

MINUTES  
LEGISLATIVE ETHICS COMMITTEE  
FEBRUARY 5, 2008 MEETING  
{Approved: February 5, 2008}

The Legislative Ethics Committee (RSA 14-B:2) held a joint meeting with the Executive Branch Ethics Committee (RSA 21-G:29) on Tuesday, February 5, 2008, at 12:00 p.m. in Room 308 of the Legislative Office Building.

The following members of the Legislative Ethics Committee (LEC) were present: Attorney Russell F. Hilliard, Chairman, Representative Janet G. Wall, Vice Chairman, Senator Sheila Roberge, Senator Peter H. Burling, Representative Eric Anderson, and Attorney Martin L. Gross. Attorney Kimon S. Zachos was unable to attend.

The following members of the Executive Branch Ethics Committee (EBEC) were present: Dale S. Kuehne, Vice Chairman, John E. Blair, Secretary, Attorney Patricia B. Quigley, Attorney Deborah J. Schachter, and Karol LaCroix. Attorney David L. Nixon, Chairman, was unable to attend. Also in attendance were Associate Attorney General M. Kristin Spath, who filled in for Deputy Attorney General Orville B. "Bud" Fitch as legal counsel for the EBEC, and Kara-Lee Bean, Recording Secretary.

LEC Chairman Hilliard asked the members of the 2 committees and their staff to introduce themselves.

Chairman Hilliard then called upon Senator Burling, who had asked to make a statement. Senator Burling had the following comments about the passing of Malcolm McLane and Bert Teague:

"Something happened earlier this week with the passing of Malcolm McLane and Bert Teague and it's not just two men are gone, but it has to do with people who established in this legislature and this state, honesty, verity, commitment to public service and public life. With my dear friend Carolyn Gross, they taught me everything I ever knew about the way government ought to work in this place. And I just wanted to take a moment on the record to say what we do here must be a reflection of the values that those folks brought to the City of Concord, and they will be sorely missed."

Chairman Hilliard said that Bert Teague was the father of one of his law partners, John Teague, and he knew Bert Teague in the ways Senator Burling described him, and in many other ways as well. He said he was "a tremendous person." He thanked Senator Burling for sharing his thoughts.

The joint meeting of the 2 committees consisted of the following items:

ITEM #1

Discussion of changes enacted during the 2007 legislative session to RSA 15-B and other ethics statutes affecting both committees.

Chairman Hilliard asked Rich Lambert, the LEC's Executive Administrator, to recap the changes, and he suggested the 2 committees then could find out from the House and Senate members present what else is in the works.

Mr. Lambert said that there had been an amendment to RSA 15-B that made several changes; some of the changes applied only to the legislative branch. One change had to do with establishing a reporting requirement for meals and beverages exceeding \$25 consumed in the course of official business. Other changes, he said, were intended to create greater clarity in RSA 15-B.

Chairman Hilliard asked if there were any changes on the executive side that should be on the table for purposes of discussion.

Mr. Blair asked about the restrictions on political activities in the legislation that established the EBEC.

Attorney Gross said there were people on the House Election Law Committee who insisted that members of the EBEC should be "political neuters" and they seemed to think that was important, that it be sort of like the State Ballot Law Commission. The committee said the first thing should be that EBEC members should not contribute to any candidates but, he said, when they got to the term "publicly endorsed," he said to the House Election Law Committee that New Hampshire is full of political activists and that's one of the things that makes us strong. But the committee, he said, said that it was the appearance of "apoliticality" -- if someone has endorsed a candidate, then someone from the outside could say that they're being driven by some motivation or the other.

Chairman Hilliard noted that at the last joint meeting, EBEC Chairman David Nixon raised the point as well.

Attorney Schachter said she has also raised the issue and the thought she had for a distinction that might be palatable was to distinguish state from federal elective office because candidates for U.S. office are not going to be coming before the EBEC.

Attorney Gross said that if there is any resolve on the part of the EBEC to do something about the issue, there is House Bill 91, which has passed the House and is headed to Senator Burling's committee in the Senate. Such a change, he said, would be germane because there is already a piece in the bill that changes the prohibition on volunteers. He added that there was a very difficult prohibition in the original legislation {2006 Senate Bill 206} and HB 91 has language that trims that down and makes it much more manageable. So, he said, if there is any disposition on the part of the EBEC members to do something about the issue, HB 91 would be an opportunity.

Chairman Hilliard asked Attorney Gross if any part of the thought when the legislation {SB 206} was being developed was that, in the context of the LEC where there are bi-partisan appointments and the theory of a politically-balanced committee, was that not also true of the EBEC.

Attorney Gross said that the EBEC is also politically balanced, in a rather peculiar way, because it is not only balanced by party registration, but the appointments are distributed among the governor, secretary of state, and state treasurer. The thinking, he said, was that somehow the dispersion of appointment power would somehow prevent the EBEC from becoming a mechanism dominated by the governor.

Chairman Hilliard asked if there were any further comment about HB 91.

Attorney Gross noted section 8 of the bill, which would repeal and reenact RSA 21-G:25 with a much more simplified provision than currently exists. He then summarized the section.

