

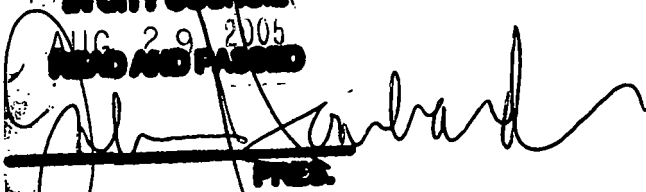
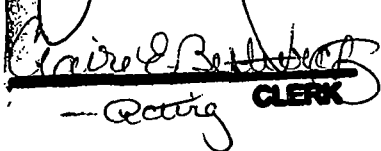
**THE CITY OF PROVIDENCE**  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

# RESOLUTION OF THE CITY COUNCIL

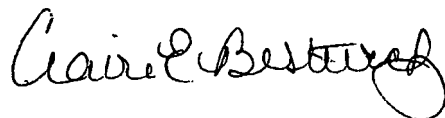
**No. 387**

EFFECTIVE ~~XXXXXX~~ September 8, 2005

RESOLVED, That the City Council hereby retains R. Kelly Sheridan, Esquire, under the provisions of the Providence Home Rule Charter of 1980, As Amended, Section 401(d), relative to the Cadillac Lounge, at the rate of \$150.00 per hour or a total amount not to exceed \$10,000.00.

**IN CITY COUNCIL**  
AUG 29 2005  
**READ AND PASSED**  
  
**PRE.**  
  
**CLERK**

Effective without the  
Mayor's Signature:



Claire E. Bestwick  
Acting City Clerk

CLERK

DEPT

RETD AND PRESSED

IN CILA CORRECT

Commissioner of Ports and Council on Romanu




THE CITY COUNCIL  
CITY HALL  
PROVIDENCE, R.I. 02903

**COPY**

## MEMORANDUM

TO: Joseph Fernandez, City Solicitor

FROM: Council Majority Leader Luis Aponte  Hand Delivered

Cc: Providence City Council

DATE: August 26, 2005

RE: **Legal Opinion – Cadillac Lounge**

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The purpose of this memorandum is to memorialize the points of our discussion from today regarding my request, on behalf of the City Council, that you issue a written explanation of the law departments opinion as conveyed by Deputy Solicitor Adrienne Southgate during last nights special council meeting.

Specifically, as discussed, I am requesting a comprehensive written opinion explaining the rationale used by the law department to arrive at the opinion that because they had provided legal advise to the Board of Licenses they would be in a conflicted position if they complied with the Resolution approved at last nights council meeting; "directing the City Solicitor to take all appropriate action under Article VI, Section 603, subsection (10) and (11) of the Providence Home Rule Charter, to stop the Board of Licenses from issuing a liquor license to the "Cadillac Lounge".

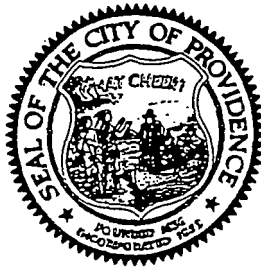
As you are aware from our conversations, there is serious disagreement regarding the law department's position in this matter. Considering the gravity of this situation, as well as the blatant disregard by the Board of Licenses of the city ordinance prohibiting the issuance of liquor licenses to businesses with adult entertainment licenses, your written explanation is eagerly anticipated.

On behalf of my fellow Council members, we look forward to your timely submission of the requested written opinion.

ANDREW J. ANNALDO  
Chairman & Secretary

ARLINE FELDMAN  
Vice-Chairman

JOAN BADWAY  
ARYS BATISTA  
STEPHEN DANIELS



DAVID N. CICILLINE  
Mayor

BOARD OF LICENSES  
*Building Pride in Providence*

August 29, 2005

The Cadillac Lounge, LLC.  
Ms. Nancy Shappy  
361 Charles Street  
Providence, Rhode Island 02903

RE; CEASE AND DESIST-2<sup>nd</sup> FLOOR

Dear Ms. Shappy:

Please be advised that you must cease and desist usage of the second floor per order of the Board of Licenses on a Motion made by; Commissioner Feldman and seconded by; Commissioner Batista. Commissioner Badway did not vote. Commissioner Daniels was absent. The vote 3-1. In favor of the motion.

