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VIA ELECTRONIC MAIL

February 4, 2025

Rhode Island Ethics Commission
40 Fountain Street, 8th Floor
Providence, RI 02903

Dear Members of the Rhode Island Ethics Commission:

This letter is following up on the testimony I delivered on behalf of Common Cause Rhode Island at your January 7, 2025, meeting. At that meeting I presented the case for our petition for rulemaking submitted on December 18, 2024.

The purpose of this letter is to provide further background about, and argument for, Common Cause Rhode Island's petition. At the Commission's January meeting I was questioned by members of the Commission about why we filed our petition, and what it had to do with a controversy stemming from the awarding of a state contract to the ILO Group. I will begin with some background about that controversy and how it led us to this point.

In early 2021 as then-Lieutenant Governor Daniel McKee transitioned to become governor upon the resignation of Governor Gina Raimondo he initiated a process for awarding a contract for services related to reopening schools closed by the COVID-19 pandemic.¹ News reporting from later in 2021 showed that Governor McKee took steps to steer the contract to the ILO Group, a business that was formed seemingly for the sole purpose of receiving the contract.² The ILO Group was founded by Julia Raphael-Baer, an executive of a nonprofit called Chiefs for Change that had long advised McKee, first when he was Mayor of Cumberland, and later when he was Lieutenant Governor.³ Raphael-Baer's boss at Chiefs for Change, Mike McGee lobbied McKee to issue a request for proposals (RFP) for a school reopening contract, largely drafting the document. He also lobbied McKee to award the contract to the ILO Group after the RFP yielded two bids, with the price of the ILO Group bid being significantly higher

¹ This summary is taken primarily from "Report on the Investigation of Governor Daniel J. McKee in Connection with the Award of the School Reopening Contract to the ILO Group, LLC" (herein "Report") which can be found at: <https://riag.ri.gov/ilo>

² The initial reporting was done by WPRI. See, for example, here: <https://www.wpri.com/target-12/brand-new-consulting-firm-picked-for-5-million-state-contract-to-reopen-ri-schools/>

³ The ILO Group, LLC was incorporated by Raphael-Baer at the same time the incoming McKee administration was considering how to bring on a consultant for a school reopening contract, but also remained an employee of Chiefs for Change for several more months.



than its competitor. McKee ultimately ordered the procurement process changed to a master price agreement so that both bidders were awarded contracts, with the ILO Group receiving the bulk of the state's business.

After news of McKee's interference with the contracting process emerged in the media, the State Police and then the Attorney General initiated investigations. On October 29, 2024, the State Police issued a report of their investigation and the Attorney General released a legal analysis evaluating whether McKee could be charged under the state's bribery statute, the Code of Ethics, or the state's campaign finance laws.

The State Police's investigatory report, and the Attorney General's legal analysis, revealed facts that had not been reported on by the media. Most notably it showed that Chiefs for Change had paid a public relations firm named SKDK tens of thousands of dollars to provide communications consulting services to Governor McKee. It also revealed that the contract for the services was specifically designed to skirt the gift rule in the Code of Ethics.⁴

The Attorney General concluded that the services of SKDK paid for by Chiefs for Change could not be successfully prosecuted as a bribe under the criminal code. Nor could it be successfully prosecuted as an illegal in-kind contribution to McKee's gubernatorial campaign under the state's campaign finance law.⁵ The Attorney General also concluded that the governor's interference with the contract did not violate § 36-14-5(d) of the Code of Ethics because there was no financial nexus between the governor and the ILO Group.

Common Cause Rhode Island noted that the Attorney General's legal analysis did not examine whether Governor McKee violated portions of the Code of Ethics besides 5(d) which deals with the use of official position and confidential information. When we did examine whether the gift rule of the Code of Ethics might be implicated, we concluded, similar to the Attorney General, that while Governor McKee took tens of thousands of dollar's worth of free consulting services from SKDK, it could not be determined if the free services were provided to the McKee administration, the McKee for Governor campaign, or Daniel McKee personally. The gift rule is clear that the government can receive gifts.⁶ Furthermore, the Code of Ethics limits gifts to

⁴ When negotiating the contract with SKDK on behalf of Chiefs for Change, Rafal-Baer is reported to have rejected a first draft because it would "look like a gift," and instructed SKDK to "be sure there is nothing sketchy or illegal in this" and "make sure nothing in the scope would be construed as lobbying or gifts." Report, page 9.

