

MINUTES
LEGISLATIVE ETHICS COMMITTEE
APRIL 13, 2009 MEETING
{Approved: April 27, 2009}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, April 13, 2009, at 10:00 a.m. in Room 103 of the State House. The following members were present: Attorney Martin L. Gross, Chairman, Representative Janet G. Wall, Vice Chairman, Senator Amanda A. Merrill, Representative Stella Scamman, Attorney Kimon S. Zachos, and Attorney Richard L. Russman. Senator Sheila Roberge was unable to attend. Also present were: Richard M. Lambert, Executive Administrator, Attorney Jeffrey A. Myers, Senate Legal Counsel, and Attorney David Frydman, House Legal Counsel.

The Committee's meeting consisted of the following items:

ITEM #1

Consideration and Adoption of Agenda.

Vice Chairman Wall moved adoption of the proposed Agenda. Senator Merrill seconded the motion and the Committee voted 6 to 0 in favor of the motion.

ITEM #2

A Public Hearing and action on the proposed amendments to the Ethics Guidelines.

Chairman Gross said he wanted to "refresh everyone's recollection about where we have come from and where we are right now with these proposed amendments." Chairman Gross then said:

The Committee's proposed amendments to the Guidelines are the product of more than 2 years of effort to bring the Guidelines into conformity with ethics legislation pertaining to gifts, expense reimbursements and honoraria adopted by the General Court in 2006, 2007, and slightly amending again in 2008. The Committee attempted to submit revisions to the House and Senate in the spring of 2008, but the proposal wasn't taken up at that time due to the press of other legislative business. So once again the Committee is bringing forth the proposed amendments to the Guidelines. The purpose of the public hearing is to take comment from interested persons on the proposed changes. At our previous meeting on March 23, we considered and tentatively included some additional suggestions from counsel for the House and Senate. These have been included in the text circulated for the purpose of this hearing and these particular items are marked with asterisks. Again, the purpose of these proposed amendments is to conform the Guidelines to statutory changes and to make the Guidelines an authoritative and handy go-to place for legislators, legislative employees, and legislative officers to see what their obligations are. And so that we're all dealing with the same information, I would like to quickly go through the proposed amendments to point out their sources. Although there are 14 pages of text, only the bold italic text or the lined-through text involve changes. And so, I'd ask anyone who wants to speak today to focus their comments on the proposed changes rather than existing Guidelines text, which is not proposed for change. If you would put before you the copy of the draft proposed amendments, we can run through these very quickly.

{See the attached document: *Notice, Legislative Ethics Committee, Draft Proposed Amendments to the Ethics Guidelines*}

Chairman Gross then went through the proposed changes to the Ethics Guidelines describing the source of each change as follows:

- Section 2, paragraph III, the definition of "Expense Reimbursement," the new material, he said, "is verbatim drawn from RSA 15-B:2, IV."
- Section 2, paragraph IV, the definition of "Family Member" is "drawn from RSA 15-B:2, VII."
- Section 2, paragraph V, "Financial Interest." He said: "'Financial interest' is not defined in the statute. 'Financial interest' is a definition that the Guidelines have defined for many years and what we see here is simplification of that definition which, I believe, was proposed largely by House and Senate legal counsel."
- Section 2, paragraph VI, the definition of "gift," he said, "is drawn verbatim from RSA 15-B:2, V."
- Section 2, paragraph VII, the definition of "Honorarium" is "drawn from RSA 15-B:2, VI."
- Section 2, paragraph XI, the definition of "Official Business" is "drawn from: RSA 15-B:2, VIII-a."

