

MINUTES
LEGISLATIVE ETHICS COMMITTEE
DECEMBER 5, 2023, MEETING
{Approved: January 29, 2024}

The Legislative Ethics Committee (RSA 14-B:2) met on Tuesday, December 5, 2023, at 1:30 P.M. in Room 212 of the Legislative Office Building.

The following committee members were present: the Honorable Edward M. Gordon, Chairman, the Honorable Donna Sytek, Vice Chairman, Senator Cindy Rosenwald, Senator Ruth Ward, Representative Janet G. Wall, and the Honorable David H. Hess. Representative Bob Lynn was unable to attend. Also participating was Richard M. Lambert, Executive Administrator.

The Committee's meeting consisted of the following agenda items:

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on October 31, 2023.

Following review, Vice Chairman Sytek moved to adopt the *Minutes* as presented. Senator Ward seconded the motion and the Committee voted 5-0, with 1 abstention, to adopt the motion.

ITEM #2

Preliminary Investigation of *Complaint 2023-10*. (Nonpublic Session)

{Representative Bob Lynn had recused and did not participate.}

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct a preliminary investigation of *Complaint 2023-10*. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Mr. Hess	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Representative Wall	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

Representative Wall moved to exit nonpublic session. Senator Ward seconded the motion and the Committee voted as follows:

Mr. Hess	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Representative Wall	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “The Committee has just come out of nonpublic session. The purpose of that nonpublic session was to continue the preliminary investigation of *Complaint 2023-10*. The Committee has received a written communication from the complainant, the person who made the complaint, and the complainant has requested to withdraw the complaint. The Committee discussed that and based on the discussion, voted to accept the withdrawal of the complaint and, that being done, that terminates our further consideration of *Complaint 2023-10*.”

ITEM #3

Consideration of a request for an Advisory Opinion from Representative Alissandra Murray.

Chairman Gordon stated: “We’ve invited Representative Murray and her counsel here today to perhaps give us some more perspective on her request. Specifically, her request to, ah, to fill out a little more background on what she has been doing so we can understand exactly the facts, the circumstances, which led up to her request for the advisory opinion. And I see she is represented by counsel today, so if you wanted to come up, we would appreciate that.”

Attorney William E. Christie, of Shaheen & Gordon PA, represented Representative Murray.

Attorney Christie: “In October of this year, I recommended that Representative Murray file a request for an advisory opinion after an article was published concerning her employment status with Reproductive Freedom Fund in New Hampshire that suggested that perhaps Representative Murray had not followed certain ethics rules of the New Hampshire legislature. We believe that Representative Murray has followed the applicable ethics rules of the legislature. But considering that the article was published and then there was a follow-up article with some potential controversy, Representative Murray believed that the best course was to ask this committee to consider issuing an advisory opinion.

“So, here are the facts. Representative Murray is a co-founder of an organization called Reproductive Freedom Fund of New Hampshire. Representative Murray worked for that organization since its inception in 2019. In June of 2022, Representative Murray was hired part time by that organization. There had been discussions for some time between 2019 and June of 2022 about that transition, going from a founder and volunteer to either a part-time or a full-time employee. And as a result of the leaking of the United States Supreme Court decision in *Dobbs* in late April or early May of 2022, there had been an increased amount of fundraising and activity concerning Reproductive Freedom Fund and there were discussions in around that time to hire new employees to deal with the increased activity at that organization. And it was around that time that prior discussions about Ms. Murray being either a part-time or full-time employee materialized.

“Representative Murray’s employment there is, they are not employed as a lobbyist. They are employed as deputy director, which involves social media and organization. But there is no lobbying either directly or indirectly done by Representative Murray on behalf of the organization.

“In June of 2022, Representative Murray was part of a group that was seeking to recruit individuals to run for the New Hampshire legislature. The filing period, as we all know, is in early June of 2022 and there was an open seat in her district where Representative Murray lives in and it was suggested in that period of time that they should consider running for House, and after some discussion and with no other candidate up to that time stepping forward, Representative Murray filed a Declaration of Intent to run 3 days before the filing deadline of June 2022. That was not as a result of any direct agreement of Reproductive Freedom Fund or

any discussion to work for Reproductive Freedom Fund as a revenue source in order to run for the New Hampshire House.

“Representative Murray was elected in November of 2022. After the election, as is required, Representative Murray filed a Financial Disclosure Form in December of 2022 that declared Reproductive Freedom Fund as one of the organizations from which they receive a source of income. There were several bills that came up in the next session that related to, ah abortion-related bills, including one constitutional amendment Representative Murray was asked to cosponsor, CACR 2. They agreed to do that. They agreed to testify on behalf of the bill, and they voted on behalf of the bill, but conducted no direct lobbying efforts, and no lobbying efforts on behalf of that bill, and does not engage in lobbying at all in relation to their activities at Reproductive Freedom Fund.