Chairman Hilliard asked if HB 91 was the only legislation pending that would impact the EBEC.

Senator Burling said that he sponsored another bill {2008 SB 482} that relates to the current restriction on volunteer public service. He also said that it is his belief that "all of this process began as an effort to embarrass the governor and the politics that swirled around the passage of this legislation was designed to come up with a bill that was so cumbersome, so cuckoo, that he would have to veto it, thereby going against one of his own campaign pledges." He said that there are a couple of vehicles that could be used to make appropriate changes to the ethics laws and encouraged everyone to give his committee their best thoughts and said they would do everything they can to make corrections.

EBEC Vice Chairman Kuehne said that his committee would want to discuss it and get back to Senator Burling.

Chairman Hilliard asked if there were any other bills in the hopper that could affect the LEC.

Senator Burling talked about another bill he sponsored {2008 SB 499}, which he said had passed the Senate and was on its way to the House. The fundamental principal of the bill, he said, is that if one knowingly and intentionally leaks information that is part of a confidential proceeding, you are guilty of a misdemeanor.

Chairman Hilliard said the bill would make the LEC's statute parallel to the EBEC's. He said the LEC had one experience where a person -- a member of the public otherwise beyond the Committee's jurisdiction -- did not honor the confidentiality requirement in the statute and there was nothing the Committee could do about it.

Attorney Gross had another observation about HB 91. He said Section 6 affects the gift law by expanding the exclusion to gift to include services as well as objects.

## ITEM #2

Discussion of a joint effort to identify any interpretive problems in existing law and the possibility of agreeing on a joint approach to remedial legislation.

Chairman Hilliard said that the LEC is currently in the process of trying to make the *Ethics Guidelines* consistent with SB 206.

Attorney Gross asked if anyone had detected any divergence -- actual or potential -- in the interpretations of RSA 15-B, particularly in the meaning of "gift." The law, he pointed out, requires the two committees to exchange copies of their guidelines, interpretations, and advisory opinions. He said he had not seen anything from the EBEC that made him worry and asked if the members of the EBEC had seen anything from the LEC that gave them concern.

EBEC Vice Chairman Kuehne said that the past year has been a year where the EBEC has begun to try to understand what they are about and where their charge is. He said their discussions have been driven by the cases that have been brought to them rather than stepping back in a sort of a "big picture" way and thinking about how things ought to look. He said their biggest points of discussion have centered around issues related to conflicts of interest and recusal.

Attorney Schachter said her committee may want to clarify what matters are outside their scope so folks are clear about what the EBEC can address.

Chairman Hilliard observed that, in its opinions, the EBEC often ends up dealing with case law, where the LEC looks at the *Ethics Guidelines*. He asked if the executive departments each have their own ethics rules.

EBEC Vice Chairman Kuehne said if a department has its own ethical rules, the EBEC will not counteract them.

Attorney Gross asked if a department's own ethics code is stricter, does it apply. He asked if the EBEC would tell a department "your standard is too strict."

EBEC Vice Chairman Kuehne said his committee would say it goes further than the statute requires and they could start a discussion.

### ITEM #3

Development of joint educational sessions for members of the legislative and executive branches.

Chairman Hilliard said that, from his committee's side, the situation was in such a state of flux about getting the *Ethics Guidelines* straightened out, that it was hard to jump to the next step and try to inform someone about them.

Attorney Quigley said that Deputy Attorney General Fitch and the staff of the Attorney General's Office had organized seminars in a few executive agencies and EBEC Chairman David Nixon had participated in a couple of them.

EBEC Vice Chairman Kuehne said that his committee viewed the educational sessions as very important because the committee doesn't want to be a "gotcha" committee; they want to be a committee that helps individuals make good choices and to know what the rules are along the way. He said he thinks the educational effort is an important function.

### ITEM #4

Discussion of collaborating on educational brochures on ethics.

Representative Wall passed out copies of the EBEC's educational brochures and recalled how the two committees discussed at their prior joint meeting in June whether the LEC would like to be included on the brochures' cover pages as endorsing their content. She said the LEC agreed it would analyze the brochures' content to see how it worked with the LEC's own guidelines. It would be wise, she said, to have the whole thing compatible.

Chairman Hilliard said he saw a two-step process: 1) making sure everything in the brochures is consistent with what the LEC has said in its opinions and rulings; and 2) working toward some joint publication and including the LEC's name.

EBEC Vice Chairman Kuehne suggested including the judicial branch, too, if the committees could find common ground.

Attorney Gross said that would be a great aspiration, but a lot of people were still shell-shocked from the aftermath of SB 206. He suggested that someone might encourage the Chief Justice to get the Judicial Conduct Committee to participate in a joint meeting with the LEC and EBEC.

Following further discussion, Chairman Hilliard urged the LEC members to go over the brochures to make certain the content agrees with LEC positions.

Senator Burling said that "it is absolutely clear that there is another prerequisite that has to be met: the legislature needs to figure out what it wants to have as a reasonable set of rules and requirements" and, he said, "we are not there yet."

