

Complaint # 2010-1

Decision following Initial Review

Procedural Background

This complaint was received by the Committee on March 18, 2010. It was submitted by Ryan Williams, Communications Director of the Republican State Committee, on behalf of the Republican State Committee, requesting that the Legislative Ethics Committee investigate conduct of Representative Daniel Eaton.

As submitted, the complaint contained no allegations of fact based on the complainant's personal knowledge, but was supported only by attached copies of news accounts relating to allegations made by certain personnel at the State Liquor Commission. The persons who made those allegations had not seen fit to submit any complaint to the Committee.

Although the Committee does not proceed based solely on unverified news accounts, the Committee was aware that the matters stated in the news accounts were under active investigation by the New Hampshire Department of Justice, and that the Committee has the authority to investigate allegations of improper conduct. RSA 14-B:3, I (d). On the assumption that the results of the DOJ investigation would be provided to the Committee when complete, as had been the case with a previous DOJ investigation, the complaint was promptly docketed, and by letter dated March 26, the complainant and respondent were notified that in light of the pending DOJ investigation, and to avoid interfering with or compromising that investigation, the Committee would defer further action on the complaint until the DOJ investigation had been completed.

In anticipation of receipt of the DOJ report, the matter was tentatively scheduled to be taken up at the Committee's meeting of May 17, 2010. However, on or about May 12, the Committee learned that the DOJ investigation report would not be made available to the Committee before the meeting date, and the matter was removed from the tentative agenda.

By letter to the Committee dated May 13, based on news accounts that the DOJ investigation had been completed, the complainant inquired about the status of the complaint. The Committee reviewed the status in non public session at its meeting of May 17, and by letter of May 21, 2010, informed the complainant and the respondent that it would not take action on the complaint pending the availability of the DOJ investigation report.

On or about June 14, 2010, the Committee again inquired about the availability of the DOJ investigation report, was informed that a petition would shortly be instituted before the Governor and Council stemming from the investigation, and that the

investigation report would not be made available prior to institution of the G&C proceeding. The Committee obtained a copy of the G&C petition dated June 23, which contained a footnote appearing on page 2, stating that the respondent had been a subject of investigation. This was the first public confirmation of that fact. By letter to DOJ dated June 24, 2010, the Committee formally requested that it be provided with copies of all materials relating to that investigation. Copies of that letter were transmitted to the complainant and the respondent dated June 25.

The Committee's Executive Administrator was informed by the DOJ by telephone on June 30 that no materials would be forthcoming in the short term in response to the Committee's request. In a telephone conversation on July 7, the Committee Chair was informed of concerns on the part of the DOJ that disclosure of investigation materials to the Committee could compromise the efficient conduct of proceedings before the G & C, and was told that a letter to the Committee would be forthcoming to that effect. The Committee reviewed the status of the matter at its meeting of July 8, 2010, and concluded that it would defer further action pending receipt of the letter from DOJ regarding availability of the DOJ investigation report.

In a letter received by the Committee on August 6, 2010, the DOJ proposed that the investigation materials not be made available to the Committee until the conclusion of the public hearing on the G&C petition, because the Committee's rules would not permit holding the materials confidential from the parties to a complaint in the course of conducting its initial review. The Committee acceded to this proposal by letter to DOJ of August 11.

By letter dated September 23, the DOJ transmitted copies of its investigation materials to the Committee. This was the first time the Committee was provided with information based on personal knowledge regarding the subject matter of the complaint. By letter of September 24, the Committee informed the complainant and respondent that the materials had been received, that the Committee had requested the full record of the G&C proceeding, and that when it was received, the Committee would schedule a meeting to pursue further consideration of the complaint. By letter of October 1, the Committee informed the parties that copies of the investigative materials, as well as transcripts of certain associated grand jury testimony, had been distributed to Committee members, and would be available to the parties on request. The parties were informed that a meeting of the Committee was in the process of being scheduled.

