

MINUTES
LEGISLATIVE ETHICS COMMITTEE
JANUARY 5, 2012 MEETING
{Approved: February 10, 2012}

The Legislative Ethics Committee (RSA 14-B:2) met on Thursday, January 5, 2012, at 10:00 A.M. in Room 103 of the State House. The following members were present: Attorney Martin L. Gross, Chairman, Brian M. Quirk, Vice Chairman, Senator Fenton Groen, Representative Janet G. Wall, Representative Jordan G. Ulery, and Mr. John F. Quinlan. Senator Amanda A. Merrill was unable to attend. Also present was the Committee's Executive Administrator, Richard M. Lambert. The Committee's meeting consisted of the following items:

ITEM #1

Consideration and Adoption of *Agenda*.

Chairman Gross asked the Committee to consider a proposed *Agenda*. Following review, Vice Chairman Quirk moved to adopt the proposed *Agenda*. Mr. Quinlan seconded the motion and the Committee voted 4 to 0 to adopt the *Agenda*.

ITEM #2

Consideration of the draft *Minutes* from the Committee's meeting held on November 3, 2011.

Following review, Senator Groen moved to adopt the *Minutes* as drafted. Mr. Quinlan seconded the motion, and the Committee voted 4 to 0 to adopt the *Minutes*.

ITEM #3

Consideration of a request for an Advisory Opinion from Representative Edmond D. Gionet {Graf/3}.

Chairman Gross noted that Representative Gionet was in attendance, thanked him for submitting his request, and stated that "the best kind of an ethics problem is one that never happens, and because you have asked us for an advisory opinion, we are in a position of preventing something like that from happening." He said that the materials relevant to Representative Gionet's request had been circulated to the Committee.

Chairman Gross:

"You can see that what we have at stake here is the custom that has been of longstanding that legislators get free ski passes to Cannon Mountain to a certain extent. And something that I did not know until Representative Gionet brought the subject to our attention, is that legislative members of the Cannon Mountain Advisory Commission are eligible for a distinct program of free ski passes. So, what Representative Gionet has brought to our attention is that he wants to know whether he could accept these benefits without having an ethics violation. And that's the question before us.

"I think we have substantial information at our disposal that Rich has circulated and I'll just go over these briefly. We have the request from Representative Gionet dated December 14 that had attached to it what triggered the request and that was a memo from John M. DeVivo, General Manager of Cannon Mountain Aerial Tramway & Ski Area, to members of the Cannon Mountain Advisory Commission, of which Representative Gionet is a legislative appointee, announcing the availability of complimentary lift ticket vouchers to members of the Cannon Mountain Advisory Commission and also indicating that other members of the state legislature, whether or not they're members of the Cannon Mountain Advisory Commission, are eligible for a distinct program of day ticket use. In connection with that requirement, we have ascertained through Rich's inquiry that the value of these passes is \$68 regular admission or \$45 for seniors. So, the daily benefit here is \$68 or \$45 depending on the age of the recipient. We also queried Mr. DeVivo to ask him what the basis was for his assertion in his memorandum that these were permitted by statute, and he replied that the procedure for approval of Cannon's fee package and special use policy is pursuant to RSA 216-A:3(g), and he said guidelines for season passes are covered in RSA 218:16. So those are the 2 pieces which he offered to us: a piece of advice that he got from DRED about what if any statutory authorization there is for this program. Now, I believe Rich circulated copies of those particular pieces of legislation and there's RSA 12-A:29-b, the Cannon Mountain Advisory Commission, and there's 216-A:3(g), Fees for Park System."

{Representatives Wall and Ulery joined the meeting}

Chairman Gross:

"And also I asked Rich to circulate to the Committee a copy of Part II, Article 15 of the New Hampshire Constitution dealing with legislator compensation. ... What I'd like to do now with that introduction is simply say I think the issue here is whether this ticket program: A) Would qualify as a gift under RSA 15-B:2, which is our governing statute; and B) Is there any exception available on whatever basis if it turns out that these would be gifts under the statute?"