After further discussion, Representative Wall said she agreed with Senator Burling, but she urged the committees to keep on the table the issue of collaborating on the brochures.

Senator Burling said that, as much as one would want to say we can sign on to educational joint documents, one could hand them out to the House of Representatives and come back with a majority that wants to amend the whole thing.

Chairman Hilliard said that is why the LEC has had such a struggle trying to get the *Guidelines* consistent with statute and having both houses comfortable with how the Committee has reworded the *Guidelines*.

Senator Burling suggested it would be helpful to take the brochures and present them to legislative leadership and say "this is where we need to get to, something that is understandable and readable."

Attorney Gross noted that one of the pamphlets relating to gifts needs to be updated to reflect 2007 legislation concerning the definition of gifts.

EBEC Vice Chairman Kuehne suggested the two committees consider putting together a half-day conference at which they could develop some consensus and look at other states' laws.

Representative Wall said it could be hard to get everyone together for a half day.

Senator Burling suggested, as an alternative, a get-together in the spring at which a small group could prepare changes that would represent "the best thing we can get," which could then be presented to leadership.

The joint meeting adjourned at approximately 1:15 p.m.

Chairman Hilliard suggested the Legislative Ethics Committee go into nonpublic session to discuss a personnel matter. Senator Burling moved to enter nonpublic session. Attorney Gross seconded the motion and the Committee voted as follows:

Senator Roberge	Yea
Attorney Gross	Yea
Representative Anderson	Yea
Senator Burling	Yea
Representative Wall	Yea
Attorney Hilliard	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

The Legislative Ethics Committee then held a separate meeting at approximately 1:30 p.m. which consisted of the following items:

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on October 29, 2007.

Following review, Attorney Gross moved to adopt the *Minutes* as drafted. Senator Burling seconded the motion and the Committee voted 6-0 in favor.

ITEM #2

Discussion of reconsideration of *Interpretative Ruling 2007-#1*.

Chairman Hilliard said that with the Committee's indulgence he would like to move away from the formal agenda and take up Senator Burling's letter of February 5, 2008, which was distributed to the Committee.

Senator Burling said he appreciated the Committee taking up the matter and said it was an "awkward moment" for him, but the fact of the matter was that the issue had come clearly to his attention and he would like to move reconsideration of *Interpretative Ruling 2007-#1*, as adopted by the Committee on October 29, 2007. The motion was seconded by Attorney Gross.

Senator Burling then asked if Attorney Jeffrey A. Meyers, Senate Legal Counsel, could address the Committee.

Attorney Meyers said there were 2 issues. The first point, he said, pertained to Issue 2A of the ruling pertaining to the requirement added very late in the process, either at the August 28 or October 29, 2007 meeting, that conditions the acceptance of a complimentary ticket to an annual dinner of, for example, a charitable organization to the legislator's receipt of the ticket directly from the sponsoring organization and not from a third party, such as a lobbyist or somebody else. That requirement, Attorney Meyers said, was added to the ruling very late in the game. He asked the Committee to recall that the interpretative ruling was actually approved by the Committee in February 2007, and then, because of scheduling issues and concerns that there was more work to do on the ruling, it "kind of sat in front of the Committee" without being transmitted formally to the Speaker of the House and Senate President as is customarily the case. Then in August, there were changes that were brought forward at the suggestion of some members of the Committee, including the changes in question. He said the concern that is being raised in the Senate with respect to the particular item is that the conditioning of the receipt of the ticket directly from the sponsoring organization is not now required by the statute. And, he said, the legislature last year went back and amended the definition of a "gift" and did not make any changes that would support that aspect of the ruling. And so, the question that has been raised is "Is it consistent with statute?" Attorney Meyers said that if you look at the jurisdictional statute of the Committee -- RSA 14-B:3, I (a) and (b) -- the statute is clear that the guidelines issued by the Committee have to be consistent with the statute. It doesn't have that same language with respect to the interpretative rulings, but what Senator Burling is suggesting in his letter is that it's only common sense that the purpose of an interpretative ruling is to help explain and elucidate for legislators what a requirement is under the *Guidelines* or a statute. An interpretative ruling, he said, is not a vehicle to create new requirements, and what Senator Burling is suggesting in his letter is that the new condition is in effect a new requirement that would be perfectly appropriate for the legislature to enact if the legislature deems it appropriate. But, he said, it was not appropriate, as Senator Burling's letter suggests, for the Committee to graft that onto its interpretative ruling without it having been reviewed by the legislature.

Chairman Hilliard asked if the Committee had any questions about the first point.

Attorney Gross said he would like to identify how the "direct offer" provision got into the ruling.

Attorney Meyers said it is reflected in the *Minutes* of the August 28, 2007 meeting on page 5 {see Item #4, pages 4-10}.

Attorney Gross said he remembered saying that the problem with the tickets is that they become "lobbyists' currency."

