



Seal of the New Hampshire

GENERAL COURT

LEGISLATIVE ETHICS COMMITTEE

Legislative Office Building - Room 404
Concord, N.H. 03301

**SPECIAL REPORT TO THE SPEAKER
OF THE HOUSE OF REPRESENTATIVES**

I. Introduction:

The Ethics Committee has received two complaints regarding the conduct of Representative Kathleen W. Ward in connection with the processing of House Bill 653. One of the complaints was made by a member of the general public and the other by five members of the New Hampshire Legislature.

Following a review of the complaints, and Representative Ward's response thereto, the Ethics Committee conducted an extensive preliminary investigation, in accordance with its procedural rules, and ultimately determined that substantially all of the material facts necessary to resolve the complaints were undisputed.

II. Factual Background:

House Bill 653, concerning the practice of optometry, was the focus of much legislative attention and stimulated intense lobbying efforts by both optometrists and ophthalmologists. On April 6, 1993, the Executive Departments and Administration (ED&A) Committee reviewed and approved an amendment (2171B), and voted 14-0 to recommend passage of the Bill, as amended, to the full House. The committee report and proposed amendment were forwarded to the House Clerk for publication in the House Calendar. The report and amendment were scheduled to be included in the calendar to be mailed on Friday, April 9, 1993, and to be acted upon by the full House on Tuesday, April 13, 1993.

At approximately 4:00 p.m. on Thursday, April 8, 1993, near the end of the House session, a lobbyist representing the interests of ophthalmologists advised Representative Ward, Vice Chairperson of the ED&A Committee, that there could be an interpretation of certain words in the Bill, as amended, which would result in permitting optometrists to treat glaucoma and

use steroids.¹ Believing this not to be the intention of the committee, (based on prior Committee discussion and votes) Representative Ward conferred with the committee chairperson, Representative William Kidder, and with Representative Merton Dyer, who was responsible for drafting the questioned language.²

In the discussions with Representatives Kidder and Dyer, different methods of correcting the language were considered. Representative Dyer proposed that no action be taken and that the errant language be corrected in the Senate. Chairman Kidder offered the possibility of reconvening the ED&A Committee for the purpose of preparing a floor amendment. Representative Ward testified that she recommended that a new sentence be added to a legislative intent section reflecting the committee's intention. Chairman Kidder and Representative Dyer, concurred, and Representative Dyer was instructed to accomplish this through Legislative Services and deliver the revised amendment to the Clerk's office for publication in the Calendar to be issued the next day. In describing her reasoning in recommending this action, Representative Ward cited the legislative deadlines, the late hour, the impending Easter weekend and the inconvenience of reconvening the ED&A Committee. In addition, she stated that the intent of the committee was clear, as evidenced by the 14-0 vote, and that the insertion of a "legislative intent" section would only clarify the intention of the bill.

Representative Dyer communicated with Legislative Services, requesting that the amendment be revised to clarify the prohibition against treatment of glaucoma and usage of steroids by optometrists. Legislative Services prepared a new amendment (2287B), which included a subsection containing the added wording. Representative Dyer delivered this amendment to the Clerk's Office that afternoon, and this version was published in the House Calendar issued on Friday, April 9, 1993. No change was made in the filed committee report which described the committee's 14-0 vote.

¹This same information had been previously supplied to Representative Merton Dyer earlier that same day, the ED&A subcommittee member assigned responsibility for drafting House Bill 653, but not communicated to Representative Ward, ED&A Committee Chairman William Kidder, or subcommittee Chairperson Sandra Dowd.

²Representative Dowd had apparently left the State House by this time, and was not present for this discussion.

Representative Ward testified to the Ethics Committee that she never reviewed the changes to House Bill 653 prior to the next session day, April 13, 1993, and was unaware that something other than a "legislative intent" subsection had been added. She also testified that she did not contact any other ED&A Committee members to inform them that any changes had been made.

The alteration of the committee amendment came to the attention of other representatives before or during the session on Tuesday, April 13, 1993. One or more of them expressed to Representative Ward their concern regarding the manner in which the change was made. When House Bill 653 was called by the Speaker, Representative Ward addressed the full House, explaining and apologizing for the change. The further proceedings of the House of Representatives and the ED&A Committee with respect to House Bill 653 are a matter of record.