Chairman Gross invited Representative Gionet to address the Committee.

Representative Gionet:

"My own interpretation of this – I hate to use the term and I'm not doing it out of lack of respect—but this is hogwash. We don't get paid to be here... {inaudible}...to buy us out for any special favors. As a matter of fact, I have been a co-sponsor several times to privatize Cannon. They're not going to change my mind. I've got my own reasons for doing that. So if for some reason people think that this is a bribe of some kind, no, I think probably it's a courtesy that's because we don't get paid. We're putting in a lot of time and effort into what we do. I don't see any problem with it. As a matter of fact, I think probably looking back through the record here, before a lot of this new legislation came through, that probably everybody lived happily ever after. I couldn't see – I couldn't find any track record here -- where members of the House took advantage, we're being paid off by somebody. I don't know. I need your advice. ... I just want to do the right thing. People are looking at us as representatives here and that if they think for some reason that what we're doing is behind the iron curtain, I don't want that. I want to live by the rules as we've got them. I just think that in this case they don't apply."

Chairman Gross asked if any Committee member had a question for Representative Gionet. {No one did.} He then asked if anyone else wished to be heard or had something to offer the Committee on the request for an advisory opinion.

Representative Lyle E. Bulis {Graf/1} addressed the Committee:

Representative Bulis said that he wanted to point out that legislators get 2 free tickets, while the Cannon Mountain Advisory Commission members get 5. He said he believed the sums are substantial and "personally I wouldn't want to find myself in a position where I'd done something inappropriate."

Representative Daniel J. Tamburello {Rock/3} addressed the Committee:

Representative Tamburello said he was opposed to removal of the Cannon Mountain benefit. He said he felt that "the \$25 rule was to prevent outside influences that are not within the government." "Here," he said, "you have a case where it's a government entity allowing another government employee a benefit. I don't see anything morally reprehensible about that no matter what the dollar amount is.... I look at it like this, it's an analogy I used before when I was talking with Representative Ladd, I don't know a rule that would prohibit me from taking \$25 from myself and giving it back to myself ...that's the way I see it."

Chairman Gross:

"I think these points are very good points, and that's the problem we've got here. Are there any questions for Representative Tamburello?" {There were none.}

Representative Rick M. Ladd {Graf/5}:

"I'd like to go on record as endorsing what the previous representative said."

Chairman Gross asked if anyone else wished to address the Committee. No one did.

Chairman Gross:

He suggested that the first question for the Committee to consider was: "Is this a gift within the definitions of RSA 15-B?" He went on to say: "And we know what that statute says, and it's not terribly flexible, it says if it's \$25 or more, it's a gift. And then you have a series of exceptions in the statute that tell you what is not a gift. That was the structure that the drafters of that legislation put up. They

wanted to throw the blanket as wide as possible and then they enumerated a bunch of exceptions. I guess the first question before us in my mind would be, 'Are these tickets gifts to begin with?' Then we can talk about where any applicable exceptions are."

Representative Wall:

"I don't look at the tickets as being gifts. I've been a member here for a long time and every year the commissioner of DRED {New Hampshire Department of Resources and Economic Development} sends a letter to the Speaker of the House and the Senate President to inform us that these tickets are available. We have always been told that we are essentially goodwill ambassadors for the State of New Hampshire. We have a responsibility to know our state, to experience our state, and to promote our state. I will admit that I have skied at Cannon. It's not my favorite mountain. It's always icy. It's always windy. But at the same time, I would not have known that had I not gone up there to ski. And I would not have gone up there to ski, and I would not have skied on that particular mountain if I hadn't had the chance to do it for free because I'd heard its reputation. I think of these tickets as being a way of working with DRED. Over and over we have bills that come before us regarding privatization of Cannon Mountain and people are blind not knowing how to vote on this without experiencing that mountain, knowing what's going on there. When I went there I made it a point to see about how many people were skiing, what the conditions were, what the equipment was like, what was the staff doing, things like that. Just to get a sense of what was going on. I looked at this as part of my job, I didn't do it just for the fun of it. And I didn't look at it as a gift. I may be misunderstanding this, but this is the way I've looked at it and the way skiers I know in the legislature have looked at it.