⁵ Campaign finance law limits the receipt of in-kind contributions, but only if they are contributions to the campaign. Rhode Island campaign finance limits "in-kind contributions" from people to \$2,000 annually. They are defined in § 36-25-3(16): "In-kind contributions" means the monetary value of other things of value or paid personal services donated to, or benefiting, any person required to file reports with the board of elections."

⁶ RICR 36-14-5009(B)(2): "The prohibitions in this section do not apply if the gift or other thing of value is: ... (b) services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation and services to constituents."



persons subject to the Code only if they are from an “interested person.”⁷ Because Chiefs for Change did not have a “direct financial interest” in awarding of the school reopening contract, the gift rule likely didn’t prohibit the gift of the consulting services from SKDK.

After reviewing the results of the investigations, Common Cause Rhode Island took three actions. One was to file the petition you are considering. A second was to file a complaint with the Secretary of State alleging that Mike Magee failed to register as a lobbyist.⁸ Finally, we are introducing legislation that would clarify the campaign finance laws with respect to in-kind contributions.⁹ Nothing we can propose, to the Ethics Commission or the legislature, could change the fact that the consulting services provided by SKDK were not clearly given to Daniel McKee personally.¹⁰ However, those same facts exposed parts of our campaign finance and ethics laws that could be clearer and better serve the public interest. Our desire to clarify the Code of Ethics is what led us to file our petition in December.

But even if the facts were clear and Chiefs for Change provided a gift of free consulting services from SKDK to Daniel McKee personally, the gift rule might not have prohibited him from taking the services because Chiefs for Change was not an “interested person” as defined in the Code of Ethics. Chiefs for Change is a 501(c)3 nonprofit organization. Although its CEO Mike Magee clearly lobbied Governor McKee to award the contract to the ILO Group, Chiefs for Change did not have a “direct financial interest” in the awarding of the contract, which is the current standard under the “interested person” analysis.¹¹

There are many nonprofit organizations that lobby the government, including Common Cause, who might not meet the definition of an interested person. Nonetheless, we believe their lobbying creates a conflict of interest and their gifts should be limited under the terms of the gift rule. As an employee of Common Cause if I am successful at passing legislation, or getting the Ethics Commission to adopt a rule, the organization I represent may benefit in numerous ways, including positive press coverage. I too may benefit personally on my yearly performance evaluation. None of that may make me, or the organization I represent, an “interested person” as defined in the Code. That is why we are asking you to amend the gift rule so that it categorically applies to lobbyists.

⁷ RICR 36-14-5009(C) “‘Interested person,’ for purposes of this section, means a person or a representative of a person or business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participation in the making of, as part of his or her official duties.”

⁸ You can find a copy of that letter here: <https://www.commoncause.org/rhode-island/wp-content/uploads/2024/12/2024-12-18-Lobbying-Complaint.pdf>

⁹ As of this letter the legislation has not yet received bill numbers.

¹⁰ For a detailed legal analysis of whether the consulting services provided by SKDK were provided to Governor McKee personally see pages 8-10 of Report.

¹¹ The Attorney General describes Magee’s activity as lobbying on page 13 of his report: “Magee had a hand in drafting the RFP in a way that would directly benefit Rafal-Baer and ILO, and he forcefully lobbied the Governor and his staff to engage Rafal-Baer.”



As we stated in our original petition, at least 22 states categorically include lobbyists in their gift rules.¹² Of those 22 states, 12 *also* have limits that depend on the application of a test, similar to the “interested person” analysis.¹³ If Rhode Island were to do this, we would not be alone. We also believe that categorically including lobbyists would make the gift rule clearer. Lobbyists would be on notice that regardless of who employs them they are subject to the gift rule.

While we cannot point definitively to evidence that lobbyists are exploiting this loophole in the gift rule other than what is laid out in the Attorney General’s report, Common Cause Rhode Island believes it is better to close this loophole now. We can point to public demand for this change. When Common Cause Rhode Island sent our petition to the Ethics Commission we also asked our members to sign a brief petition calling for the Commission to include lobbyists categorically into who is subject to the gift rule. Within hours 115 people signed that petition. Rhode Islanders support this proposed change.