“During the process, although I would not represent to this committee that there was a legal analysis done at the time, but the belief was that any disclosure of Reproductive Freedom Fund on the 2023-2024 Financial Disclosure Form would cover or address any necessary disclosure that needed to be made. And that document does say, ‘If your participation in an official activity creates a conflict of interest not disclosed by the information on this form, you must complete and file a Declaration of Intent Form in accordance with section 6 of the Ethics Guidelines.’

“Since this issue has come to light, Representative Murray has reviewed this issue with counsel and with others and is still of the belief that a Declaration of Intent form was not necessary for any of their votes. But considering the publicity surrounding this issue, there is concern enough to come to this committee to ask this committee for an advisory opinion concerning whether if that circumstance arises in the future whether or not a Declaration of Intent form should be filed in these circumstances. Again, the Reproductive Freedom Fund’s mission is not, it’s not an advocacy group. In fact, its purpose is not to perform lobbying efforts before the legislature. Its purpose is to raise funds and to raise awareness for abortion-related activities. Its executive director, Josie Pinto, did engage in some lobbying efforts in the past session, but out of a budget of approximately \$200,000, the amount of lobbying time was \$800, which is less than 1% of staff funds expended. And again, Representative Murray did not engage in any of that lobbying activity and it’s our view that the activity that Representative Murray does engage in, which is social media activities, would be exempt under the lobbying statute in any event. So, those are the facts that we think are relevant to this issue. They have done everything to attempt to comply with the law as we understand it. But if this committee believes a different course of action is necessary for Representative Murray or other similarly situated representatives in the future, we obviously say Representative Murray would follow the committee’s direction.”

Chairman Gordon asked if the Committee had any questions.

Mr. Hess: “Several questions, Mr. Chair. First of all, I noticed on the disclosure form, it specifies that you have to disclose if you receive income more than \$10,000 from the entity. I assume that means that Representative Murray received more than \$10,000 in income from the fund. Is that correct?”

Attorney Christie: “Yes.”

Mr. Hess: “How many bills did the member from the company lobby on, or testify to or make calls about?”

Attorney Christie: "I'm not sure we know the answer to that, specifically."

Mr. Hess: "Either you or perhaps the representative in the initial request for the advisory opinion stated that they believed that there were facts in this situation that were distinguishable from the advisory opinion that his committee rendered earlier in the year. Would you elaborate on the facts that you think distinguish this from that advisory opinion?"

Attorney Christie: "So, there was an advisory opinion issued earlier this year and that directive is *Advisory Opinion 2023-2*. And that involved an advisory opinion regarding a member who was considering doing work, for doing canvassing work, for Americans for Prosperity. And the difference as we see it is Americans for Prosperity is a 501(c)(4), a political advocacy group. Its purpose is to advocate and influence legislation and influence public issues, whereas the Reproductive Freedom Fund New Hampshire is a 501(c)(3) nonprofit whose mission is to fund abortion care for indigent patients in New Hampshire. Any lobbying effort done by that organization is incidental to its purpose. That was .5% of its total budget. None of it was done by Representative Murray, nor is it in Representative Murray's express position at Reproductive Freedom Fund for social media and other media activities, which are supposed to be exempt from lobbying under the lobbying statute. So, for those reasons, we think this factually, this case is distinguishable from *Advisory Opinion 2023-2*."

Mr. Hess: "But you don't know how many bills the representative from the Reproductive Freedom Fund testified on or made telephone calls or did in any way act and to try to influence the legislation?"

Attorney Christie: "I don't know the answer to that question. We can get that information for the committee if you request, but I wasn't prepared to answer that question."

Vice Chairman Sytek: "So, the purpose of the Reproductive Freedom Fund is to raise funds to support women who need to pay for an abortion?"

Attorney Christie: "Yes."

Representative Murray: "The express purpose is to fund abortions. So, we work directly with the clinics and fund abortions for patients, and we also arrange rides. We've gotten hotel rooms. These kinds of things. But that's the primary purpose of the organization."

Vice Chairman Sytek: "So, if there were a change in the law relative to the availability of an abortion, what effect would that have on your activities?"

Representative Murray: "I guess it would depend on what kind of change it would make. Were it to happen, I would say that I don't think that there were any clear financial interests in the bill that I sponsored, either to myself or the organization."

