

MINUTES
LEGISLATIVE ETHICS COMMITTEE
JANUARY 29, 2024, MEETING
{Approved: April 22, 2024}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, January 29, 2024, at 2:30 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, Representative Bob Lynn, and the Honorable David H. Hess. 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 December 5, 2023.

Following review, Senator Rosenwald asked for the *Minutes* to be amended to reflect the fact that she voted no on the adoption of *Advisory Opinion 2023-3*. Vice Chairman Sytek moved to adopt the *Minutes* as amended. Representative Wall seconded the motion and the Committee voted 6-0, with 1 abstention by Rep. Lynn, to adopt the motion.

ITEM #2

Initial Review of *Complaint 2024-1*. (Nonpublic Session)

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an Initial Review of *Complaint 2024-1*. Representative Lynn seconded the motion and the Committee voted as follows:

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

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

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

{MOTION ADOPTED}

Chairman Gordon stated: “We just came out of executive session having conducted an initial review of *Complaint 2024-1*. Having conducted the review, the Committee voted to discharge the complaint based on it failing to state a violation of ethics guidelines, rules or law that would require further examination.”

ITEM #3

Examination of *Complaint 2024-2*. (Nonpublic Session)

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to examine *Complaint 2024-2*. Representative Lynn seconded the motion and the Committee voted as follows:

Representative Lynn	Yea
Mr. Hess	Yea
Senator Ward	Yea
Senator Rosenwald	Yea
Chairman Gordon	Yea
Representative Wall	Yea
Vice Chairman Sytek	Yea
{MOTION ADOPTED}	

{NONPUBLIC SESSION}

Senator Rosenwald moved to exit nonpublic session. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Representative Lynn	Yea
Mr. Hess	Yea
Senator Ward	Yea
Senator Rosenwald	Yea
Chairman Gordon	Yea
Representative Wall	Yea
Vice Chairman Sytek	Yea
{MOTION ADOPTED}	

Chairman Gordon stated: “The Ethics Committee has just come out of an initial examination of *Complaint 2024-2*. Having done so during the nonpublic session, the Committee voted to discharge *Complaint 2024-2* because it fails to state an actionable ethics offense.”

ITEM #4

Consideration of a request for an Advisory Opinion from Representative Judy Aron.

Chairman Gordon summarized Representative Aron’s request and invited her to address the Committee.

Chairman Gordon: “The issue I saw, Representative Aron, is that you had received a donation from a humane society ... and you were concerned that that might be prejudicial, so you refused to accept the donation, but were concerned about other donations, or other people, receiving those donations. Is that an accurate representation?”

Representative Aron: “So, I am a committee chairman. I sit on Environment & Agriculture and, first of all, I think that these lobbying organizations shouldn’t be sending out any of these kind of donations prior to the legislative session because it does sort of ‘wink, wink, nod, nod if I give you this money, you’ll support my bills.’ But be that as it may, I know that there are legislators that receive contributions, and they vote entirely against the organization that

just paid the money. And that's fair. It's their choice to do that. I just find it problematic for the legislator. But I came here as chairman of my committee because I do have some bills coming before my committee that are supported (inaudible) the views of the Humane Society and perhaps PETA as well ... and I just wonder if it's reasonable to ask my committee members if they received such solicitations, and if they have accepted those funds, and if they have, should they recuse themselves from voting or execing on those bills because that would put them, I think, in a quid pro quo situation. And it's very clear that in the *Ethics Guidelines* that we are not to accept money in return for any kind of vote..."

Vice Chairman Sytek: "The *Guidelines* are pretty clear: 'the following shall not be considered gifts for purposes of these *Guidelines* ...a political contribution.' That's what this was. It was to your campaign fund. So, you're saying that anybody that takes any political contribution has to recuse themselves?"

Representative Aron: "No, I'm saying prior to a legislative session. I think that would be considered a quid pro quo."

Representative Lynn: "What's the quid pro quo? Did the contributions say 'I'm giving you this money and I expect that you're going to vote the way I want you to'?"