This decision was made upon receiving a report from Assistant Deputy State Fire Marshall and a subsequent inspection the Providence Police Department and members of the Fire Marshals office. This inspection found the second floor of your establishment occupied and in use on August 26, 2005.

This area can not be utilized until you receive a certificate of occupancy.

Very truly yours,

A handwritten signature in cursive script that reads "Andrew J. Annaldo".  
Andrew J. Annaldo  
Chairman & Secretary

HAND DELIVERED; \_\_\_\_\_

CC: Deputy Fire Marshall George Galise-Sgt. Peter Costello License Enforcement  
City of Providence  
Phone (401) 271-2430 Fax (401) 271-2430

S. Farrell  
Marshal

George D. Calise  
Deputy Fire Marshal



David N. Cicilline  
Mayor

David D. Costa  
Chief of Department

## Providence Fire Prevention Division *"Smoke Detectors Save Lives"*

August 22, 2005

Mr. Richard Aitchison, License Administrator  
Providence Board of Licenses  
25 Dorrance Street  
Providence, RI 02903

Re: 361 Charles Street (The Cadillac Lounge, L.L.C.)—Liquor License Hearing

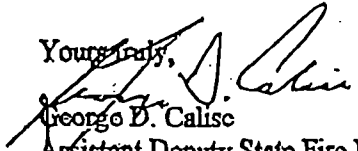
Dear Mr. Aitchison:

This letter is in response to your memo of July 13, 2005 for the above referenced facility. The Board of Licenses should be made aware by this letter that only a portion of 361 Charles Street has a valid certificate of occupancy. On June 11, 2004 plans were reviewed and approved for a new 2<sup>nd</sup> floor addition and 1<sup>st</sup> floor addition to the existing building (see the attached copy of the plan review letter of approval). The building owner obtained a building permit but did not complete the process by obtaining a certificate of occupancy for the additions. I conducted an inspection on May 11, 2005 and found numerous fire code deficiencies related to this new construction that require correction. I informed the owner representative, Mr. Ted Cardillo, that the 2<sup>nd</sup> floor and 1<sup>st</sup> floor additions were to remain vacant until such time as a fully executed certificate of occupancy was obtained for those spaces. It should go without saying that any new construction shall not be occupied without a certificate of occupancy.

If a liquor license is issued for this establishment, for the present time it should include only the first floor portion of the building that has a certificate of occupancy. It should specifically exclude all of 2<sup>nd</sup> floor and the 1st floor addition.

If you should have any questions regarding this matter, please call me.

Yours truly,

  
George D. Calise

Assistant Deputy State Fire Marshal

cc: Mr. Peter Casale  
Lt. Tim Lee



Department of Law

August 29, 2005

**BY HAND**

The Honorable Luis A. Aponte  
Majority Leader  
Providence City Council  
City Hall  
Providence, Rhode Island 02903

Re: Board of Licenses/Cadillac Lounge, LLC

Dear Mr. Majority Leader:

At the special meeting of the City Council on August 25, 2005, resolutions were passed directing me "to take all appropriate action under Article VI, Section 603, Subsection (10) and (11) of the Providence Home Rule Charter (the "Charter") to stop the Board of Licenses (the "Board") from issuing a liquor license to the 'Cadillac Lounge'" (the "Lounge"). As per your request, I hereby outline the "appropriate action" that I have taken in compliance with the Council resolutions and explain why the Department of Law was ethically required to respond as we have.