Vice Chairman Sytek: "So, if abortion were banned completely, there would be no need for your fundraising? Or if there were no restrictions on abortion how would that affect the necessity of your organization?"

Representative Murray: “Yeah. We’d simply continue doing the work that we do depending on the laws in place. There are always gonna be ways for us to assist people who are in those positions, and it becomes a very small staff of 3 people. But we’d just run the mechanics of what’s needed to get the funds to where they’re going. So, there’s not, like, a large group of people that are going to be impacted either way by something like that.”

Vice Chairman Sytek: “A ballpark figure of how many people are assisted by your organization each year? Is it a thousand? Or is it a hundred?”

Representative Murry: “More than that. I’d say, Josie could answer those questions more specifically, I know we’ve helped over 500 people in New Hampshire specifically.”

Senator Rosenwald: “My question comes from my Finance Committee perspective. I’m trying to think of whether we had any bills that their purpose was to provide funding for abortions that your organization might have testified on. Were there?”

Representative Murray: “To my knowledge, there were not any bills.”

Senator Rosenwald: “Since you were elected?”

Representative Murray: “To my knowledge there have not been any regarding funding of abortion. And Reproductive Freedom Fund also doesn’t take any kind of state money or grants like that. We’re largely grassroots funded by individual donors.”

Attorney Christie: “If I could just add to that. I think a reasonable eye in real time is, and this did not come up at that time, there was no financial benefit to either Representative Murray or her organization on any of these votes, and if there had been, perhaps there would have been a pause in the consideration of them. But, considering that there was no financial benefit perceived in real time, the issue did not come up. But, again, and out of an abundance of caution considering the media, that’s why we’re raising it (inaudible).”

Chairman Gordon: “The issue I have is not looking at it strictly in terms of filling out forms, but looking at it intuitively, I would say, ‘Jeez, don’t I have a conflict here?’ and did Representative Murray at some point in time say, ‘Jeez, this is close. This is something where I would have a concern about. That if somebody else were doing it, another legislator were doing it, I would have a concern about it.’”

Attorney Christie: “I understand the concern and issue, and, I mean, I’m sure there’s been rules that, there’s bills that, impact a host of professions or a host of issues where a member being, someone could be a union member and there could be a bill that would impact labor issues or someone could be a member of the medical profession and there could be a bill that could impact Medicaid funds in the state, or something like that. So, there are a host of issues that come up during the course of the session that, depending upon the lens, if you looked at that, could be perceived as that person could have some sort of personal interest in beyond what they’re interested in as a legislator. But what I think ethics rules speak to, or were intended to speak to, is a direct financial interest, or a direct conflict of interest, and it’s our belief that the issues raised here, and even in these bills here, are at a sufficient level where any perceived conflict is tangential and does not arise to the level of an ethics (inaudible).”

Representative Murray: “I would say when I filled out the disclosure form, I thought that was me disclosing about any potential conflict of interest, that was me sharing my workplace. I thought the information was readily available and I had disclosed enough. I didn’t see any clear conflict when I was voting on these bills. I felt just a part of the nature of being a citizen legislature where several of us, many of us, have working jobs where we have interests in the sort of things that might come up before the body (inaudible).”

Mr. Hess: “I don’t think anyone here is looking at this issue as a question of whether or not you knowingly violated any ethics guidelines, keeping in mind that the advisory opinion that we issued, was issued, in June, I think June 30th. So, it was after most legislative sessions which may have been the significant impact on your judgment earlier, since you filed this at least 6 or 7 months earlier. But my question is, and this is to counsel primarily, the relevant provision of the Ethics Guidelines, Section 3 Prohibited Activities, and I’m going to quote it in excerpts:

Legislators shall not accept anything of value from another for themselves knowing or believing that the giver is or is likely to become interested in any matter or action pending before or contemplated by the legislator or the General Court.

If the representative has received income from the entity that is lobbying, even if it’s minimal lobbying, although you can’t identify what issues that you have lobbied on, how can you distinguish ‘any matter contemplated or pending before the General Court’? And I assume since the lobbying occurred the head of the institution, the funding institution, thought that it was relevant to the purposes of the organization, and she’s the executive director of the organization. So, if she was lobbying, she must have assumed that the legislation had some impact on the corporation.”

Attorney Christie: “Well, I mean, I think that provision applies in a circumstance where there is a direct benefit, where somebody is engaged in activity where the legislation passes or fails it would result in a direct benefit either to the member or to the organization. In the language in the disclosure forms, a financial benefit.

