

**Advisory Opinion 2010-5**  
**Response to a Request for an Advisory Opinion**  
**from Representative Alida I. Millham**  
**(September 20, 2010)**

Representative Millham has requested an Advisory Opinion whether, consistent with applicable statutes and the Ethics Guidelines, it would be permissible for her to participate in official activity as a member of the Joint Legislative Committee on Administrative Rules in considering certain rule changes which may be proposed by the New Hampshire Insurance Department (NHID) pertaining to the New Hampshire Medical Malpractice Joint Underwriting Association (JUA).

According to information provided to the Committee by Representative Millham, she currently is an unpaid member of the Board of Trustees of Lakes Region General Healthcare (LRGH), and has no pecuniary interest in the organization. LRGH has been engaged in litigation with the Insurance Department regarding the JUA, and is associated with a position adverse to the rule changes currently proposed by NHID which she expects will be presented to JLCAR.

Specifically, Rep. Millham asks whether her participation in considering the proposed rule changes as member of JLCAR would violate Ethics Guidelines Section 4, Prohibited Activities, Paragraph II (d).

Relevant provisions of the Ethics Guidelines are:

**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.

II. Principle Of Independent Objective Judgment Legislators should employ independent objective judgment in performing their duties, deciding all matters on the merits free from conflicts of interest and both real and apparent improper influences.

III. Principle Of Accountability Legislators should assure that government is conducted openly, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.

**2 DEFINITIONS.**

\* \* \* II. "Conflict Of Interest" is the condition in which a legislator has a financial interest in any official activity.

\* \* \* V. "Financial Interest" is a reasonably foreseeable direct material financial effect which is greater on the legislator, legislative officer, legislative employee, or a family member than on the general public.

\* \* \* X. "Official Activities" is the conduct of activities which relate to official responsibilities including the introduction of legislation, testifying before any legislative

committee or state agency, voting in committee or in house or senate session or otherwise participating in, influencing, or attempting to influence any decision of the legislature, county delegation or any state agency.

#### 4 PROHIBITED ACTIVITIES

\* \* \* II. Legislators shall not:

\* \* \* (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.

\* \* \* V. Legislators shall not become involved in any official activity without complying with the conflict of interest procedure set forth in this document.

#### 5 CONFLICT OF INTEREST PROCEDURE.

I. No declaration shall be required if no benefit or detriment could reasonably be expected to accrue to the legislator or the legislator's family member as a member of a business, profession, occupation, or other group, to any greater extent than to any other member of such business, profession, occupation, or other group, provided that disclosure of the legislator's or family member's membership is made in the Financial Disclosure Form pursuant to section 3 of the Ethics Guidelines. For purposes of these guidelines, groups shall be limited to ones generally recognized and of a substantial size.

II. When a legislator becomes aware that a conflict of interest exists or may exist and the conditions set forth in paragraph I are not met, the legislator shall proceed in accordance with either subparagraph (a) or (b):

(a) Declare that the legislator will not participate in any official activity associated with the issue.

(b) Declare that the legislator intends to participate in the official activity and will provide a description of the conflict of interest including:

- (1) names of all entities, both public and private, which might be affected;
- (2) the nature of any benefit which may accrue to the legislator or legislator's family member;
- (3) the nature of any financial interest in the issue;
- (4) the nature of any relationship which existed, exists or may exist between the legislator and
- (5) any person or entity which might be affected;
- (6) such additional information as may be required to permit clear public awareness and understanding of the nature and extent of the conflict.

III. The declaration required in subparagraphs II (a) and (b) of this procedure shall be publicly announced prior to the legislator's initial participation in the official activity. The information required in subparagraph (b) shall be filed with the clerk of the member's respective body within 24 hours of the time of the official activity and be made available for public inspection during normal business hours.

We advise as follows: It appears from the facts presented that Rep. Millham has no discernible financial interest involved, and therefore no "conflict of interest" as

narrowly defined in the Guidelines. However, as a member of the Board of LRGH, she has fiduciary duties to LRGH. That situation may be perceived as potentially affecting her decision as a member of JLCAR, where the proposed rule changes may directly affect the interests of LRGH. Thus the interests of LRGH may be viewed as a “private interest” which Principle I urges members not to pursue if “incompatible with the public interest,” or as Principle II urges, an “influence” to be avoided if apparently “improper.”

The Guidelines do not require disqualification under these circumstances. Instead, Guidelines Section 5 permits legislators to participate if its procedures are followed, even where a defined “conflict of interest” is present. Accordingly, we believe that to avoid violating Principles I and II of the Guidelines would require Rep. Millham to follow the procedures set forth in Guidelines Section 5, Paragraphs II and III, before engaging in official activity in the matter as a member of JLCAR in connection with the proposed rule changes.

If consistent with those procedures, she chooses to participate in the matter, so long as her activity as a member of JLCAR is conducted openly, rather than in any private negotiation with the New Hampshire Insurance Department, we perceive no potential violation of Guidelines Section 4, Prohibited Activities, Paragraph II (d).

We appreciate the opportunity to be of assistance.

Martin L. Gross, Chairman  
For the Committee