By letter of November 2, 2010, the Committee informed the parties that the record of the G& C proceedings had been received by the Committee and was available to the parties on-line. The letter also advised the parties that the Committee would conduct its initial review of the complaint at its meeting scheduled for November 16, 2010. On November 5, 2010, the Committee received a hand delivered letter dated November 1, in which the respondent for the first time challenged the sufficiency of the complaint as not based on the personal knowledge of the complainant.

Decision

The Committee's initial review of this complaint was conducted on November 16, 2010 in accordance with RSA 14-B:4, I (b) and Committee Procedural Rule 4. Material reviewed by the Committee included the complaint, the investigative materials compiled by the NH Department of Justice in connection with its petition to the Governor and Council in the matter of Mark Bodi, certain related grand jury testimony of Mr. Bodi, the transcripts of the G& C proceedings, and the written decision of the G&C in the matter. The Committee also considered the letter from the respondent received November 5, 2010, asserting that the complaint as originally submitted was not supported by requisite "personal knowledge."

The complaint concerns the Respondent's alleged conduct in connection with enforcement action pursued by State Liquor Commission personnel against a liquor licensee in Keene, NH. Specifically, the complaint asserts that the respondent's alleged conduct involved activities prohibited under Ethics Guidelines, Section 4, subparagraphs (c) and (d), thereby violating the Principle of Public Service that legislators must treat their office as a public trust.

The provisions of the Guidelines cited in the complaint are:

4 PROHIBITED ACTIVITIES.

* * *

II. Legislators shall not:

* * *

(c) Threaten reprisals or promise inducements of any kind to influence another so as to obtain special personal benefits for the legislator, the legislator's immediate family, or for certain constituents which would not be available to others under similar conditions.

(d) Conduct private negotiations with any governmental agency in an attempt to obtain a decision on a pending matter which would result in special personal benefit to the legislator, to the legislator's immediate family, or to certain constituents which would not be available to others under similar conditions.

* * *

1 PRINCIPLES OF PUBLIC SERVICE.

I. Public Office As A Public Trust

Legislators should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.

* * *

Also relevant to determining the merits of the complaint would be the following additional provisions of Section 4 of the Guidelines:

VII. Nothing in this section on prohibited activities should be construed to prohibit the following:

* * *

(b) Assistance to constituents in their dealings with state agencies.

(c) Advocacy of a particular outcome on matters pending before a state agency when the legislator believes such a decision would benefit the general public or the legislator's constituents generally.

While the complaint itself was based solely on unverified news accounts, rather than personal knowledge of the complainant, the referenced materials subsequently obtained by the Committee indicate that the allegations of the complaint may have merit, and support undertaking a preliminary investigation into the alleged conduct of the respondent, to determine whether there is sufficient cause to warrant further proceedings with regard to his alleged contacts with personnel of the State Liquor Commission, relative to certain enforcement proceedings against the Railroad Tavern, Keene, NH, and whether such contacts may have violated the stated provisions of the Guidelines.

This decision does not constitute a determination of the merits of the complaint, or a finding of misconduct.

Under the Committee's Rules, Representative Eaton will have 14 days from the date of this notice to submit a response. Procedural Rule 5.

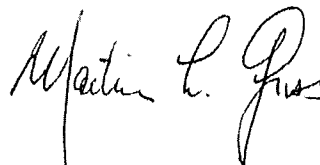
The Committee notes, however, that Representative Eaton's term of office will expire as of 12:01 a.m., December 1, 2010. N.H Const., Part 2, Art. 3. After that time he will no longer be a member of the General Court, and as such his conduct will not fall within the jurisdiction of the Committee. RSA 14-B:1, I.

Under these circumstances, there is no practical way that the Committee can proceed with, let alone conclude, a preliminary investigation prior to losing jurisdiction over the matter. Accordingly, the Committee will take no further action on the complaint at this time, and will terminate further proceedings in this matter as of 12:01 a.m., December 1, 2010, for want of jurisdiction.

In accordance with RSA 14-B:4, IV and Procedural Rule 3, III, all records relating to the complaint, other than the Committee's work product and internal memoranda, shall be available for public inspection.

November 16, 2010

For the Committee



Martin L. Gross
Chairman