“Here you have somebody that is employed whether or not the bill passes or not. The person is going to be employed whether the bill passes or not, their position, their job and their pay is not going to change. It will be a, there’s been bills passed by the legislature that have increased funding for healthcare services in this state and there have been people, physicians and providers, and members of the legislature who have spouses who are physicians and providers, and I don’t believe they’ve ever been asked to recuse themselves from votes on those matters. And I think that would be extending these rules way too far in that situation because it’s not an appropriate situation to recuse yourself, in our view, and what that rule is intended to apply to, ‘Do I have a direct financial interest in this bill and, if so, I should recuse myself from voting.’”

Chairman Gordon: “This is a curiosity question more than anything else, and that was whether or not Representative Murray went to the ethics training as a new representative.”

Representative Murray: “Is that part of Orientation?”

Chairman Gordon: “Yes.”

Attorney Christie: “Yes.”

Chairman Gordon: “Any other questions? Seeing none, thank you very much. We also invited someone else to be here. That is Ms. Pinto. She’s under no obligation at all to speak to us at all because she’s not a party to the matter at all. But if she would like to address us.”

Attorney Jeffrey D. Odland, of Wadleigh, Starr & Peters PLLC, represented Ms. Josie Pinto, Executive Director of Reproductive Freedom Fund of New Hampshire.

Attorney Odland: “Ms. Pinto certainly is happy to address the committee if that’s responsive or helpful in aiding on the advisory opinion (inaudible). It’s not incumbent on her to testify?”

Chairman Gordon: “No. She doesn’t have to testify. But we did invite her because one of the things, at least, I read was that this sort of arose out of an article where she might have been quoted. So, if you would like to testify, that would be helpful.”

Attorney Odland: “In order to conserve the committee’s time, I will tell you that in conversations with my client, prior interviews she voluntarily underwent, I believe her testimony would be completely consistent with the explanation you heard from Attorney Christie with respect to Representative Murray’s volunteering, becoming a part-time employee and a full-time employee of the fund. Ms. Pinto is a cofounder of the Fund, and in the pertinent time period was in the role of executive director. Responsive to Representative Hess’s question with respect to the number of bills that the Fund lobbied on and, again, that lobbying was done directly by my client, it is my understanding that there were 5 such bills in the last session which, again, it was not a great amount of time spent lobbying. Approximately \$800 worth of labor that was attributed to those lobbying efforts. But it was with respect to 5 separate bills. I think based on what we heard today, that’s really the additional information I would give the committee beyond what Attorney Christie has already said in an effort not to simply reiterate. We would welcome the committee’s questions.”

Mr. Hess: “Thank you for answering my question.”

Chairman Gordon: “Any other questions? Seeing none, thank you for coming today. That concludes the testimony we’re going to receive.”

Committee Discussion

Senator Rosenwald: “When you start a new term, you have to fill out the Financial Disclosure filing, the ethics filing, and my understanding has been if you list your sources of income there, you don’t have to file a Declaration of Intent every time you’re going to vote on a bill. Isn’t that correct?”

Mr. Lambert: “Unless the bill is going to affect you more than others or directly.”

Senator Rosenwald: “But if it’s just ‘My husband was a physician’ and I said that, unless it was going to give way more Medicaid reimbursement to Catholic Medical Center and that

maybe was going to benefit him directly, I wouldn't have to fill out a Declaration as long as I filled out our sources of income at the beginning of the term."

Chairman Gordon: "There are prior advisory opinions in which there is some indication that even though you may have disclosed who you might work for and who you get income from, if in fact there's a particular bill in which you have an interest you would be required to file a Declaration of Intent. You wouldn't necessarily have to recuse yourself... but what you would do for the benefit of the public is to disclose the fact that you have a conflict, or a potential conflict."

Mr. Hess: "I'd like to reiterate what I said earlier in part of my question. We are being asked for an advisory opinion by the applicant, Representative Murray. We are not responding to any complaint that she violated any code of conduct or violated any rule in her past behavior. The advisory opinion that she is requesting is prospective only. It only would be applicable to behavior that occurs after we issue an opinion and would not, in my opinion, detract from or be derogatory in any way about what happened before the opinion. It's like any court case. You can't be accused of violating a court case if the decision was not rendered until after the activity took place. So, that being said, I think it's important that this is an advisory opinion discussion and is not based upon a complaint and would not adversely reflect on the requesting representative.

"That being said, having read *Advisory Opinion 2023-2* several times as part of this process, and looking at the facts that have occurred here, I see no distinction whatsoever between the two situations. The fundamental facts that, I think, are stated in *2023-2* are that number one, an employee received income from an employer and, number two, that income constituted something of value as defined by the ethics rule, and thirdly, the organization, the giver, did engage in and was interested in legislation pending before the legislature. And the three nexuses, if you will, seem to be indistinguishable in this case from the case we had previously.