As you know, at the September 23, 2003, meeting of the Board, an Assistant City Solicitor, at my direction, advised the Board that it could not legally approve the transfer of a liquor license to the Lounge, an opinion which was reiterated (after discussion within the Law Department) in writing on or about December 8, 2003. The issue was scheduled to come before the Board again on August 10, 2005. At the request of the Board a separate "outside" attorney – George J. West, Esq. – was retained to render a second legal opinion on the issue. In his written opinion, Attorney West agreed with the conclusions that had been reached by the Law Department, *i.e.*, that the Board could not legally approve the transfer of a liquor license to the Lounge. Despite these legal opinions, the Board went ahead and approved the liquor license transfer to the Lounge at its August 10, 2005 meeting, thus precipitating the two Council resolutions which are the subject of this letter.

Article VI, Section 603 of the Charter provides in pertinent part that the powers and duties of the City Solicitor shall include:

275 Westminster Street, Suite 200 • Providence, Rhode Island 02903-1845  
(401) 421-7740 (Voice) • (401) 751-0203 (TDD) • (401) 351-7596 (Facsimile)

(10) *To apply*, when so instructed by the mayor or the city council, in the name of the city to a court of competent jurisdiction *for an injunction to restrain* the misapplication of funds of the city or *the abuse of its corporate powers* or the execution or performance of any contract which was made on behalf of the city in contravention of law or which was procured by fraud or corruption;

(11) *To apply*, when so instructed by the mayor or by the city council, or upon said city solicitor's own initiative, *for suitable process to stop any activity prohibited by this Charter*, or to compel the performance of any officer or employee of the city who fails to perform any duty, discharge any responsibility, or make any disclosure required by the terms of this Charter or by law.

See id., Subsections (10) and (11) (emphases added).

Presumably, the Council takes the position that the Board's action in approving the liquor license transfer constitutes: (a) an "abuse" of the City's "corporate powers" within the meaning of Subsection (10), above; and/or (b) "activity prohibited by the Charter" within the meaning of Subsection (11), above. As will be discussed, even if one were to assume for present purposes that the action of the Board fell within the ambit of the conduct contemplated by (a) or (b), above, neither I nor any attorney employed by me can ethically represent the City (in whatever capacity) in an action against the Board in connection with the matter.

Rule 1.13(a) of the Rhode Island Rules of Professional Conduct, entitled "Organization as client," provides that: "[a] lawyer employed or retained by an organization represents the organization *acting through its duly authorized constituents*." Id. (emphasis added). The Commentary to the Rule makes clear that it applies to government organizations. See Commentary, 2005 Annotated Rulebook at p. 145. As noted by the Committee on Professional Ethics of the New York State Bar Association:

When a governmental body is organized into a number of separate departments or agencies, such department or agency, and not the parent governmental unit, should be treated as the client for purposes of the rule which forbids the concurrent representation of one client against another.

See Josephson and Pearce, *To Whom Does the Government Lawyer Owe the Duty of Loyalty When Clients are in Conflict?*, 29 How. L.J. 539, 546 (1986), *quoting* N.Y. State Bar Ass'n Comm. on Professional Ethics, Op. 501 (1979).

Applying the above principles, it is apparent that the Law Department, through the Assistant City Solicitor who, at my direction, provided the legal advice to the Board

relative to the Lounge on September 23, 2003 and thereafter, was clearly acting as the attorney for the Board, which was the *duly authorized constituent of the City*, or “client,” for relevant purposes. It also would appear that, *at least with respect to this one issue*, the Assistant City Solicitor and the Law Department ceased acting as attorney for the Board on the matter as of the date in August of 2005 when Attorney West was retained to advise the Board on the issue. In any event, as will be discussed, whether or not the Board is an *existing* or *former* client of the Law Department is irrelevant as the Law Department would be precluded from taking action adverse to the Board on this issue in either case.