Attorney Meyers said, according to the *Minutes*, there had been discussion by various members, and House Counsel David Frydman, and the discussion initiated with the fact that Attorney Gross brought up that not all chambers of commerce are charitable organizations registered with the Bureau of Charitable Trusts or under section 501(c)(3). He said there was discussion about whether the ruling should reflect that not all chambers of commerce are registered. He said that Attorney Frydman then raised another issue, asking about a situation where a lobbyist purchases the ticket and then gives it to a legislator to attend this type of event. Attorney Meyers quoted Attorney Frydman from the *Minutes* as saying: "The exclusion, as he reads 15-B, does not pertain to the organization providing the free ticket, but is about a free ticket or admission to an event." Attorney Meyers said that Attorney Frydman's interpretation of the statute was that the legislator receives the ticket but not that it is provided by any third party.

Attorney Gross asked if the source of the suggestion was counsel for the House.

Attorney Meyers said that was "correct." Attorney Meyers said that there was additional discussion and then Chairman Hilliard asked if it was true that the statute as worded does not distinguish between the gift coming directly from a lobbyist as opposed from a nonprofit organization. Attorney Meyers said that Mr. Lambert replied that that point was not clear. Attorney Meyers said that his reading of the statute, as in effect now, is it would not prohibit a third party from providing the ticket, that act would not be unlawful under the statute.

Chairman Hilliard asked what subsection of 15-B should the Committee be looking at.

Senator Burling said it was RSA 15-B:2, V(b)(9)(A) and (B).

Chairman Hilliard asked Attorney Meyers if what he read was the sequence in the *Minutes* that Attorney Frydman made the comment and where the Committee put the word "directly" in the interpretative ruling.

Attorney Meyers said that actually the *Minutes* attribute to Attorney Gross the statement that he was trying to think back to the "'winking and nudging' going on in the House Election Law Committee trying to think whether the provision was intentionally left unclear." Attorney Meyers then quoted the account of Attorney Gross' comments from the *Minutes*: "He said if you are going to parse the statute (RSA 15-B), you have to look back to the beginning of the paragraph where 'gift' is defined as any other tangible thing having more than insignificant economic value and '(b)' which states that 'notwithstanding subparagraph (a), 'gift' shall not include...' He said 'we know that if it were not for '(9)', a free ticket to an event like in Chairman Hilliard's example would be something more than insignificant economic value, but '(9)' as a category takes out the ticket for the free admission and it doesn't depend on who the immediate giver of the benefit is."

Attorney Gross said that that is what the statute says.

Attorney Meyers replied, "right, and you were just giving your view of that."

Chairman Hilliard stated that the statute does not say "to the contrary."

Attorney Meyers said that was the point, the statute does not say "to the contrary" and there is a "fairly well-developed law of statutory construction" in New Hampshire that "the court doesn't supplant its view, it presumes that the legislature knows how to phrase a statute." He said that in a case cited in Senator Burling's letter, the court held that a court should not read into a statute what the legislature doesn't put there if it is otherwise plain language.

Senator Burling said that the only thing he would add to Attorney Meyers' comments was that "it is not simply a matter of legislative interpretation and parsing of words, we clearly are running into a concern of legislative leadership, so there is a political ramification of this as well."

Attorney Gross asked if the Committee were to "do what you guys want us to do, what does the House leadership whose representative who is counsel made this suggestion, to pull the teeth of this exemption from the lobbyists' currency, what do they say?"

Senator Burling said that it was important to remember what he asked the Committee to do -- to reconsider. He said that he hoped that the Committee would schedule the matter at a point when the House counsel could attend with Attorney Meyers and the Committee could have some clarity from leadership.

Chairman Hilliard asked Senator Burling if he meant he was just asking the Committee to agree to reconsider.

Senator Burling said his motion was to reconsider and that he "would think that we need to get everybody in here." He said: "we need to get an agreement of the legislative leaders as to what they mean and intend us to do."

Attorney Meyers said he had spoken with Attorney Frydman and it was not clear to him that Attorney Frydman was speaking for himself or if he was speaking for legislative leadership when he made his comments. He said he thought it was important to clarify that, and he agreed with Senator Burling that the intent was only to vote to reconsider and not to adopt new language.

Attorney Gross said "it would be appropriate for me or someone else on this committee to ask whoever it is who is contending for changing what we have done to tell us how in real life it affects the commerce in gifts. I want to make sure we don't talk around these issues anymore. I want to have somebody who wants us to do something stand up and have the courage to say what's really happening."

Attorney Meyers said he thought "as a practical matter, it's understood that in some events, maybe many events -- I have not done a survey, it's only anecdotal -- tickets to these events in the past are, in fact, provided by lobbyists. I don't think anyone is denying that."

Attorney Gross said "I see that as a problem."

Attorney Meyers said that the legislature may determine that, in fact, that problem should be addressed and all that Senator Burling's letter tries to convey is that's an issue that should be addressed by the full legislature and not necessarily through an interpretative ruling where the statute would appear to permit that practice taking place.

Attorney Gross said someone asked the Committee to interpret the issue and the suggestion was made. He said that "all I'm saying is that when we get it out on the table, let's get it out on the table...it was a suggestion made by somebody -- and I thought you were part of it -- that we put together some comprehensive kinds of things that could be handed to legislators that could deal with questions frequently asked. And a question frequently asked is: 'I've been handed a ticket for a Chamber of Commerce dinner, can I take it?' We didn't make up that question, people asked us to answer it so the response that we have so far is not that we're making something up, people asked us ... to advise that."

