STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION

In re: Wayne E. Cross **Complaint No. 2005-17**

ORDER

This matter having been heard before the Rhode Island Ethics Commission on October 11, 2005, pursuant to Commission Regulation 1011, and the Commission having considered the Complaint herein, the arguments of counsel, the findings of fact, the Respondent's admissions and mitigating factors and the proposed Information 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 as submitted; and

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

THAT, the Respondent violated R.I. Gen. Laws § 36-14-5(a) of the Rhode Island Code of Ethics in Government; and

THAT, the Respondent is ordered to pay a civil penalty in the amount of Two Hundred Fifty ($250) Dollars.

Entered as an Order of this Commission,

James Lynch, Sr. 10/17/2005

James Lynch, Sr. Dated:
Chairperson

RECEIVED
RHODE ISLAND
ETHICS COMMISSION
05 OCT 11 AM 11:16

STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION

In re: Wayne E. Cross **Complaint No. 2005-17**

INFORMAL RESOLUTION AND SETTLEMENT

The Respondent, Wayne E. Cross, and the Rhode Island Ethics Commission hereby agree to a resolution of the above-referenced matter as follows:

A. Findings of Fact

1. The Respondent, a member of the Exeter Town Council, a municipal elected position, was at all relevant times subject to the Code of Ethics in Government. The Respondent was originally elected to the Exeter Town Council in November 2000.
2. Pursuant to the Town of Exeter Charter, Section 403, the members of the Town Council receive compensation as fixed by the financial town meeting.
3. At the Annual Financial Town Meeting on May 21, 2002, Resolution 21 was approved which granted a stipend to be paid to the members of the Exeter Town Council.
4. On June 29, 2004, at the Special Meeting for the Town Council, a motion was passed to eliminate the Town Council stipend from the 2005 budget.
5. On January 3, 2005, at the Regular Meeting of the Town Council, a motion was passed to reinstate the stipend eliminated on June 29, 2004.

6. The Respondent was present at the January 3, 2005 meeting and voted to reinstate the Town Council stipend.

7. The Respondent received three checks, totaling $789.00, representing payment of the stipend to the Respondent for the months of January, February, and March of 2005.

8. On May 17, 2005, Warren F. Halstead, III, of Exeter, Rhode Island, filed Complaint No. 2005-17.

9. The Complaint alleges that the Respondent, Wayne E. Cross, voted to reinstate a stipend payable to himself and to the members of the Town Council.

B. <u>Conclusions of Law and Settlement</u>

1. By voting to approve a motion to reinstate a stipend to the members of the Town Council, including himself, the Respondent violated R.I. Gen. Laws § 36-14-5(a).

2. The Respondent denies that his actions set forth above was a knowing and willful violation of the Code of Ethics and R.I. Gen. Laws § 36-14-5(a). Nevertheless, the Respondent chooses not to contest that sufficient evidence exists to support such a conclusion by the Commission.

C. <u>Mitigating Factors</u>

In addition to the agreed upon Findings and Conclusions of Law contained herein, the Respondent alone makes the following representations:

1. When the stipend was initially eliminated, the Town Council minutes reflect that the stipends could "be reinstated in the event [the Town] realize[s] more revenue."

2. The stipend that was reinstated at the January 3, 2005 Town Council meeting was in the same amount that had been in effect before it was "eliminated". In other words, there was no increase from the previous amount.

3. In mid-March 2005, some ten (10) weeks after the stipends had been reinstated, there was a question raised by a political group known as Exeter 1st. Within one week thereafter, the Respondent made it publicly known that he would be seeking an advisory opinion from the Rhode Island Ethics Commission. This was well before any complaint was filed with the Rhode Island Ethics Commission.

4. On May 16, 2005, a request for an advisory opinion was sent by the Respondent to the Rhode Island Ethics Commission. The request was received on May 18, 2005. It was never acted upon because on May 17, 2005, one day after the request for an advisory opinion was mailed but one day before the request for an advisory opinion was received, the Complaint in the instant matter was filed with the Rhode Island Ethics Commission.

5. The Respondent was not aware that this Complaint was filed until after he had mailed in the request for an advisory opinion.

6. The Respondent reimbursed the Town of Exeter for the full amount of the money received from the stipend when it was initially brought to his attention that there was a potential violation of the Code of Ethics. Said reimbursement took place on April 25, 2005, well before the Complaint was filed with the Rhode Island Ethics Commission.

7. In addition, the Respondent did not take any further stipend from the Town of Exeter once it was first brought to the Respondent's attention that receiving the same might be a violation of the Code of Ethics.

8. The Respondent's vote to reinstate the stipend was done in good faith.

D. <u>Settlement</u>

Pursuant to the above Findings of Fact, Conclusions of Law and Mitigating Factors, the Prosecution and the Respondent agree, pursuant to R.I. Gen. Laws § 36-14-13(d), to the Commission's imposition of payment by the Respondent of a civil penalty of ~~Five Hundred ($500) Dollars~~. $250.00 (Due 10/11/05)

The above terms represent the full and complete Informal Resolution and Settlement for Complaint No. 2005-17.

10/11/05
Dianne L. Leyden Date:
Commission Prosecutor

10/11/05
Wayne E. Cross Date:
Respondent

10/11/05
Joseph F. Penza, Esq. Date:
Counsel for Respondent