

STATE OF RHODE ISLAND  
BEFORE THE RHODE ISLAND ETHICS COMMISSION

In re: Samuel C. Kinder  
Respondent

Complaint No. 2011-1

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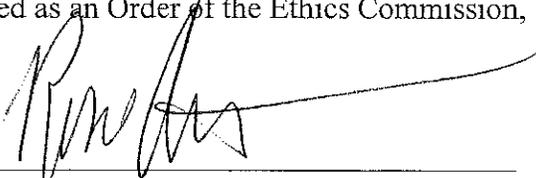
ORDER

This matter came before the Rhode Island Ethics Commission on October 4, 2011, pursuant to Commission Regulation 1011, for review of a proposed Informal Resolution and Settlement between the Respondent and the Ethics Commission. After consideration of the complaint, the Informal Resolution and Settlement and the representations of counsel, it is hereby

**ORDERED ADJUDGED AND DECREED**

1. That the Ethics Commission approves the Informal Resolution and Settlement, and incorporates herein by reference its Findings of Fact and Conclusions of Law;
2. That the Respondent may continue to act as the Town's Tree Warden, with his duties limited to those expressly set forth in Title 2, Chapter 14 of the Rhode Island General Laws;
3. That the Respondent and Samuel Kinder & Brother, Inc. will, and are hereby ordered to, cease and desist from seeking, accepting, and/or performing any compensated or reimbursed tree or shrub related services for the Town of Bristol, including but not limited to tree removal, pruning, trimming, planting, preservation, stump grinding and pest spraying, while the Respondent serves as Tree Warden and for a period of one year after he has officially severed his position with the Town;
4. That the Respondent did not engage in a knowing and willful violation of the Code of Ethics and the complaint is hereby dismissed.

Entered as an Order of the Ethics Commission,



Ross Choi, Chairperson

Dated: 10/4/2011

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

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**In re: Samuel C. Kinder**  
**Respondent**

**Complaint No. 2011-1**

**INFORMAL RESOLUTION AND SETTLEMENT**

The Respondent, Samuel C. Kinder, and the Rhode Island Ethics Commission prosecutor, representing the People of the State of Rhode Island, hereby agree to a resolution of the above-referenced matter as follows, subject to the approval of the Rhode Island Ethics Commission:

**A. Findings of Fact and Admissions**

1. The Respondent is the Tree Warden for the Town of Bristol ("Town"), a municipal appointed position. He was originally appointed by the Town Council in 1987, and has been re-appointed each year, without interruption, for the past twenty-four years through his current appointment on February 16, 2011.
2. In his private capacity, the Respondent is the owner and operator of Samuel Kinder & Brother, Inc. ("Kinder & Brother"), a nursery and tree service company located in the Town.
3. The Rhode Island General Laws delineate the powers and duties of Tree Wardens in Rhode Island cities and towns, providing generally for the method of appointment, jurisdiction, duties and compensation. R.I. Gen. Laws §§ 2-14-1 to -12. Tree Wardens shall be appointed yearly by the town council or city mayor and must be a licensed arborist within six (6) months of assuming office. Section 2-14-2. Once appointed, a

Tree Warden has statutory authority over the care and control of all trees and shrubs located on Town property. Section 2-14-5.

4. Section 2-14-8 entitled, "Removal and pruning of trees," reads in pertinent part: "Whenever, in the opinion of the tree warden, it is necessary to remove or prune any tree or shrub under his or her control, he or she may cause the tree or shrub to be removed or pruned at the expense of the town or city, and the town council or city council shall order paid to the person performing the work any reasonable compensation that may be determined and approved, in writing, by the tree warden." This provision neither explicitly authorizes nor clearly prohibits a Tree Warden from authorizing himself or his business to perform billable tree maintenance, but merely authorizes the Tree Warden to "cause" removal or pruning and to order payment "to the person performing the work."
5. Consistent with the above state laws, both the Bristol Town Charter and the Bristol Code of Ordinances ("Code") contain provisions relating to the Town's Tree Warden. Town Charter § 1005; Code §§ 25-21 to -36. Bristol's Code places the ultimate approval authority and jurisdiction regarding the maintenance and preservation of Town trees with the Town Administrator, who must review all recommendations made by the Tree Warden as to the care and removal of trees within the jurisdiction of the Town, and who may grant or withhold permission to perform any recommended work. Code § 25-24.
6. It has been the Town's long-standing practice to appoint a Tree Warden who, in addition to making recommendations as to tree care and maintenance, is also capable of and willing to actually perform the recommended pruning or removal for the Town. Accordingly, the Respondent's duties regularly include the inspection of Town trees and recommending what maintenance, if any, should be done. Then, subject to the Town

Administrator's approval to proceed, Kinder & Brother performs the tree maintenance that the Respondent has recommended.

7. The Respondent does not receive a salary or any benefits from the Town for his work as Tree Warden, but the Respondent does receive payment from the Town for the tree maintenance performed by Kinder & Brother. The Town Administrator reviews all invoices and approves all payments to Kinder & Brother for tree services. The Town paid the Respondent, through his company Kinder & Brother, an average of \$86,000 a year since 2006 for tree services to the Town.
8. A member of the Kinder family has served as the Town's Tree Warden for three successive generations, and Kinder & Brother, a company founded by the Respondent's grandfather, has historically performed most of the Town's tree maintenance. The Respondent was preceded as Tree Warden by his own father, who served for decades and who was preceded by the Respondent's grandfather. The Town's practice of the Tree Warden both making recommendations and then acting upon them for compensation has been in place for all twenty-four (24) years that the Respondent has been Tree Warden, and dates back to the Respondent's father's tenure as Tree Warden.

