stated that DSCYF had contacted her to see if she was interested. She also pointed out that the Medical Director at DSCYF during her State employment had left, thus ameliorating concerns that she obtained the positon through friendships with her former colleagues.

The Commission decided that [Employee's] acceptance of the contract position did not violate the post-employment restriction in the Code of Conduct.

Moved—Commissioner Gonser; seconded—Commissioner Manus. Vote 4-0, approved.

10. 18-45 Outside Interest

[Employee] works [with a specific population of clients] for the Department of Services for Children, Youth and their Families ("DSCYF"). [Employee]'s job duties included performing evaluations of children up to 18 years of age and making recommendations for their treatment. The vast majority of her clients received health insurance through the State Medicaid program.

[Employee] wanted to work part-time [in a private business]. [Employee] would perform similar job duties as those she performed as part of her State job duties. However, she would not work with clients who were involved with [her Division]. She anticipated the majority of her private clients would be self-pay or private insurance. Should she encounter one of her State clients at her part-time job, she understood the need to recuse herself, as did her supervisor.

[Employee] asked the Commission to consider whether her part-time work would create a conflict of interest with her State position.

1. In their official capacity, employees may not review or dispose of matters if they have a personal or private interest in a matter before them. 29 *Del. C.* § 5805(a)(1).

A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter." 29 *Del. C.* § 5805(a)(1). As a matter of law, a person has a personal or private interest if any decision "with respect to the matter would result in a financial benefit or detriment to accrue to the person or a close relative to a greater extent" than others similarly situated or if "the person or a close relative has a financial interest in a private enterprise which would be affected" by a decision on the matter to a greater or lesser degree than others similarly situated. 29 *Del. C.* § 5805(a)(2)(a) and (b). A personal or private interest is not limited to narrow definitions such as "close relatives" and "financial interest." 29 *Del. C.* § 5805(a)(2). Rather, it recognizes that a State official can have a "personal or private interest" outside those limited parameters. It is a codification of the common law restriction on government officials. *See, e.g., Commission Op. Nos. 00-04 and 00-18.* When there is a personal or private interest, the official is to recuse from the outset and even neutral and unbiased statements are prohibited. *Beebe Medical Center v. Certificate of Need Appeals Board*, C.A. No. 94A-01-004 (Del. Super. June 30, 1995), *aff'd*., No. 304 (Del., January 29, 1996).

[Employee]'s private employment qualified as a private interest. However, given the fact that [Employee]'s State clients were Medicaid recipients and her private clients would be self-pay or private insurance clients, the Commission decided it was unlikely she would encounter her State clients while performing her private job duties and vice versa. As a result, it was unlikely she would be required to review and dispose of matter in which she had a private interest. In the unlikely event she were to encounter one of her private clients while performing her State job duties, [Employee] was aware of the need to recuse herself from that client. In the event [Employee] were to encounter one of her State clients while working in her private practice she would recuse herself from evaluating that client and her supervisor had given her permission to do so.

2. Employees may not engage in conduct that may raise suspicion among the public that they are engaging in conduct contrary to the public trust. 29 *Del. C.* § 5806(a).

The purpose of the code is to insure that there is not only no actual violation, but also not even a "justifiable impression" of a violation. 29 *Del. C.* § 5802. The Commission treats that as an appearance of impropriety standard. *Commission Op. No. 07-35*. The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality. *In re Williams*, 701 A.2d 825 (Del. 1997). Thus, in deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances. *See, e.g., Commission Op. No. 97-23* and *97-42.* Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment. 29 *Del. C.* §§ 5802(1) and 5802(3).

It was unlikely that [Employee] would encounter clients from one position while performing job duties related to the other position. In the event such a circumstance were to occur, she would recuse herself as necessary. Therefore, her dual employment was unlikely to create an appearance of impropriety amongst the public.

In deciding if the conduct would raise the appearance of impropriety, the Commission also considered whether the Code would be contrary to the restrictions on misuse of public office. 29 *Del. C.* § 5806(e). One prohibition considered by the Commission under that provision is the State employee may not use State time or State resources (i.e. computer, fax, phone, etc.) to work on the private business. [Employee] stated she would work at her private practice outside of her State work hours, mostly on Saturdays.

The Commission decided that [Employee]'s outside work would not create a conflict of interest with her State position.

Moved—Commissioner Anderson; seconded—Commissioner Manus. Vote 4-0, approved.

11. Motion to go out of Executive Session: Moved—Commissioner Manus; seconded—Commissioner Anderson. Vote 4-0, approved.

12. Adjournment

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[i] Pursuant to *29 Del. C. § 10004(6) to discuss non-public records (29 Del. C. § 10002(6)* Any records specifically exempted from public disclosure by statute or common law), as the written statements required for advisory opinions and complaints are subject to the confidentiality standards in 2*9 Del. C. § 5805(f)*, *29 Del. C. § 5807(d)* Advisory Opinion Requests, and *29 Del. C. § 5810(h)* for Complaints. Further, the proceedings, like personnel actions are, by statute, closed unless the applicant for the advisory opinion requests a public meeting, *29 Del. C. § 5805(f), 29 Del. C. § 5807(d)*, or the person charged in a complaint requests a public meeting. *29 Del. C. § 5810(h)*. No applicant for an advisory opinion, nor a person charged by a complaint has requested an open meeting.