Attorney Meyers said that was "right," and "the letter suggests that, in interpreting the acceptability in that situation, the Committee has adopted a ruling that has a requirement that is not in the statute, that seems to be a new requirement."

Senator Burling said what the Committee could clearly say is "you can take the ticket if you get it directly from the chamber, but if it comes from somebody else, we don't know."

Attorney Meyers said that could be the response.

Senator Burling said the "veneer" the Committee put on it was "because we don't know we assume you can't have it."

Attorney Gross said he could see what Senator Burling was saying: "in other words, it would be open to us if we do reconsider to put a gloss on saying: 'if the chamber is a charitable organization and you get it directly from them, then you're free and clear, but if you get it from an intermediary, you may be subject to challenge from somebody.'"

Several Committee members indicated agreement.

Chairman Hilliard suggested the Committee go on to the second point in Senator Burling's letter.

Attorney Meyers said the second point was with respect to section 4 of the ruling that was approved on October 29 dealing with acceptance of meals and beverages from private individuals who have interests before the legislature when official business is discussed. He said that from his reading of the *Minutes* from the October 29 meeting, it was noted that the *Ethics Guidelines* contain an annual limit as to what a legislator can accept -- no more than \$250 a year -- and there was some discomfort voiced at the meeting about an open-ended acceptance of the value of the meal and beverages even if official business is discussed. And so, he said, the Committee voted to take language from the *Guidelines* and apply it to the end of the ruling, saying this is still subject to the \$250 limit, so you can take meals over \$25 if official business is discussed, but it is subject to the annual cap of \$250. The point of Senator Burling's letter with respect to this issue, he said, is if you look at the Committee's jurisdictional statute, RSA 14-B:3, I(a), it says that any guidelines issued by the Committee have to be consistent with statute. He said the legislature last session "specifically amended this very provision in 15-B but did not include an annual cap, and again at the meeting, applying the same principles of statutory construction, the legislature knew the *Guidelines* cap was there, certainly it is presumed to be aware of it, and amended this very section, but did not include the cap." He said there was discussion at the meeting that 'well, the Committee is free to apply standards through the *Guidelines* that are stricter than the statute,' but he said he thinks that that raises a very interesting point in terms of the Committee's jurisdiction that any *Guidelines* have to be consistent with statute.

Senator Burling said "in this case the statute doesn't contemplate a cap, period."

Attorney Meyers said Senator Burling's letter suggests that the *Guidelines* may be outdated given the fact that they still reflect an annual cap that could be applied in this meal situation. The letter, he said, does not argue that this is not the right policy outcome, but rather that the legislature has to decide whether or not to put a cap on and what the proper amount of that cap is. He referred to the bill coming to the Senate and said it could be a vehicle for the issues the Committee was discussing as well as the issues discussed at the joint meeting. He said the letter is very clear that Senator Burling personally feels that these may be right policy choices for the legislature to make, but it should be done in that context and not in an interpretative ruling.

Chairman Hilliard said he remembered the Committee's discussion and how Representative Anderson raised a question about a meal a week -- a lobster dinner a week with one particular lobbyist. He said the question was whether to vote to reconsider and the Committee was not addressing the merits of the question, but to reconsider it at a subsequent hearing and receive input. He then asked if there was further discussion on that limited question as to whether to reconsider the ruling with respect to the 2 points raised.

Representative Anderson asked if the outcome would be to provide clarity.

Senator Burling indicated he would put in an amendment if the Committee asked him to do so.

Representative Anderson asked if there was still time to do that.

Attorney Meyers referred to the March 20 "crossover" date.

Representative Anderson asked if a "pre-emptive" amendment could be prepared in anticipation of what the Committee might do.

Attorney Gross said that the Committee was already on record as favoring the limitations and said he thought it ought to ask the legislator members to prepare legislation and get it into the hopper to carry through to statute what it thinks ought to be the proper policy. He said he didn't think they had to wait until the outcome of reconsideration because "if we think we are right, then we should ask our legislator members to see if the legislature will agree with us." He said he would be willing to support what Representative Anderson referred to as "preemptive legislation" because "we already have voted on these things (and) we know what we think is right (but) it's been pointed out to us that what we think is right may not be supported by the current legislation."

Senator Burling said the fact that the Committee voted for reconsideration and then asked the legislator members to see what could be done to provide suitable foundation through some amendment process, the Committee would see that either the amendment process gives an avenue to get some foundation or the legislature would kill the bill, in which case, he said, the Committee would need to amend to bring the *Guidelines* back into conformance with the statute. He said he would hope that the Committee would vote "yes" on the motion to reconsider and then he would be happy to get going on an amendment.