"I did talk with Commissioner Bald a few weeks ago and he did not see anything immediately in terms of how we could deal with this, but he expressed to me that this was a way to work cooperatively with the legislature. It's not like we're going out and getting free meals and things like that. Again, it's a way to know this mountain, know how it operates, know what's available, and it's certainly has helped me in any decision-making as a legislator. So I look at it almost as being like on – I'm on the zoning board – and on the zoning board we often do what the planning board does: go for site reviews. And that's the way I have looked at having these tickets available. Only a handful of legislators take advantage of using these tickets. State employees get breaks here, there, and everywhere. They get to ski at Cannon Mountain for less money than regular people do. They get to get into state parks for less money than others, and I think that's a way of showing goodwill for our state employees. I don't know how they interpret that. If that's a gift for them, or not. But I do know that I feel that it's a responsibility as a state representative to know my state and experience it, and that's why even though with 15-B now and the \$25 limit – and perhaps I'm looking at this too broadly – I do see it as a way to know a resource we have in our state."

Chairman Gross:

"Thanks. Let me just simply say, I have no quarrel with the policy as you outlined it and the potential benefit of helping legislators understand. But we've got a statute to deal with here and what I'm trying to figure out is how we deal with it."

Vice Chairman Quirk:

"I'll follow up on those comments. I think you've {Representative Wall} articulated that point very well and I'll also point to {Representative Gionet's} letter where he says he has no problem with it. You {Representative Gionet} also say that the legislation, the Guidelines, are severe and unreasonable. I could see your point on that. The issue that I'm kind of grappling with -- and we'll just throw it out there for a point of discussion -- is we're faced with not our personal views and a good policy argument, we're looking at the statute that the General Court has passed. And when I read this statute, it is pretty clear that any -- and I'll just quote {from RSA 15-B:2, V (a)(1)} 'Gift means: Any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. Any such item with a value of less than \$25 is presumed to be of insignificant economic value.' Where here there's no factual dispute, the value is beyond that \$25. So I'm just wondering where in the written statute there can be some life breathed into the policy argument because I think it's a valid policy argument, and I'm just having a problem when I look at the written word and, of course, this is what we need to go on. So I just throw that out as a point of discussion because I think you raised a good point as does the representative in his letter."

Representative Wall:

"Yes, I agree with you. I'm speaking policy but I have struggled with this ever since finding out there was a concern about it. I'm questioning whether this is a gift or is this part of our job."

Chairman Gross:

"Well, the problem I had was -- two points, number 1: the breadth of the statute in saying 'anything of value \$25 or more,' that's what the statute says and then the statute outlines a series of specific exemptions. And so I think the process of analysis we need to follow is: A) Do these things fall within the general category of gift? and B) Is there any statutory material that would create an exemption from the rule that the legislature has laid down? As I mentioned to you, the policy behind these tickets may be wonderful, and I have no problem with them, but we've got a statute that we've got to deal with and, I think, once we depart from our statutory support then we're afloat in a sea that I don't want to be in because it becomes a subjective matter, a question of whether we want something or not."

Senator Groen:

"I don't think we can construe this as other than a gift. If we do, we are making a judgment call and that can become a precedent and we can begin to make judgment calls in other areas. So I think it has to be construed as a gift because that's what the statute says, and secondly {interruption} --. We have a statute that defines what a gift is, and it's anything over \$25. Then it gives exceptions of gifts that are allowed, and this doesn't fall under those exceptions. So I think that I wouldn't be opposed to changing the statute to write this as an exception. But I think it has to be that because otherwise we are making a judgment call and that's not within our right to do."