Representative Aron: "Well, why would they give you a contribution? It's sort of like a wink, wink, nod, nod, isn't it?"

Representative Lynn: "Well, that's a lot different than a quid pro quo. I mean, if that were the rule nobody could accept campaign contributions."

Representative Aron: "No, I'm saying that you can accept any kind of campaign contributions I would say after the session because then your voting is already done. But prior to a legislative session, that I think is involving buying votes. That's the way I see it. \$500 is not small money to me. But I tell you, this came out of the blue in November. I'm not even running for office yet. So, I can't even imagine what the purpose of this contribution would be other than to say, 'gee, you're going to have some legislation in front of you that is supported by my organization, here's a contribution for you.' Yes, you can accept contributions, but I think there should be some time period where it shouldn't be allowed because it puts you in a situation where you probably could be accused of voting one way, or another based on money that they've given you."

Chairman Gordon: "I don't disagree with you that contributions are made by some with the idea that you will look favorably upon them when you consider legislation. I surely think that's the case. But looking in terms of our *Ethics Guidelines*, as Speaker Sytek has specifically said, political contributions are basically exempted from being considered as a gift, or something of value. So, I'm not sure that we could find an ethical violation based on what the legislature has told us what our standards are. But it seems to me that if you are concerned about that, that's something that you could do by proposing legislation because we certainly would enforce something if the legislature said contributions like that aren't acceptable and are an ethics violation. Then it would be our job to enforce that. But I don't think we can under the current *Guidelines* if that makes sense to you."

Representative Aron: "Sure. I can see that. To prepare some type of legislation that says lobbyist contributions can't be accepted within so many days of a new legislative year. I can understand an organization giving you a contribution at the end of a legislative year because, based on what your votes were, how you supported them and so forth, but prior to the year, so close like that, it seems to me that it is an attempt to buy votes and that's what I'm concerned about..."

Vice Chairman Sytek: "To buy access, not influence. That's what they tell you. Some states have laws that say you can't do any fundraising while the legislature is in session. So, maybe you would want to bring in a bill that says that...."

Representative Lynn: “You weren’t doing any fundraising. They just sent you a contribution. So, I would question whether there would be a First Amendment problem with any legislation like that because money is speech, that’s what the Supreme Court has held. I mean, you can have some restrictions, but to say, ‘you can’t make contributions within the limits of whatever’ I think there would be a real First Amendment issue with that.”

Vice Chairman Sytek: “Other states have it.”

Representative Lynn: “Well, for soliciting, maybe soliciting.”

Chairman Gordon: “Certainly there is a negative public perception of politicians who accept money and then vote in a particular way. But I’m not sure that it’s something that our committee has the ability to do something about.”

Representative Aron: “I just thought I’d bring the question to you and see what the conversation could be about it.”

Senator Ward: “My feeling is that there are these checks that will come in and some things that are promoted may come up. On the other hand, that if the individual, you in this case, is very much bothered, then talk with them and say, ‘I really don’t want to accept this check for the following reasons.’ I don’t think that, at the same time, you have the right to ask other people how they feel about it because they may feel totally not bothered by it, or they may not vote in the direction that this organization wants you to vote because you have, what, 20 people on the committee? So, I think that if it really bothers you as an individual, then I would deal with that, but I don’t think you can tell the other people, ‘I think you should recuse if you have accepted this check...’”

Mr. Hess: “I think that is a decision that each member has to make himself or herself. That’s not your responsibility as a committee chair, and you don’t know if they’re going to vote for or against the bills anyway. So, you’re making a supposition, a priori, ahead of the fact, which may never occur. So, I don’t think that’s a responsibility of you as a chair, and certainly whether somebody gets accused subsequently if they’re taking a quid pro quo, that’s their responsibility, and if somebody does that and that occurs, they have to handle it.”

Representative Aron: “Fair enough. That’s why I wanted to bring it to your committee and see what you had to weigh in on about it.”