Chairman Hilliard called the question to reconsider *Interpretative Ruling 2007-#1* and the Committee voted as follows:

Senator Roberge	Yea
Attorney Gross	Yea
Representative Anderson	Yea
Senator Burling	Yea
Representative Wall	Yea
Attorney Hilliard	Yea

{MOTION ADOPTED}

Attorney Gross then moved that the Committee request the legislative members of the Committee to prepare and introduce appropriate legislation that would conform the statute to the content of its previous interpretative ruling.

Senator Burling seconded the motion and the Committee voted as follows:

Senator Roberge	Yea
Attorney Gross	Yea
Representative Anderson	Yea
Senator Burling	Yea
Representative Wall	Yea
Attorney Hilliard	Yea

{MOTION ADOPTED}

### ITEM #3

Consideration of a request for an Advisory Opinion from Representative Robert J. L'Heureux.

Chairman Hilliard referred the Committee to a letter dated January 30, 2008, from Representative L'Heureux (Hills/19), which requested an advisory opinion as to whether it would be permissible for him to accept 2 complimentary tickets, valued at \$55 per person or \$100 per couple, to attend a fundraising banquet for the New Hampshire Chapter of the Safari Club International. He then asked the Committee to discuss the request.

Mr. Lambert conveyed to the Committee an additional request stated verbally by Representative L'Heureux asking whether he could accept a free 1-year membership in the New Hampshire Chapter of the Safari Club International.

Attorney Gross said that the way he analyzes such requests is, if it's worth more than \$25, then it is up to the person who wants the ticket to tell him where the exemption is. He said he did not see where the exemption is. He said the Safari Club International is not a charitable organization and, when he looks at the agenda for the dinner, the sponsors seem to be assiduously avoiding the discussion of public policy, but, he said, maybe that was another exception that he was not seeing.

Chairman Hilliard asked if anybody saw any other exemption to the otherwise prohibited nature of the item, and he asked if the Committee were willing to also respond to Representative L'Heureux' question about the free 1-year membership. Chairman Hilliard noted that Representative L'Heureux cited RSA 15-B:2, V(b)(10)(A) as a possible exemption.



Attorney Gross said that, if the Committee said that the event described in Representative L'Heureux' letter is "ceremonial" or "celebratory," then there is no event that is not. He said his recollection from the background of the legislation when it was before the House Election Law Committee was that the committee "was looking for a kind of public event like a July 4<sup>th</sup> local community celebration, some kind of ceremony or celebration, not just 'let's have a party.'"

Chairman Hilliard noted "this is a fundraising banquet."

Attorney Gross said "yes, if we are going to apply (10)(A), the applicant needs to tell us why the event is ceremonial or celebratory.

Senator Roberge asked if the exception regarding events attended by at least 50 people could apply.

Chairman Hilliard said that the event would still have to be ceremonial or celebratory for that exception to apply.

After further discussion, Chairman Hilliard asked the Committee what their pleasure was and whether their pleasure included responding also to the free 1-year membership question.

Attorney Gross said he would like to answer the membership issue first, and he moved that the Committee advise that the membership, since its worth is more than \$25, would be a prohibited gift unless otherwise excepted, and the Committee perceives no exception that would cover it. Senator Burling seconded the motion and the Committee voted as follows:

Senator Roberge	Yea
Attorney Gross	Yea
Representative Anderson	Yea
Representative Burling	Yea
Representative Wall	Yea
Attorney Hilliard	Yea

{MOTION ADOPTED}

Chairman Hilliard asked the Committee about their response to Representative L'Heureux' question about the 2 complimentary tickets.

Attorney Gross said he felt the same way about the tickets as he did the free membership.

Chairman Hilliard asked if Attorney Gross was making a motion to respond with similar language.

Attorney Gross said he was.

Representative Anderson asked for a clarification regarding the wording of the motion.

Chairman Hilliard said the motion would be that acceptance of the tickets "on its face, is a prohibited gift, and there's no applicable exception."

Representative Anderson then seconded the motion and the Committee voted as follows:

Senator Roberge	Yea
Attorney Gross	Yea
Representative Anderson	Yea
Representative Burling	Yea
Representative Wall	Yea
Attorney Hilliard	Yea

{MOTION ADOPTED}

#### ITEM #4

Report on the Filing of Financial Disclosure Forms.

Mr. Lambert reported on the filing of the forms required by *Ethics Guidelines* Section 3. He reported that the Senate was in full compliance with the requirement by the January 31 deadline and that there were still 13 members of the House who had not filed the form. He also reported that, in addition to the 13 non-filers, there were 5 forms that were incomplete in that the House member forgot to sign the form or to make a check mark in section 1 if the member's income did not apply. In the past, he said, the Committee has asked him to contact the members who filed incomplete forms to ask them to complete them.

Chairman Hilliard asked what the Committee has done with the non-filers.

Mr. Lambert said there have been different approaches over the years. One was to write a letter to the House Speaker listing the names and allowing the Speaker to exercise the discretion over what action to take. Then, he said, the statute was amended and for 2 years the statute called for the Committee to initiate on its own motion a complaint against any member who had not filed the form by January 31. A subsequent amendment removed that provision and now the statute refers to the Committee doing the same thing regarding members who have not filed the 15-A form. He reminded the Committee that he does not administer the filing of the 15-A form and he said he was not sure that the Secretary of State's Office, which does, knows who has not filed the 15-A form.

