

**STATE OF RHODE ISLAND  
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

**In Re: Kevin J. Carter  
Respondent**

**Complaint No. 2009-2  
Complaint No. 2010-1**

**ORDER**

This matter having been heard before the Rhode Island Ethics Commission on September 28, 2010, pursuant to Commission Regulation 1011, and the Commission having considered the Complaints herein, the findings of fact and admissions, and the proposed Informal Resolution and Settlement, which is incorporated by reference herein, it is hereby

**ORDERED, ADJUDGED AND DECREED**

THAT, the Commission approves the Informal Resolution and Settlement; and

THAT, the Commission incorporates by reference herein its findings of fact and admissions, and conclusions of law as those set forth in the Informal Resolution and Settlement; and

THAT, the Respondent is ordered to pay a civil penalty in the amount of Eight Thousand (\$8,000.00) Dollars.

Entered as an Order of this Commission,



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Barbara R. Binder  
Chairperson

Dated: September 28, 2010

**STATE OF RHODE ISLAND  
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**In Re: Kevin J. Carter  
Respondent**

**Complaint No. 2009-2  
Complaint No. 2010-1**

**INFORMAL RESOLUTION AND SETTLEMENT**

Pursuant to Commission Regulation 1011, the Respondent, Kevin J. Carter, and the Rhode Island Ethics Commission hereby agree to a resolution of the above-referenced matters as follows:

**I. Findings of Fact and Admissions**

1. The Respondent, a member of the Board of Fire Commissioners ("Board") for the Pascoag Fire District ("Fire District"), a municipal elected position, was at all relevant times subject to the Rhode Island Code of Ethics in Government. The Respondent was first elected to the Board in September of 1995 and has served continuously in that capacity since that time.

2. In his private capacity, the Respondent is the President of Carter Bros., Inc., a Rhode Island business incorporated in 1997, which provides heating and oil delivery services.

3. The Respondent admits that in the fall of 2004, he participated in a bid specification process regarding a replacement boiler at a fire station located at 141 Howard Avenue, Pascoag, Rhode Island ("Hose #2"), and then subsequently submitted a bid to the Fire District regarding the same project, which was awarded to and accepted by the Respondent.

4. The Respondent admits that Carter Bros., Inc. entered into a heating oil delivery contract with the Fire District in February of 2005, without prior public notice or subsequent public disclosure of said contract.

5. The Respondent admits that he accepted employment as an independent contractor with the Fire District to install an HVAC system at a fire station located at 105 Main Street, Pascoag, Rhode Island (“Hose #1”), in October of 2007.

6. The Respondent admits that, in the summer of 2007, he participated in discussions with other members of the Board relative to the hiring of Carter Bros., Inc. to install an HVAC system at Hose #1.

7. The Respondent admits that he participated in the appointment and/or classification of a family member when he voted to approve the 2008-2009 Officers’ List, which included the name of his brother, Keith Carter, a volunteer member of the Fire District, holding the rank of Captain.

8. The Respondent admits that he participated in the appointment and/or classification of a family member when he voted to approve the 2008-2009 Officers’ List, which included the name of his brother, Harold Carter, a volunteer member of the Fire District, holding the rank of Lieutenant.

9. The Respondent admits that on July 19, 2004, he voted to approve the payment of vendor bills, which included a bill from his company, Carter Bros., Inc.

10. The Respondent admits that on July 10, 2007, he voted to approve the payment of vendor bills, which included a bill from his company, Carter Bros., Inc.

11. The Respondent admits that on September 11, 2007, he voted to approve the payment of vendor bills, which included a bill from his company, Carter Bros., Inc.

## **II. Mitigating Factors**

In mitigation of the conduct detailed above, the Respondent points to the following factors which warrant the informal resolution and settlement of this matter, and which are the

sole representations of the Respondent and are in no way adopted by the Commission or the Prosecution:

1. The Respondent's participation in Board meetings, votes taken, contracts awarded, and payments made by the Board pursuant to contracts awarded were made a part of the Board's public record in the ordinary course of business. The Respondent did not conceal his interest in any of the matters that came before the Board. His part ownership of his company, Carter Bros., Inc., is well-known in the village of Pascoag, where Carter Bros. services or has serviced 75% of the homes and businesses.

2. Respondent and Carter Bros., Inc. endeavored to provide services to the Fire District at low rates. There is no indication from the record that their charges to the Fire District were excessive.

3. With regard to the 2004 boiler contract and the bid specifications that Respondent helped to prepare, the bid specifications required only that the bidder be licensed, have insurance, have prior experience, and install a Viessman model heating system. Carter Bros., Inc. was not selected for the job over any other bidder. No other company bid on the job. Respondent left the room before the Board voted on Carter Bros.'s bid.