Mr. Quinlan:

"I concur. I read this over and over and there's no getting away from the fact that it falls under the definition of a gift and, without an exception, it's not an allowable gift. I'm going in the same direction. I think we would have to create an exception in the statute for this. As it stands right now, it isn't allowed."

Representative Ulery:

"Representative Ladd and {inaudible} have suggested that this was a right hand, left hand exchange, and I don't think that is the case because the way we have set up the agencies within the State of New Hampshire is that the agency is separate from -- they must comply with state law -- but the commissioners of the various agencies that exist aren't responsible to anyone but themselves. They run their own entities. Once they are appointed by the governor and council they serve for a term of office that is longer than the legislative session or the governor's term of office. They are essentially a body unto themselves. And they do lobby each legislator -- a senator or representative -- to gain funds for their operation ... and it is a gift, it is a gift, it is a gift. I don't see any other construction of that."

Chairman Gross:

"I sense that the sentiment of the Committee is that this program does qualify as a gift, that no one can see a specific exemption in the statute or through any other piece of legislation that has been put before us. If that is the case, then our reaction to the request would be to indicate through a written advisory opinion that to accept these tickets would amount to acceptance of a prohibited gift. Is there a motion to that effect?"

Mr. Quinlan:

"So moved."

Chairman Gross:

"Is there a second?"

Senator Groen:

"Second."

Chairman Gross:

"Is there any discussion on the motion?"

Vice Chairman Quirk:

"The only point I'd like to make is I think the consensus is that we agree that, if there was an exception, this would not be impermissible under 15-B. And I think that from the discussion we have had that Committee members are inclined to maybe even suggest in our advisory opinion that the General Court ---- "

{Vice Chairman Quirk's remarks were interrupted as Representatives Wall and Ulery excused themselves from the remainder of the Committee's meeting so that they could return to the House session, which was occurring concurrently.}

Senator Groen:

"I think ... the consensus other than Representative Wall is that this is a gift. And so I say: 'let's vote on that.' But I'd also like to add to this a recommendation to the legislature that, if they would like to carve out an exception, that is their prerogative."

Chairman Gross:

"I think that is a good idea. Let me just simply observe that there is an exception under 15-B:2 {RSA 15-B:2, V(2)(b)(8)} that looked to me at first that it might apply and that is compensation from the state for official activities. The problem I had with applying that here is that the Cannon Mountain Advisory Commission statute itself says that its members shall serve without compensation. And secondly, there is the provision of the New Hampshire Constitution that says that the full compensation for members of the legislature shall be \$200 and mileage. So I'm saying: I can't see how this is authorized by any positive piece of legislation we have that would fit it into an exception.

"One thing that I would add before I call for a vote, and that is this: I think we need to limit this opinion to its facts. And the reason I say that is that yesterday Rich brought to my attention that the State Employee Collective Bargaining Agreement gives them ski tickets at half price. It's something that is a bargained-for benefit and Rich pointed out to me that the legislative employees are accorded by the legislature with the same privileges as accorded to state employees under the State Employee Collective Bargaining Agreement. I think that presents a very different set of questions. And so, I'd like us in what we say to restrict this determination to its facts so, if anybody then wants to raise that question with us, then we have not created a precedent which would drive us in the wrong direction."

Vice Chairman Quirk:

"I concur." {Other Committee members also indicated their concurrence.}

After further brief discussion, the Committee voted as follows:

Mr. Quinlan	Yea
Senator Groen	Yea
Vice Chairman Quirk	Yea
Chairman Gross	Yea

{MOTION ADOPTED}

ITEM #4

New/Other business.

{There was none.}

The Committee's meeting adjourned at approximately 10:40 A.M. The Committee's next meeting will be at the call of the Chair.

{Prepared by: Richard M. Lambert, Executive Administrator}