"The amount of money involved, the amount of time involved, to me, is irrelevant. This was 5 bills. If it was just 1 bill or just the testimony that 'I support the legislation,' I think that that falls within the definition of the ethics rule. And so I'm open to being persuaded otherwise, but I don't see any distinction between the facts here and the facts in *Advisory Opinion 2023-2*."

Vice Chairman Sytek: "How is this different from the Doug Ley situation [*Complaint 2019-2*]? He was president of one of the teachers' unions. He was told that he couldn't vote on anything related to education."

Chairman Gordon: "Well, I think we distinguished that. He couldn't vote on things which substantially benefited his members. So, he could vote on education bills, but things that had a specific impact, because he was the president of the organization and although he didn't carry the title of, he wasn't registered as a lobbyist, he was effectively a lobbyist."

"I agree with Representative Hess. I think in this particular case with regard to specific bills, at a minimum, there ought to have been, or should be in the future, Declarations of Intent indicating that, particularly if their organization had an interest in particular legislation, if we're talking 5 bills that they might have advocated for and Representative Murray voted or participated in those bills, then that seems to me to be the type of conflict that should be disclosed. And I don't know how you get around that and, at a minimum, I think the Declaration of Intent should be filed with, at least, notice that there is a conflict. I don't know if you wanted to go further with regard to recusal, but I think in certain cases, particularly if my organization,

and not that's it's a critical issue, but being a founder of the organization, being an employee of the organization, the organization lobbying, I think probably recusal would be the appropriate outcome in those cases."

Mr. Hess: "The mere fact that they lobbied on a bill, to me, indicates they thought that it was something relevant to their purpose and intent. So, I think that's a distinction without much of a difference because simply by lobbying they are expressing that they are interested in this subject matter."

After further brief discussion, Chairman Gordon asked: "Do you have a particular direction you want to go in?"

Mr. Hess: "I'll move that we find that the facts in this case are comparable, if not nearly identical, to the facts in *Advisory Opinion 2023-2*, and that the chair be authorized to draft an opinion reflecting that belief, including the obligation to recuse under the circumstances."

Vice Chairman Sytek: "To recuse or to disclose?"

Mr. Hess: "To recuse. That's what we ordered in *Advisory Opinion 2023-2* on the same facts. I don't see any distinction here."

Chairman Gordon: "Maybe we can distinguish between when recusal would be appropriate and when simply declaring a conflict would be appropriate. If her organization is lobbying on 5 bills and she participates in those 5 bills, then I think she ought to recuse, as far as I'm concerned. But if the organization isn't participating in other bills, but they happen to be dealing with abortion funding in general, then maybe just a Declaration of Intent is appropriate because that's what we tied the Hobson thing [*Advisory Opinion 2023-2*] to, and the fact that you've got to be getting some type of financial remuneration. Some type of remuneration, it doesn't have to be financial, and once you do that then you're getting some benefit for participating in the activities."

Senator Rosenwald: "So, are you making a distinction that, if you're not just a member of an organization but you're actually an employee of an organization? I'm thinking about members who are realtors and they're probably a member of the Realtors of New Hampshire. There are a lot of real estate and tenant and landlord bills. Are you suggesting they'd have to recuse if they were a member of an organization, or only if they were an employee of the organization and their organization was lobbying on a bill?"

Chairman Gordon: "If you were working for a realtor and the Realtor's Association was lobbying, I don't think you'd have any obligation to recuse. But if you work for the Realtor's Association which is lobbying, then I think you have an obligation."

Senator Rosenwald: "Okay, so that's the distinction you're making."

Following further brief discussion, Vice Chairman Sytek seconded the motion made by Mr. Hess.

Chairman Gordon: “And the motion includes, basically what I heard the motion to say was, that we would follow the same guidelines as the Hobson opinion and that the chair would draft an opinion to circulate to get approval from the Committee.”

Mr. Hess and Vice Chairman Sytek agreed that was what the motion stated. Mr. Hess called the question and the Committee voted 5 to 1 in favor of the motion, with Chairman Gordon, Vice Chairman Sytek, Senator Ward, Representative Wall, and Mr. Hess voting in favor, and Senator Cindy Rosenwald voting against the motion. Representative Lynn recused and did not participate.

ITEM #4

New/Other Business.

There was no new or other business.

ITEM #5

Scheduling of the next meeting.

The Committee’s next meeting will be at the call of the chair.

The Committee’s meeting adjourned at 2:30 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}