Following further brief discussion, the Committee agreed to respond with an opinion stating that: 1) the *Ethics Guidelines* specifically exempt campaign contributions from being considered a gift, so it could not find that it would be an ethics violation for a legislator to accept the contribution; 2) it is the responsibility of Representative Aron’s committee members to decide for themselves whether they should accept legal campaign contributions from individuals or organizations who may support or oppose legislation that could come before them; and 3) the members of Representative Aron’s committee would not be required to recuse from voting or otherwise participating in official activities relating to legislation the Humane Society has supported or opposed solely on the basis of having received a campaign contribution from the Humane Society.

ITEM #5

Consideration of a request for an Advisory Opinion from Attorney Richard J. Lehmann, Senate Legal Counsel, on behalf of Senator Sharon M. Carson and Senator Daniel E. Innis.

Senator Rosenwald: “Mr. Chairman, the same situation applies to Senator (Rebecca) Whitley...she teaches at the UNH Law School.”

Chairman Gordon: “In essence, as I understand the letter, it indicates that with our prior advisory opinions that, if they were broadly interpreted, it would prohibit Senator Carson or Senator Innis, and Senator Whitley, from participating in matters involving the University System. Anybody have any thoughts?”

Vice Chairman Sytek: “I do. {Addressing Attorney Lehmann} You make the argument that they’re exempt under paragraph (h) {*Ethics Guidelines*, Section 4, II(h)} because ‘These things shall not be considered gifts’ and it says, ‘salaries given to the person by the state, or the United States of America related to performance of official duties.’ To me, that means the stipend that you get paid for going to a county meeting or the \$200 that legislators get paid. That’s the official duty. I think they would be exempt under (g) {*Ethics Guidelines*, Section 4, II(g)} because they get their wages in the ‘regular course of employment’ which ‘is unrelated to the government position held.’ So, I would think that would be the reason that they are exempt.”

Attorney Lehmann: “I think it could be. I read paragraph (h), the clause about related to official duties to mean official duties on behalf of the employer. But I think you’re right that it could refer to the government source...”

Vice Chairman Sytek: “I think that’s what it means...they wouldn’t call it ‘official duties’ if you’re working for your employer.”

Attorney Lehmann: “Except if they’re working for the government. Employer is the government in that paragraph.”

Senator Rosenwald: “I read ‘official duties’ as legislative duties, and so if we didn’t have RSA 14-C:2, IV(b)(8), that would mean that 3 members of the Senate, including a majority leader and the vice chairman of the Finance Committee, couldn’t vote on a budget, either budget, because the University System and Community Colleges come in and testify. But that’s a big percentage of the Senate that would be disqualified from voting according to the advisory opinion that this Committee issued. So, I know that the question I have, and I think it’s Mr. Lehmann’s question, I think it’s a broader issue too, because number (7) {RSA 14-C:2, IV(b)(7)}, or in the *Ethics Guidelines* it’s the one above {*Ethics Guidelines*, Section 4, II(g)}, say I’m a bookkeeper or a janitor for Sig Sauer and they come in and testify against a gun bill. That means that even though that is totally unrelated to my function at that company, I can’t vote on any bill they’ve testified on. Is that our intention? And does that make it harder for people who are not retired to serve in the legislature? I think we have to think about both public and private employees ... I just wonder if there are so many legislators besides these 3 Senators, who work for public colleges and universities, where their job has nothing to do with the employer person who testifies. Are we really intending to make it so you must recuse yourself rather than some other action, which could be you must file a declaration of intent?”

Attorney Lehmann: “I don’t know if you’ve had a chance to review it yet, but there was a late bill filed by Senator (Jeb) Bradley and Senator (Donna) Soucy that would set a specific recusal standard that would apply. {He summarized 2024 SB 605}

Chairman Gordon: “Do they get paid by individual schools or do they get paid by the University System?”

Attorney Lehmann: “I don’t know. I assume that at the end of the day it’s all state money.”