4. With regard to the 2005 heating oil contract, Carter Bros. began delivering heating oil to the Fire District on an emergency basis when the prior provider stopped delivering oil. Carter Bros. has continued to deliver oil to the Fire District on an *ad hoc* basis to the present. The previous oil provider stated that the heating oil contract with the Fire District was not profitable.

5. With regard to the 2008-2009 Officer's List, the annual list of officers was compiled and proposed by the Fire District's Fire Chief, and not by the Respondent. The vote of the Board to approve the Fire Chief's slate of officers was unanimous. The offices of Captain and

Lieutenant, which the Respondent's brothers received from the vote, do not involve any pay above the \$75.00 annual stipend given to all firefighters.

### **III. Travel of the Case**

1. Complaint No. 2009-2 was filed on August 31, 2009, by Jerry A. Prete of Pascoag, Rhode Island.

2. Pursuant to Regulation 1003, the Ethics Commission made an initial determination on September 22, 2009, that Complaint No. 2009-2 alleged facts sufficient to constitute a knowing and willful violation of the Code of Ethics and approved a full investigation.

3. On January 26, 2010, pursuant to R.I. Gen. Laws § 36-14-12(c) and Commission Regulation 36-14-12002, the Ethics Commission found that good cause existed to grant the Prosecution's Motion to Enlarge Time for Investigation.

4. On January 27, 2010, Complaint No. 2010-1 was filed by Peter J. Mancini, Deputy Chief Investigator for the Ethics Commission.

5. Pursuant to Regulation 1003, the Ethics Commission made an initial determination on February 9, 2010, that Complaint No. 2010-1 alleged facts sufficient to constitute a knowing and willful violation of the Code of Ethics and approved a full investigation.

6. On April 6, 2010, the Ethics Commission, after a hearing as to probable cause, made specific findings as to the following counts:

1. There exists probable cause to believe that, by participating in the bid specification process in the fall of 2004 and then subsequently submitting a bid proposal to the Pascoag Fire District for the same project, the Respondent had a reasonable expectation that he would be awarded the contract, and therefore, the Respondent had an interest which was in substantial conflict with the proper discharge of his duties, in violation of R.I. Gen. Laws § 36-14-5(a).
2. There exists probable cause to believe that, by participating in the bid specification process in the fall of 2004 and then subsequently

submitting a bid proposal to the Pascoag Fire District for the same project, which was awarded and accepted by the Respondent, the Respondent violated the open and public process of the Code of Ethics, in violation of R.I. Gen. Laws § 36-14-5(h).

3. There exists probable cause to believe that the Respondent, by entering into a heating oil delivery contract with the Pascoag Fire District in February of 2005, without prior public notice or subsequent public disclosure of the contracts awarded, violated R.I. Gen. Laws § 36-14-5(h).
4. There exists probable cause to believe that, by accepting employment as an independent contractor with the Pascoag Fire District to install a HVAC system at Hose #1 in October of 2007, the Respondent violated Commission Regulation 36-14-5014.
5. There exists probable cause to believe that, by participating in the discussions at Hose #1 with the other members of the Board of Fire Commissioners in the summer of 2007 relative to the hiring of his company to install a HVAC system at Hose #1, the Respondent used his public office to obtain a financial gain for a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
6. There exists probable cause to believe that, by participating in the Board of Commissioners discussions on December 12, 2006 and on January 9, 2007 regarding awarding a contract to David LaMontagne, the Respondent used his public office to obtain a financial gain for his business associate, David LaMontagne, in violation of R.I. Gen. Laws § 36-14-5(d).
7. There exists probable cause to believe that, by failing to notify the Board of Fire Commissioners that he assisted David LaMontagne with his bid proposal for Hose #2, and then subsequently participating in the Board of Fire Commissioners discussions relative to the contract award on December 12, 2006 and on January 9, 2007, the Respondent had an interest which was in substantial conflict with the proper discharge of his duties, in violation of R.I. Gen. Laws § 36-14-5(a).
8. There exists probable cause to believe that, by voting to approve the 2008-2009 Officer's List, which included the name of the Respondent's brother, Keith Carter, a volunteer member of the Fire Department holding the rank of Captain, the Respondent participated in the appointment or classification of a family

member, in violation of Commission Regulation 36-14-5004(b)(2)(A).