Senator Burling then moved that the Committee direct Mr. Lambert to transmit to the House Speaker a list of those members who have failed to file in a timely fashion.

Representative Wall seconded the motion and asked to speak to it. She said that there had been a greater effort than ever before to get individuals to comply. She said that every week at House leadership meetings the lists of non-filers had been circulated and the House Clerk had announced during House sessions that Mr. Lambert was in the anteroom ready to help members fill out their forms. She said that she had also been in the anteroom as members filled out their forms and had heard comments from members regarding why they had to fill out 2 forms and why they had to file forms every year, and they expressed resentment over the amount of information they have to give on the 15-A form. She said that at some point the Committee ought to revisit those questions.

Senator Burling agreed but said "discipline right now is in the Speaker's hands, not in ours."

Representative Wall said that was right, but she wanted to get on the record "that all this has occurred" and it's been "reminder, after reminder, after reminder" to get members to comply.

Mr. Lambert said that there were also calendar notices, including a notice on the front page of the *House Calendar*.

Chairman Hilliard asked if there was any further discussion on the motion. {There was none.}

The Committee then voted on Senator Burling's motion as follows:

Senator Roberge	Yea
Attorney Gross	Yea
Representative Anderson	Yea
Representative Burling	Yea
Representative Wall	Yea
Attorney Hilliard	Yea

{MOTION ADOPTED}

#### ITEM #5

Consideration of a request for an Advisory Opinion from Representative Dale Sprague.

Chairman Hilliard asked Representative Sprague (Straf/02) to speak briefly to his request, stated in a memorandum dated July 26, 2007, for an advisory opinion regarding a proposed charity golf tournament. {This matter was originally scheduled for consideration at the Committee's August 28, 2007 meeting, but was postponed at Representative Sprague's request following a brief discussion. See Item #2 of the August 28, 2007 *Minutes*.}

Representative Sprague said that the request had changed since the July 2007 memo, which he indicated he wrote with the assistance of House Legal Counsel David Frydman. He said he wanted to express to the Committee that he would not be sponsoring the golf tournament as "Representative" Dale Sprague or to try to solicit votes or favors from anyone. He said all the money raised would go to charity, he has a 501(c)(3) that would receive the money, and the tournament might be held at the state-owned golf course at Pease where the charge for using the course would be "at cost."

Representative Anderson asked if what Representative Sprague was saying was that his activities are going to involve his sponsorship as a realtor more than a legislator.

Representative Sprague responded "exactly."

Representative Anderson asked if it "is part of your business."

Representative Sprague responded "yes."

Attorney Gross thanked Representative Sprague for coming to the Committee and being so forthcoming with the information he provided. He asked Representative Sprague "how the cash would flow" if he went forward with the tournament.

Representative Sprague said the 501(c)(3) would handle all the money and all the sponsorship checks would be put into the charity. He said nothing would be made out to his name personally.

Attorney Gross asked if Representative Sprague would be actually receiving checks.

Representative Sprague answered "yea, I will be, but it wouldn't be in my name. I'll just be giving it to the charity to dispose."

Attorney Gross said he wanted to share with Representative Sprague a "level of concern." He said "it's not only a concern for you, but it's a concern that if this is a prohibited gift then the giver is subject to prosecution as well. This is not just a matter of assuring you that this is okay for you, this is a matter that if it's not okay the person who would be giving these would be at legal risk. So there's a dimension to this that doesn't just have to do with a legislator wanting to know if it's okay for him. My concern is that there may be some broader implication to this." Attorney Gross asked: "It is you who plans to identify the recipient charity, is that correct?"

Representative Sprague responded "yes."

Attorney Gross asked: "And the copy of the invitation that you gave me does not identify the charity as such."

Representative Sprague said "the reason being that that was just put together last week."

Attorney Gross asked: "Would you consider restructuring this so that the charitable organization is identified as the sponsor?"

Representative Sprague responded: "yes, sure."

Attorney Gross said his concern was "that as long as the sponsor is the 'Dale Sprague Group,' then I'm looking for how I could support this. But if all the promotional material identifies the recipient charity as the sponsor of the tournament, then there at least is a way that could be identified that could allow this to go forward."

Representative Sprague said that he felt that as a legislator his hands are tied concerning things he has done in the past. He said that if it was just "Dale Sprague" doing a golf tournament, there would be no question.

Attorney Gross said his response to Representative Sprague was "you've now got something that you didn't have before, and that's a vote. And the problem with having that vote is that there are some people out there who want that vote and when you got invited before there was no public thing that you had that they were inviting you for. They were inviting you for a pure business relationship, because they thought you were a nice guy, whatever it was. But now you've got this public thing called a 'legislative vote' and that's what triggers this whole process. So my short answer to you is: 'yea, you're in a different situation than you were before because what you now have to confront is a statute that says what a gift is and what a prohibited gift is.' It wouldn't interest you at all if you weren't a legislator, but now that you're a legislator, this is a risk that you have to look at; this is a new condition in your life because for better or for worse the State of New Hampshire says that stuff of value given to legislators is controlled. And so, if you're here asking us if what you want to do with this golf tournament is among those that are controlled or prohibited, but I was addressing your general concern and any answer is 'yes, your life is different now; your freedom of action is different now that you're a legislator because you've got this law that you've got to contend with that limits the freedom that you had before when you didn't have a vote as a legislator."