Chairman Gordon: “It’s all state money but basically the University System lobbies for the University System and underneath the University System are the 4 colleges.”

Attorney Lehmann: “And under the colleges there are departments, so...”

Chairman Gordon: “Right, but I’m just saying that if they’re not getting their check from the University System, they’re not necessarily getting their check from someone who lobbies... I think it gets to the issue of the distance from the lobbying effort, so you have Representative Murray, who is the deputy director. You had Doug Ley, who was the president of the

organization. Or you had Representative (Greg) Hill, who was going to be the executive director of an organization. Whereas if, as the Senator has just said, you're just an employee with no influence over the outcome, whether or not you'd be held accountable."

Senator Rosenwald: "But our advisory opinion refers to 'your employer having testified,' so even if their check comes from the University System or the Community Colleges, those employers have testified on both the operating and capital budgets and anything else that has to do with higher education, and so according to our advisory opinion, those 3 Senators could not vote on HB1, HB2 and HB25 without being open to an ethics violation. And I question if that was what the real intent was or were we trying to get to someone who was very close to the lobbying effort as you could say Doug Ley was, or maybe Alissandra Murry. But I think more people are scooped up in our opinion than just people who were part of the senior management."

Attorney Lehmann: "In the letter I wrote you all, and the reason I focused on government employment, is that government employment distinguishes the 2 Senators, and now I learned about Senator Whitley after I sent you the letter, the 3 Senators from the people who were the subject of your advisory opinions and Representative Ley's informal resolution, and I thought that was the cleanest way to draw the line. But I think the question you raised about the proximity to power, really, is the right question and we'll see what happens with the bill that's just come out, but that's what the bill's out there trying to address."

Representative Lynn: "I have 2 concerns. Let's take the example that you used, Senator (Rosenwald), the person who works as a custodian in some company, but if the matter that was before the legislature was going to have a big impact on his employer ... suppose this bill is going to put a company out of business, then I suppose even the janitor in that situation might say, 'well, wait a minute,' he would be influenced to vote one way or the other. That's one thing. The only other question I have, and I'm not saying that this really happens, but suppose if you drew the line along the lines you were talking about, would that open up, would that provide an incentive for companies to say, 'we know you're in the legislature, we know what the rule is... we're going to hire you to work in the motor pool but you understand how we want you to vote,' and would that be allowed under that pattern?"

Senator Rosenwald: "I wonder if the custodian, I'm assuming that the employer would not go out and hire someone for that bogus job, or a key job, just because they thought they'd get 1 vote out of 400. I just don't ... I get Doug Ley. I get Alissandra Murray. But it just seems to me that we're scooping a lot more people up which have no control, aren't near the seat of power and maybe they should declare an intent. But I don't know what we're accomplishing by saying these Senators can't vote."

Mr. Hess: "Am I missing something? It seems that the provision that Attorney (Lehmann) cited, absolutely, this doesn't apply to public employees, the state, county or federal level, so our conversation should be addressed more to this situation rather than the other, the private employer, rather than this one. I think this one, for me is crystal clear. But maybe I'm missing something."

Senator Rosenwald: "I think that's right, but the advisory opinions were broad."

Mr. Hess: "I can understand."

Chairman Gordon: "So, if it's crystal clear, explain it to me."

Mr. Hess: "Well, the language says, gift does not mean, shall not mean, wages, benefits, mileage or expenses paid for the person's official duties. RSA 14-C2(IV)(b)(8). My only question is why weren't cities and towns included? Or school districts?"

Vice Chairman Sytek: "It says 'official duties.' I don't think that 'official duties' are teaching a class."

Attorney Lehmann: “So, ‘official duties’ is undefined, but the *Guidelines* define ‘official business,’ so that means they mean different things typically in statutory construction.”

Representative Lynn: “So, I don’t think I read it the way you do, Donna. I read ‘(8)’ the way Dave does. It just seems to me ... it’s just that you’re getting paid for working. So that would cover the 3 Senators.”

Attorney Lehmann: “And it’s also the section above it that deals with private employment doesn’t use the official duties...”