9. There exists probable cause to believe that, by voting to approve the 2008-2009 Officer's List, which included the name of the Respondent's brother, Harold Carter, a volunteer member of the Fire Department holding the rank of Lieutenant, the Respondent participated in the appointment or classification of a family member, in violation of Commission Regulation 36-14-5004(b)(2)(A).
10. Probable cause does not exist to believe that, by failing to file his financial disclosure statement for calendar year 2005, the Respondent, a member of the Board of Commissioners for the Pascoag Fire District, a municipal elected position, violated R.I. Gen. Laws § 36-14-16.
11. There exists probable cause to believe that, by voting to approve the vendor bills on July 19, 2004, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
12. There exists probable cause to believe that, by voting to approve the vendor bills on July 10, 2007, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
13. There exists probable cause to believe that, by voting to approve the vendor bills on September 11, 2007, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
14. There exists probable cause to believe that, by voting to approve the vendor bills on May 13, 2008, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

15. There exists probable cause to believe that, by voting to approve the vendor bills on November 11, 2008, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
16. There exists probable cause to believe that, by voting to approve the vendor bills on January 12, 2009, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
17. There exists probable cause to believe that, by voting to approve the vendor bills on February 9, 2009, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
18. There exists probable cause to believe that, by voting to approve the vendor bills on April 13, 2009, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
19. There exists probable cause to believe that, by voting to approve the vendor bills on May 11, 2009, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).
20. There exists probable cause to believe that, by voting to approve the vendor bills on July 14, 2009, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

21. There exists probable cause to believe that, by voting to approve the vendor bills on August 17, 2009, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

Since the Ethics Commission found that probable cause did not exist as to Count 10, that count was dismissed with prejudice.

#### **IV. Conclusions of Law**

1. The Respondent, a member of the Board of Fire Commissioners for the Pascoag Fire District, a municipal elected position, was at all relevant times subject to R.I. Gen. Laws § 36-14-1 *et seq.*, also known as the Code of Ethics in Government.
2. The Ethics Commission finds that by participating in the bid specification process in the fall of 2004 and then subsequently submitting a bid proposal to the Fire District for the same project, which was awarded and accepted by the Respondent, the Respondent violated R.I. Gen. Laws § 36-14-5(h).
3. By entering into a heating oil delivery contract with the Pascoag Fire District in February of 2005, without prior public notice or subsequent public disclosure of the contracts awarded, the Respondent violated R.I. Gen. Laws § 36-14-5(h).
4. By accepting employment as an independent contractor with the Pascoag Fire District to install an HVAC system at Hose #1 in October of 2007, the Respondent violated Commission Regulation 36-14-5014.
5. By participating in the discussions at Hose #1 with the other members of the Board of Fire Commissioners in the summer of 2007 relative to the hiring of his company to install an HVAC system at Hose #1, the Respondent used his public office to obtain a

financial gain for a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

6. By voting to approve the 2008-2009 Officers' List, which included the name of the Respondent's brother, Keith Carter, a volunteer member of the Fire Department holding the rank of Captain, the Respondent participated in the appointment or classification of a family member, in violation of Commission Regulation 36-14-5004(b)(2)(A).

7. By voting to approve the 2008-2009 Officers' List, which included the name of the Respondent's brother, Harold Carter, a volunteer member of the Fire Department holding the rank of Lieutenant, the Respondent participated in the appointment or classification of a family member, in violation of Commission Regulation 36-14-5004(b)(2)(A).

8. By voting to approve the payment of vendor bills on July 19, 2004, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

9. By voting to approve the payment of vendor bills on July 10, 2007, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

10. By voting to approve the vendor bills on September 11, 2007, which included a bill from Carter Bros., Inc., a business owned and operated by the Respondent, the Respondent used his public office to obtain a financial gain for himself and a business by which he is employed or by which he represents, in violation of R.I. Gen. Laws § 36-14-5(d).

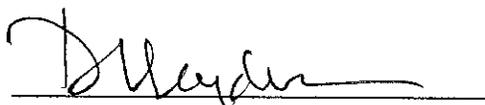
**V. Settlement**

Pursuant to the above Findings of Fact and Conclusions of Law, the Prosecution agrees to recommend and the Respondent agrees to accept the following:

1. The Ethics Commission will enter an Order and Judgment that the Respondent violated the Code of Ethics as described in Counts 2, 3, 4, 5, 8, 9, 11, 12, and 13 referenced herein.

2. The Ethics Commission will dismiss, with prejudice, Counts 1, 6, 7, and 14-21.

3. The Respondent shall pay a civil penalty in the amount of eight-thousand dollars (\$8,000.00), which shall represent a full, final and complete informal resolution and settlement of Complaint Nos. 2009-2 and 2010-1.



Dianne L. Leyden  
Commission Prosecutor

Dated: 9/28/10



Kevin J. Carter  
Respondent

Dated: 9-23-10



Albin S. Moser, Esq.  
Attorney for Respondent

Dated: 9/27/2010