

**SPECIAL REPORT TO THE SPEAKER
OF THE HOUSE OF REPRESENTATIVES
REGARDING COMPLAINT #2003-3**

I. Introduction

The Legislative Ethics Committee received two complaints in September 2003, regarding the conduct of Representative John Edward Kerns with respect to his communications with the Dover School Board. Mr. Nickolas Skaltsis, as Chairman, made one of the complaints on behalf of the Board. Representative Raymond Buckley made the other complaint. The complaints alleged that Representative Kerns violated certain provisions of rules and law.

Following a review of the complaints, the Committee conducted an extensive preliminary investigation, in accordance with its procedural rules, and voted unanimously to initiate formal proceedings to inquire into the complaints. A formal statement of charges and notice of hearing was sent by certified mail to Representative Kerns on January 13, 2004, and a copy was hand-delivered to him on the same day. A formal hearing was held before the Committee on February 9, 2004. Representative Kerns did not appear at the hearing to present evidence or to contest the charges.

II. Charges

The Committee charged Representative Kerns with purposely violating Ethics Guidelines Section 1, Principles of Public Service, for conduct reflecting badly upon the legislature. The alleged conduct forming the basis of the formal charges is as follows:

- A) Acting in a manner, through the use of his office of state representative, that was threatening and intended to intimidate others, including public officials and members of the public, as evidenced by voice messages directed to the Dover School Board; and other conduct included in the public record;
- B) Using his title in a manner intended to make others believe that he was acting in an official capacity when that was not the case; and
- C) Negotiating a personal check with "State of New Hampshire" printed on its face with the intent that the payee believe that it was drawn on the good faith and credit of the State of New Hampshire and which was drawn on insufficient funds.

III. Findings

After hearing and consideration of the evidence, the Committee made the following findings:

A) Dover School Matter

Representative Kerns left three separate voice mail messages with the Dover School District, one on August 20, 2003, and two on August 23, 2003. In the first message, Representative Kerns identified himself as a "state representative" and claimed that the district had placed fliers on "several state vehicles" parked in the Dover Middle School parking lot. The fliers informed the vehicles' owners that they could no longer park in the lot pursuant to a Dover School District policy adopted on August 18, 2003. Representative Kerns claimed that the state vehicles had both authorization and a need to park in the lot. He demanded that the school district authorities who placed the fliers inform "this office" immediately regarding who designated the lot for students only and stated that he would "have a letter sent down" to the school authorities indicating that it was "not permissible" for their "agency" to regulate use of the lot.

The voice mail message was received by school district employees. Because of its tone and content, it was referred to the superintendent of schools and the chairman of the school board. Mr. Skaltsis responded by letter to the voice mail message by explaining the Dover School Board policy and by admonishing Representative Kerns not to use his elected title to influence school district employees.

In the second voice mail message, Representative Kerns responded to the letter sent by certified mail on August 22, 2003, from Mr. Skaltsis, and stated that Mr. Skaltsis was "confused" about his prior voice mail message. Representative Kerns stated that he had contacted the district office about the flier having been placed on Department of Transportation vehicles, not on his own vehicle. He stated that he would forward Mr. Skaltsis' reply to the Department of Transportation.

In the third message, Representative Kerns stated he "couldn't wait to strike down" Mr. Skaltsis' "program" in the legislature.

Representative Kerns used his legislative office to intimidate the Dover school administrators in his first voice mail message and to threaten them in his third voice mail message. He used his title to make the Dover school administrators believe that he was acting in an official capacity, including advocacy on behalf of a state agency, when that was not the case.

B) H&H Locksmith Company Matter

Representative Kerns negotiated a check in the amount of \$90 with the H&H Locksmith Company on April 7, 2003. The check, which had "State of New Hampshire" printed on its face, was subsequently returned for insufficient funds. Representative Kerns, when contacted by Mr. Troy Hartson, the owner of H&H Locksmith Company, threatened Mr. Hartson by stating that as a state representative he could "make things very difficult" for Mr. Hartson, as a small business owner, if he continued his attempts to collect on the check.

C) Furniture World Matter

Representative Kerns negotiated a check in the amount of \$3,995 with Furniture World on September 11, 2003, for furniture delivered to his personal residence the following day. The check had "Hon. John E. Kerns" and "State of New Hampshire" printed on its face, and was subsequently returned for insufficient funds. Representative Kerns represented to Furniture World that the check was a "government check."

Representative Kerns has demonstrated no remorse for his inappropriate conduct. He has failed to acknowledge that his acts have reflected negatively upon the Legislature. Furthermore, Representative Kerns has provided the Committee with no assurance that he will refrain from similar behavior in the future.

IV. Conclusion

Based upon the evidence, the Committee finds by clear and convincing evidence that the charges set forth above are substantiated. The conduct of Representative Kerns is in violation of Ethics Guidelines, Section 1, Principles of Public Service. He has violated the public trust by using the powers and resources of his office to advance his own interests in a manner incompatible with the public good. He has engaged in a pattern of behavior that fails to meet the standard of conduct expected of a state representative. He has brought disrespect upon himself and dishonor to the position he holds.

V. Recommendation

Removal from an elected position is a punishment to be administered only in the most egregious circumstances. Indeed, no one has been removed in such a manner from the New Hampshire House since 1913. But, the conduct of Representative Kerns warrants such an action, not simply because he has abused the trust placed in him by the public, but because he apparently believes that he is entitled to engage in such misconduct. After thorough consideration, the Committee recommends the expulsion of John Edward Kerns from the House of Representatives.

Dated at Concord, New Hampshire, this 18th day of February 2004.

Respectfully submitted,

Edward M. Gordon, Vice Chairman¹

Representative Janet G. Wall

Senator Jane E. O'Hearn

Senator Joseph A. Foster

Russell F. Hilliard

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¹ Representative Shawn N. Jasper, the Committee's Chairman, recused himself from all proceedings following the formal hearing and did not participate in the deliberations in this complaint.