Senator Rosenwald: “I’m just wondering whether we might want to refine our advisory.”

Mr. Hess: “I don’t disagree with you that we could consider that. I don’t think this is the case we should be addressing now... To me this case is cut and dry because of that specific language exempting public employees who get paid to do the job.”

Chairman Gordon: “So, you’re suggesting the Committee should find that by virtue of (RSA) 14-C:2, VI(b)(8)?

Mr. Hess: “That would be my motion, yes.”

Chairman Gordon: “And that would be specific to this case, It doesn’t address all of the issues we’ve been discussing here, particularly the Senator’s issues.”

Mr. Hess: “And it wouldn’t have any impact on that discussion because it’s a different section.”

Representative Lynn: “I agree. I think you’re right. In thinking about (7), maybe (7) covers what I was concerned about because it says ‘wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the legislative position held.’ So, maybe in my example, if Sig Sauer really did hire someone and put them in the clothes of a custodian, but the real deal was we want you to go vote the way we want you to vote in the legislature, then maybe that is unrelated. They wouldn’t fall under that exception because it is related to the legislative position held. You’ve been put in the legislature to do Sig Sauer’s bidding, as an example.”

Chairman Gordon: “And you’re getting compensated for being here.”

Representative Lynn: “Right,”

Senator Rosenwald: “But our advisory letter doesn’t refer to number (7), so that people whose employment is unrelated to their legislative position are still included in our advisory letter even though by statute and *Ethics Guideline* they shouldn’t be. And that’s my concern. I think it is clear for the 3 Senators, but I think anyone who would be exempt from an ethics problem by (7), it’s not clear in our letter.”

Chairman Gordon: “Frankly, I think this is the direction we want to go. We want to answer Attorney Lehmann’s request indicating that they are exempt based upon our interpretation, at least, of our section (8) in this particular chapter, and so that will take away their concern with regard as to whether or not they should be participating. But, I think, when we go back to our discussion above, the other item, then we can deal with that in terms of how it should be done in private circumstances.”

Senator Rosenwald: “Okay.”

Vice Chairman Sytek: “I can’t support saying they’re exempt under (8) because ‘performance of official duties’ is not teaching a class. ‘Official duties’ is by virtue of your office; I think they should be exempt under (7).”

After further brief discussion, Representative Lynn stated: “I would make the motion to issue the advisory opinion saying that the Senators are not precluded, and I would rely on paragraph (8) for the reasons that former Representative Hess has stated.”

Senator Rosenwald: “I would second that.”

Chairman Gordon: “Do you want to do that, or do you want to make a motion that indicates that, in our interpretation of Chapter 14-C, they are not required to recuse themselves, as opposed to referring specifically to section (8)?”

Representative Lynn: “If you do that, won’t you raise at least the question of ‘are you deciding differently than you decided (in *Advisory Opinion 2023-3*)?’”

Mr. Hess: “I think that would raise certain questions about the validity of our first 2 opinions and create the appearance of a conflict between our opinions.”

Chairman Gordon: “Okay. I was just trying to find a way that we could all reach a full agreement.”

The Committee then voted 6 to 1 in favor of the motion.

ITEM #6

Consideration of a request for clarification regarding *Advisory Opinion 2023-3* from Representative Alissandra Murray.

{Representative Lynn recused from participation in the Committee’s consideration of the request and left the meeting.}

Chairman Gordon asked the Committee for their thoughts.

Mr. Hess: “Well, my thought, Mr. Chairman, is that the facts she raises here justify looking at our previous opinions and seeing whether or not they are too broad or appropriate since we had not made the distinction immediately, and I’ll use the same phrase ‘proximity to power,’ that we had with the Senate one that we had earlier.”

Vice Chairman Sytek: “She talks about coordination of volunteer testimony. So, she is not going to testify, her boss isn’t going to testify, but they’re going to organize people to come and testify... ‘otherwise attempt to influence the outcome’?”