Attorney Gross asked Representative Sprague another question: "I think you also said to us that if this is put on in your capacity not as a legislator but as principal of the Dale Sprague Group, you're suggesting to us that the fact that you're a legislator has nothing to do with the desirability of participating in this; that you're not going to identify yourself on the invitation in any way as a legislator."

Representative Sprague responded that "as a matter of fact I think that hampers me in real estate deals, with all due respect to people in the legislature."

Attorney Gross said he was looking at the definition of "gift" in 15-B and there is an exemption for money "where the donor's act of giving is purely private and personal in nature and the money would have been given and received even if the person were not an elected official." He said that was one avenue that would permit it. "But again," he said, "I guess my reaction is it all depends on the presentation." The other exception, he said, that might be applicable "if it's handled properly" is if the event is sponsored by a charitable organization that is registered with the Division of Charitable Trusts or which is a charitable organization under 501(c)(3). He said: "so, there's 2 things going here...2 elements here that create exemption: 1) it's got to be sponsored by the charitable organization; 2) your participation in this would have to be purely private and personal in nature" He added: "And so, if there's any suggestion that creeps in here that somehow your position as a legislator is enhancing the likelihood of people participating in this, then you've got a problem-- at least that's what it seems to me. You could make things very complex, but I try to look at it simply: if it's money and if it's more than \$25, and if somebody hands it to you, whether it's for you or somebody else, then it can be perceived as an illegal gift, unless you identify and we agree with you on some specific exemptions. There are some specific exemptions here that could apply as long as the event is handled so there is no mistake about it."

Chairman Hilliard said the thing he wanted to be clear on, in addition to the questions Attorney Gross had posed, was whether it would work like many other golf tournaments where businesses and lobbyists would purchase the tickets to the event and then give the tickets to members of the legislature. He asked if that was how Representative Sprague perceived it as working.

Representative Sprague said he didn't know if there are any lobbyists planning on coming, but back in July '07 he talked to them about coming.

Chairman Hilliard said he was just trying to make sure he as understanding not just the flow of the money once it's received through the ticket sales, but the flow of the tickets once they're purchased because that's part of the consideration as well.

Chairman Hilliard then asked the Committee what their pleasure was. He said they had sort of an idea about how the event might be structured to pass muster. He said the Committee usually has a much more targeted question such as: "I've been invited to a dinner Saturday night, can I go or not?" He said that Attorney Gross had raised some questions about how it might be structured to fit within one of the exceptions -- RSA 15-B:2, V(b)(9)(B).

Representative Anderson said he would like to have the questions that the Committee is to address focused. He said Representative Sprague had talked about variations and modifications and options being considered for the golf tournament and, Representative Anderson said, if the Committee had a really good idea of the specific issues that need to be addressed, then they could be addressed. He asked Representative Sprague if his memorandum was no longer operative.

Representative Sprague indicated it was not.

Chairman Hilliard said that maybe the thing for Representative Sprague to do would be to sit down with House Legal Counsel David Frydman again "now that we've had this discussion and you understand these exemptions" and sharpen up his proposal "so that it might be structured to come within (9)(B) both in terms of the sponsorship... and somehow divorcing it from 'Dale Sprague the legislator' being the moving force behind it and that it's either 'Dale Sprague the realtor' or not Dale Sprague at all, so that we've got a crystal clear target to respond to."

Representative Sprague asked whether having the tournament at Pease and receiving a discount rate for use of the golf course would be a problem.

Representative Anderson asked if another charity would be entitled to the same discount.

Representative Sprague said he "would assume so."

Chairman Hilliard said if the discount rate was something that a regular person off the street would not get, and Representative Sprague was getting it because he is a member of the legislature, then "right off the bat, that's a problem." He said that it seemed to him that "one of the keys to it is that it would have to be sponsored by a charitable organization in order to even get your foot in the door -- exception (9)(B) -- and then that might allow the Pease discount to flow to the charitable organization as well."

Attorney Gross agreed and said the second layer "after you've got the charitable organization...is to make sure that to the extent that your company is identified as sponsoring this, that (you are) doing it in your private capacity and not as a legislator...and the discount that is accorded by Pease has to flow to the charity, not to you. Otherwise it's a prohibited thing to do. It remains to be seen if somebody else could buy the tickets."

Chairman Hilliard noted that the Committee had been re-visiting that issue earlier.

Following further brief discussion, Chairman Hilliard asked Representative Sprague to bring the Committee a definitive proposal.

The Committee's meeting adjourned at approximately 3:15 p.m. The Committee scheduled its next meeting for March 10, 2008, at 1:00 p.m.

{Prepared by Richard M. Lambert, Executive Administrator}