**B. Conclusions of Law**

1. The Respondent, the Tree Warden for the Town of Bristol, a municipal appointed position, was at all relevant times subject to the Code of Ethics in Government.
2. The Town's long-standing practice of allowing the Tree Warden's private business to perform and bill for the tree maintenance recommended by the Tree Warden, after receiving approval from the Town Administrator, is inconsistent with Rhode Island General Laws § 36-14-5(d), which prohibits a public official from in any way using his

public office to obtain financial gain for himself, his family, his employer or his business associates.

3. Although this long-standing practice in Bristol is inconsistent with the requirements of the Code of Ethics, based on the totality of the circumstances the Ethics Commission concludes that the Respondent did not knowingly and willfully commit a violation. Circumstances supporting this conclusion include that: (1) The practice of allowing a Tree Warden to perform and bill for recommended tree care and maintenance is not explicitly prohibited by the state and local laws governing Tree Wardens; (2) this practice has been utilized and authorized by the Town for many years prior to the Respondent's appointment as Tree Warden in 1987, and was used before him during the Respondent's father's tenure as Tree Warden; (3) all of the Respondent's recommendations as to the care and maintenance of trees was subject to the review and approval of an independent Town official; (4) the Respondent and the Town have come to recognize that this practice, while longstanding and favored by the Town, is inconsistent with the Code of Ethics and must be changed immediately; and (5) the Respondent has, prior to the Ethics Commission's consideration of this Informal Resolution & Settlement, formally notified the Town that he will no longer perform any tree-related maintenance for the duration of his tenure as Tree Warden. (See attached.)

### **C. Settlement**

Pursuant to the above findings of fact and conclusions of law, the parties agree to the following:

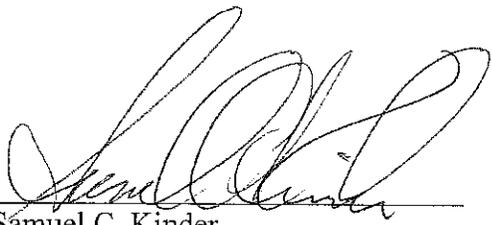
1. The Respondent may continue to act as the Town's Tree Warden, with his duties limited to those set forth in Title 2, Chapter 14 of the Rhode Island General Laws.

2. The Respondent and Samuel Kinder & Brother, Inc. will cease and desist from seeking, accepting, and/or performing any compensated or reimbursed tree or shrub related services for the Town of Bristol, including but not limited to tree removal, pruning, trimming, planting, preservation, stump grinding and pest spraying, for the duration of the Respondent's tenure as Tree Warden and for a period of one year after the Respondent has officially severed his position with the Town.
3. The Commission will dismiss this complaint upon a finding that there was not a knowing and willful violation of the Code of Ethics.

The above terms represent a full and complete Informal Resolution and Settlement of Complaint No. 2011-1.

  
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Amy C. Stewart, Esq. (Bar. No. 8209)  
Jason Gramitt, Esq. (Bar. No. 5636)  
Commission Prosecutors

Dated: 10/4/11

  
\_\_\_\_\_  
Samuel C. Kinder  
Respondent

Dated:

  
\_\_\_\_\_  
James W. Ryan, Esq. (Bar No. 4042)  
Counsel for Respondent

Dated:

TEL: (401) 253-7700  
(401) 253-8685  
FAX: (401) 254-1194

HAND DELIVERED

SINCE 1890

*Samuel Kinder & Brother, Inc.*  
*Arborists, Landscapers, Nurserymen*

315 HOPE STREET  
*Bristol, Rhode Island 02809*

September 23, 2011

Diane Mederos  
Town Administrator  
10 Court Street  
Bristol, Rhode Island 02809

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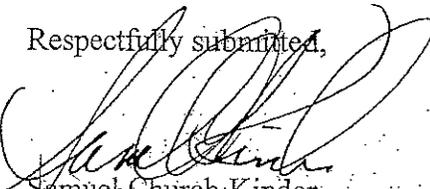
Re: Duties as Tree Warden

Dear Diane:

I am writing to you to memorialize that I am changing the procedure of how I perform my duties as Tree Warden. As you know, as Tree Warden it is my legal duty to care and maintain trees in the Town of Bristol. Long before I became Tree Warden it has always been the practice in the Town that the Tree Warden would make recommendations for work that needed to be done and then, upon approval, perform that work in a private capacity. It has come to my attention that this arrangement might appear to others to be a conflict of interest between my position as Tree Warden and as owner of Samuel Kinder & Bro., Inc. Therefore, as of September 15, 2011, I have decided that my company will no longer perform any work that is necessary to be performed for the town while I continue to hold the position of Tree Warden. I intend to continue in the uncompensated position of Tree Warden until the expiration of my term on December 31, 2011. I realize that this may create an administrative headache for you, but recent events have convinced me that this is the appropriate resolution to this situation.

May I say in closing that I appreciate the support that your office has provided in caring for the trees of our Town and I will gladly be available to provide any assistance that you may find necessary in order to effect any upcoming transitions.

Respectfully submitted,

  
Samuel Church Kinder