The second part of our petition asks you to examine whether to add a question to the financial disclosure statement requiring disclosure of gifts given “but for” the fact that someone is a public official. Again, we feel the ILO Group investigations reveal that public officials are receiving gifts that currently are not limited by the gift rule but whose disclosure is in the public interest.¹⁴

At your last meeting you approved an advisory opinion for someone who will receive free out-of-state travel but for the fact that they are a public employee.¹⁵ As you mentioned in the advisory opinion you issued, they will have to disclose that under the travel disclosure question you adopted in 2012. If that person had been asking whether they could accept something other than travel, like tens of thousands of dollars of free consulting services, that person would not have been required to disclose the gift.

Currently the Code of Ethics requires reporting of gifts greater than \$100 received from an “interested person” § 36-14-17(b)(4). In other words, Rhode Island law requires reporting of illegal gifts--a useless exercise. Disclosure of legal gifts in other jurisdictions is quite common.

¹² Alabama, Alaska, Arizona, Arkansas, California, Colorado, Indiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and West Virginia. See: <https://www.ncsl.org/ethics/legislator-gift-restrictions> (Accessed on December 17, 2024). It is worth noting that all comparisons made in this letter are of legislative ethics rules. There are few states that have jurisdiction over all three branches of government as does the Rhode Island Ethics Commission. Legislative ethics rules are the most easily comparable.

¹³ Alabama, Arizona, California, Colorado, Maine, Maryland, Missouri, New Mexico, North Carolina, South Dakota, Utah, and West Virginia.

¹⁴ The SKDK contract was only revealed by a multi-year investigation by the Attorney General and State Police.

¹⁵ See AO 25-8: <https://ethics.ri.gov/2025-8>



At least twenty eight (28) other states require reporting of gifts, *other than travel*, that are legally given.¹⁶ We urge you to look at how you can amend the Code to make the gift reporting regime a useful one. The out-of-state travel rule you adopted in 2012 has been very successful at exposing gifts that are in the public interest.¹⁷ We believe revised rules for the disclosure of legal gifts would equally be in the public interest.

Finally, we asked you to examine the section of law that you are charged with enforcing that deals with procurement. While you might not have the ability to change that statute, you could examine whether the Code of Ethics, which you can amend, can be strengthened when it comes to procurement. Oversight of government contracts is part of your constitutional mandate.¹⁸ At the press conference where he announced the results of the investigation and legal analysis, Attorney General Peter Neronha pointed out that Rhode Island does not have a law against bid rigging for instance.¹⁹ We believe this is something the Commission should consider including in the Code of Ethics.

The ILO Group investigation has revealed a number of deficiencies in Rhode Island's public accountability laws. The Rhode Island Ethics Commission, uniquely among ethics commissions in the United States, has the power to amend the Code of Ethics you are also charged with enforcing.²⁰ You have exercised the power sparingly in recent decades. We believe the Ethics Commission should once again fulfill its constitutional mandate to make sure that public officials and employees "adhered to the highest standards of ethical conduct."

Sincerely,

John Marion
Executive Director

¹⁶ Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. See: <https://www.ncsl.org/ethics/financial-disclosures-gift-and-honoraria> (accessed February 3, 2025).

¹⁷ Local media has written dozens of stories using information gathered from the travel question on the financial disclosure statement. For one example see: <https://www.providencejournal.com/story/news/politics/state/2024/05/23/how-much-out-of-state-travel-time-have-ri-top-officials-logged-who-is-the-most-frequent-flyer-diossa/73808786007/>

¹⁸ Art. III, Sec. 8 begins, "The general assembly shall establish an independent non-partisan ethics commission which shall 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." [Emphasis added]

¹⁹ See: <https://www.providencejournal.com/story/news/politics/state/2024/10/30/ri-attorney-general-neronha-scolds-mckee-over-ilo-contract-steering-what-he-said/75940201007/>

²⁰ The Commission's own website notes its extraordinary powers, "The Rhode Island Supreme Court has recognized the Ethics Commission's constitutional authority to adopt and enact the Code of Ethics." See: <https://ethics.ri.gov/code-ethics/constitutional-authority>