III. Complaints:

The complainants have alleged that Representative Ward may have violated certain provisions of State law, House Rules and the Ethics Guidelines by causing an unauthorized alteration of the amendment and permitting its publication, thus creating the implicit representation that it was the exact amendment approved by the members of the Executive Departments and Administration Committee by a 14-0 vote. In response, Representative Ward indicated that there was no intention to change the substantive portion of the committee amendment, but only to make clear the intention of the committee that optometrists be restricted from treating glaucoma or using steroids. Furthermore, she has indicated that her action was required by the circumstances, and, had time not been a factor, she would have acted otherwise.

IV. Findings:

Representative Ward has alleged that the addition of language stating "legislative intent" need not necessarily be reviewed and approved by the full committee, because it will not ultimately be incorporated into statutory law. The Ethics Committee disagrees and accordingly attaches no significance to a distinction between legislative intent language which may appear in session law only and substantive language which later appears in statutory form. Evidence presented to the Ethics Committee would indicate that legislative intent, regardless of whether it becomes statutory law or only session

law, may have great importance and is ordinarily considered and voted upon by the appropriate committee. The Ethics Committee was given no reason to believe that it is an accepted practice for individual committee members or leaders to add a legislative intent section to a House Bill after the committee has acted upon it.

Notwithstanding this, and despite having reviewed the rules governing House procedure, the Ethics Committee could find no clear legal authority governing the circumstances presented. There is a generally held understanding among Legislators that once a committee has voted to make a recommendation to the House on a bill, it is inappropriate for further changes to be made absent the knowledge and consent of the committee. However, the basis for this understanding does not appear to be specifically stated in the House Rules. In areas of decorum and procedure, Mason's Legislative Manual is intended to guide the behavior of House members. Sections of Mason's might be interpreted to address the present situation. But, it is unclear to the Ethics Committee whether Mason's is intended simply to be a guide or whether a violation of its provisions provides a suitable basis for disciplinary action.

There was no evidence indicating that Representative Ward had a pecuniary interest in House Bill 653 or that she would obtain any personal gain as a result of her actions. Therefore, the Prohibited Activities section of the Ethics Guidelines does not directly apply to this situation. Moreover, there was no evidence of any intent to deceive on her part, the motive for her action being to clarify the committee's intent with respect to the issue.

Regardless of whether there is a clear violation of the House Rules or of the Ethics Guidelines, the facts show that Representative Ward knowingly by-passed the committee process, and made no effort to inform the ED&A Committee members of the change which had been authorized.

Representative Ward is Vice-Chairperson of the Executive Departments and Administration Committee. As an appointed legislative leader, it is important for her to maintain the respect and trust of her committee members. Actions such as those taken by Representative Ward may serve to undermine that trust and reflect negatively upon the House of Representatives as a whole.

V. Conclusion:

The Ethics Committee admonishes Representative Kathleen Ward for her role in having knowingly and intentionally authorized changes to an amendment of a Bill after it had been voted upon in final form by the ED&A Committee and sent to the House Clerk. Her actions were contrary to the spirit of cooperation and the relationship of trust which is so necessary to the legislative process. Furthermore, such actions serve to undermine public confidence in the institution of the New Hampshire Legislature. Finally, Representative Ward's actions are contrary to the Principle of Accountability, one of the basic Principles of Public Service as set forth in the Ethic Guidelines.

VI. Resolution:

Having found no clear legal basis for taking further action against Representative Ward, the Ethics Committee has elected to resolve the filed complaints through the issuance and publication of this report.

In order to publish this report and resolve the complaints in this matter, the concurrence of Representative Ward is required by procedural rules, and has been obtained.

Dated at Concord, New Hampshire, this 29th day of September, 1993.

Respectfully submitted,

Rep. Amanda A. Merrill

Russell F. Hilliard, Chairman

Rep. Edward M. Gordon

Senator George F. Disnard

Francis Robinson

Senator Richard L. Russman