Mr. Hess: “In the ordinary meaning of the phrase that we have used twice, that would fall under that definition.”

Vice Chairman Sytek: “I would think so.”

Mr. Hess: “As commonly understood. It also raises the question: Will we draw a line somewhere? And, if so, where is it? Because one of the things we have to do is provide guidelines or an opinion that is understandable, so people don’t have to guess whether or not they comply with the *Guidelines* or don’t comply with the *Guidelines*. They may have to think about it more...”

Chairman Gordon: “I sort of like the proposal that Senator Bradley has offered. At least it will give us a standard to apply. {Quoting from 2024 SB 605} ‘(A legislator shall recuse himself or herself from participation in any official activity only when the legislator or a member of the legislator’s household) I. receives financial remuneration from an organization; II. Holds a position to exercise substantial influence over the affairs of the organization; and III. The organization has lobbied, testified, or otherwise attempted to influence the outcome of the official legislative activity.’”

Vice Chairman Sytek: “So, her organization encourages people to come and participate, try to influence the outcome, so that would fall under the umbrella of activities that we have required her to recuse herself. Is that true?”

Chairman Gordon: “I would think so.”

Vice Chairman Sytek: “So, the answer to her question is ‘yes.’ Does she have to recuse? I would say ‘yes.’ Talk me out of it somebody.”

Senator Rosenwald: “Okay. Weak, but I would say number (7) says she doesn’t have to because her job is social media.”

Mr. Hess: “But it mentions {in Representative Murray’s written request to the Committee} social media activity as part of the effort. So, she’s engaged in that then. She says

here: ‘I still desire clarification about the committee’s intent on whether limited coordination of volunteer testimony and social media activity from my employer would require my recusal,’ so if she’s in social media, then she is directly participating.”

Chairman Gordon: “My presumption is, when I saw social media, it means that she’s on Facebook, or at least email, soliciting participation in the people testifying.”

Vice Chairman Sytek: “Yea. That’s what Planned Parenthood and Cornerstone do. Get all of their people to sign up against this bill, or for this bill, and turn up at the hearing.”

Mr. Hess: “Yea. You have the occasional hearing when the legislative hall is three-quarters filled with people that have been solicited, organized volunteers.”

Chairman Gordon: “What do you want to do?”

Vice Chairman Sytek: “I would suggest that we tell her that she would have to recuse herself on an issue where her organization otherwise attempted to influence the outcome.”

Senator Rosenwald: “What’s our statutory authority for doing that?”

Mr. Lambert: “It’s just advice.”

Vice Chairman Sytek: “Advisory opinions, yes. We have authority to issue advisory opinions.”

Mr. Hess: “And also, as cited, *Ethics Guidelines*, Section 3, II. (b).”

Chairman Gordon: “Any other thoughts?”

Mr. Hess: “One further thought. Talking about, again, the proximity to power issue that Senator Rosenwald made, (Representative Murray) apparently continues to serve in her capacity as deputy executive director of the facility. So, even were we to clarify our prior opinions to address specifically people with the ability to influence decisions, I think that would still apply to her, and therefore the answer to the question would still be, ‘you must recuse yourself.’”

Following further discussion, Vice Chairman Sytek moved to respond that as Representative Murray continues to hold the position of deputy director of Reproductive Freedom Fund of New Hampshire (RFFNH), a position which gives her a level of responsibility and authority within RFFNH and over that organization’s efforts to influence the outcome of legislation, and that as the work she is performing, including directing individuals to testify on specific legislation or coordinating testimony with social media activity, constitutes activity which is attempting to influence the outcome of legislation, the Committee advises that she should recuse yourself from participation in any official activities related to legislation on which RFFNH has lobbied, testified, or otherwise attempted to influence the outcome.

The motion was seconded by Representative Wall and the Committee voted 6 to 0 in favor of the motion.

ITEM #7

New/Other Business.

There was no new or other business.

ITEM #8

Scheduling of the next meeting.

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

The Committee’s meeting adjourned at approximately 4:00 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}