Assuming that the Board is a former client, Article V, Rule 1.9 of the Rhode Island Rules of Professional Conduct, entitled “Conflict of Interest: Former Client” provides, in pertinent part, as follows:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

The Commentary to Rule 1.9 sheds some light on its scope, stating:

The scope of a ‘matter’ for purposes of paragraph (a) may depend on the facts of a particular situation or transaction. The lawyer’s involvement in a matter can also be a question of degree. *When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited.*

Id. at Commentary (emphasis added).

If one were to assume that the Board is a presently-existing client of the Law Department, Rule 1.7 (as opposed to Rule 1.9) would be applicable. Rule 1.7 provides in pertinent part that:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.



Id.

Here, it is clear, at least with respect to this one issue, that the City Council and the Board are "directly adverse." I do not believe continued representation of either on this particular matter can be accomplished without adversely affecting my relationship (and the relationship of the Law Department) to the other, and the Board has not, and presumably would not, consent to being sued.

In addition, disqualification under either Rule 1.7 or 1.9 would be imputed to the other attorneys employed by the Law Department under Rule 1.10, which provides in pertinent part that: "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by [*inter alia*] Rules 1.7 or 1.9." Id. This rule of imputation has been held to apply to government lawyers. As the court noted in Gray v. Rhode Island Dep't of Children, Youth and Families, 937 F. Supp. 153, 158 (D.R.I. 1996):

Governmental attorneys are also generally held to a higher standard because of the fact that their position within the government lends itself to publicity and notoriety. '[T]heir conduct must be even more circumspect than the conduct of private attorneys because government attorneys are 'invested with the public trust and because they are more visible to the public.' State of New Jersey v. Irizarry, 271 N.J.Super. 577, 639 A.2d 305, 315 (App.Div.1994) (*citing In re Opinion No. 569*, 103 N.J. 325, 511 A.2d 119, 122 (1986)).

Id.

As a result of the ethical constraints upon my conduct and the conduct of lawyers employed by me, I do not believe it would be appropriate for me to hire an outside attorney to take action against my former client, i.e., the Board. This, I believe, would be substantively different from hiring another attorney, at the Board's request, to take another look at the issue, as I did in the case of Attorney West. This would also be different from the many situations in which the Solicitor has hired outside attorneys to represent, or oppose, a City client where the Law Department did not have an ethical conflict of interest with that client. Therefore, on August 25, I informed the Council that, since the Council has the express power under the Charter to retain any outside consultants, including attorneys, "it deems necessary for the exercise of its functions," see Charter, Section 401, Subsection (d), it is necessary for the Council to do so on its own, rather than with my involvement.<sup>1</sup> Also, on August 25, I advised Attorney R. Kelly Sheridan to expect a call from you.

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<sup>1</sup> I am aware that the Charter also provides that any attorney hired by the Council is "subordinate to the Solicitor." See Charter, Section 603, Subsection (b) (2). However, that provision must be read in a manner that does not conflict with applicable ethics provisions.

It should be noted although there clearly are situations contemplated under the Charter where the Solicitor, either independently or at the behest of the Mayor or the Council, should move to stop certain illegal action, this obligation should always be exercised in a manner consistent not only with the Solicitor's ethical obligations, but also with an eye towards the nature and clear illegality of the relevant conduct. The fact that a city board or other "client" of the Solicitor disagrees with the legal opinion of the Solicitor does not automatically mandate that the Solicitor take legal action against the "client" to compel action in conformity with the Solicitor's opinion.

Finally, at the Council's request, we contacted Disciplinary Counsel for the Rhode Island Supreme Court on Friday, August 26. We received a verbal response from the Chief Disciplinary Counsel today, August 29, indicating that Disciplinary Counsel (1) does not become involved in "political questions," (2) does not interpret questions involving the interplay of the Rules of Professional Conduct and local charters or ordinances, and (3) does not issue advisory opinions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe Fernandez", written over a horizontal line.

Joseph M. Fernandez  
City Solicitor