- Section 3, Legislator's Financial Disclosure Form, he said: "You will see that we've inserted a note at the top: 'If 2009, SB 155 becomes law, the form prescribed in this section shall be replaced in its entirety with the financial disclosure prescribed by SB 155,' and so the changes that you see below are changes that may never have to be made if this disclosure form is supplanted by the statutory disclosure form. And at the end of the section is another note that says: 'If SB 155 of the 2009 legislative session becomes law, then Section 3 of these Guidelines shall be replaced with the following' and Section 3 is a placeholder for whatever the statute turns out to be."
- Section 4, Prohibited Activities, paragraph I. He said: "There's very little change in paragraph I. This prohibition goes beyond what is in the RSA 15-B prohibition. This is a broader prohibition that has existed in the Guidelines for years and the only changes there are small changes to language that I don't think are substantive, and then at the end is a catchall that includes 'In violation of RSA 15-B' as a prohibited activity under the Guidelines."
- Section 4, paragraph VII, subparagraph (f). He said the subparagraph, which the amendment would delete, is "lined through at the suggestion of counsel for the House and Senate -- perhaps more the Senate than the House -- which would eliminate the general \$250 safe harbor on acceptance of gifts."
- Section 4, paragraph VII, subparagraph (e), the acceptance of expense reimbursement, he said, "is a requirement for filing reports that is (added) to conform the Guidelines to RSA 15-B:5 and 6, I. So again, this is to conform to legislation."
- Section 4, paragraph VII, subparagraph (f), would add new language regarding the acceptance of an honorarium, he said, "is to conform to RSA 15-B: 6, I."
- Section 4, paragraph VII, subparagraph (g), acceptance of meals or beverages, where the new language "is to conform to RSA 15-B:6, II and that has to do with filing reports for the acceptance of meals."
- Section 4, paragraph VII, subparagraph (h), he said: "This is in part a suggestion by counsel and it is in part a change tentatively adopted by this Committee the last time we were here. This says that a legislator can accept anything permitted to be accepted under 15-B and then the exception to that exception that we added was that there's a \$250 annual aggregate on acceptance of meals over \$25 apiece for purposes of discussing legislation...In short, what this does is: meals valued at more than \$25 apiece are subject to an annual aggregate limit of \$250 from any single source. So, meals at less than \$25 a pop are not subject to that \$250 limit and don't have to be reported."
- Section 5, Conflict of Interest Procedure, he said, 'has the addition of the words 'or the legislator's family member' at the suggestion of counsel."
- Section 6, Legislative Employee Code of Conduct, he said: much here is repetitive of earlier provisions that apply to legislators...in subparagraph III (e)(3), the changes in that paragraph are to conform with RSA 15-B:5 and 6, I. In subparagraph III (e)(5), again, the changes are to conform to RSA 15-B:2, V(12) and 15-B:6, II. In subparagraph III (e)(6), the changes are the same as with the provisions relative to legislators.

Chairman Gross opened the public hearing at approximately 10:20 am.

The following individuals spoke:

1) Representative Liz H. Merry (Belk/02)

Representative Merry said she wanted to "thank the Committee for doing this because I'm a relative newcomer to the House and I take this really seriously, and I come from a background where ethics are really important." She said she has found the process of filling out the ethics forms to be confusing and was glad the Committee was simplifying that. She said she had questions concerning the terms "spouse" and "family member" in the definition of financial interest, and regarding non-profits. The first question regarded what she termed the "nuance" in the definition of "financial interest." She asked the Committee where the boundary lies in terms of what may be more significant to her or a family member than on somebody in the general public.

Chairman Gross responded that "to explain this section, the major language that legislators can...pay attention to is language that isn't changed from the current Guidelines, and that is the first line that says: 'a financial interest is a reasonably foreseeable direct material financial effect,' so unless those hurdles are somehow implicated, you don't have to worry about spouses. That series of words essentially narrows the focus of 'financial interest' very, very greatly...you mentioned some concern about your involvement with not-for-profits. A financial interest is a financial interest, not any interest in any of the good stuff that a not-for-profit may be doing that

all of us have our interest in. That's not a financial interest. A financial interest has got to have a direct material financial effect and it's got to be reasonably foreseeable...and that effect has to be greater on you than on the general public...An example: you're voting on a bill that would change property tax laws. Everybody pays property taxes directly or indirectly and a change in the law might have a reasonably foreseeable direct material effect on you, but if it's simply as a citizen who's subject to the tax law, then it would not constitute a financial interest within the meaning of this."

2) Representative Laurie J. Boyce (Belk/5)

Representative Boyce asked about the propriety of a legislator receiving expense reimbursement for attendance at a meeting of the American Legislative Exchange Council (ALEC). Chairman Gross referred her to Guidelines Section 4, paragraph VII (e).

Representative Boyce also asked about the propriety of a legislator accepting free ski passes from the Gunstock Ski Area. Chairman Gross emphasized that his answer did not constitute an official advisory opinion and then stated that generally a gift is prohibited if it is valued at more than \$25 and does not fall within one of the exceptions to "gift." He referred her to the proposed language in Ethics Guidelines Section 2, paragraph VI (b) and said he didn't see any exception for the ski pass example as she described it.

3) Mr. Michael Brewster

Mr. Brewster asked "where his constitutional rights went," what happens when a legislator violates the ethics laws, and spoke about issues relating to the Judicial Council. Chairman Gross described the Committee's jurisdiction and complaint process.

4) Representative Edith A. Hogan (Hills/25)

Representative Hogan asked about the propriety of legislators receiving free admission to state parks. Several such free admissions over a year, she said, could total more than \$25. Chairman Gross said that Representative Hogan had raised "a very interesting question" to which he could not provide an answer "off the cuff." He described the Committee's process for requesting advisory opinions.

With no other individuals asking to speak, Chairman Gross closed the public hearing at approximately 10:50 a.m.

Chairman Gross said that the next agenda item was action on the proposed amendment to the Ethics Guidelines based on the Committee's discussions and input from the public hearing. He suggested the Committee "go over the proposed text by exception, that is, if any member of the Committee has a problem with a specific change, let's identify it and discuss it. But what I propose to do is walk through the text page by page. If there are no objections to what is on a particular page, we'll go on to the next page, and once we've identified the issues and sorted them out, then I'll ask for a motion to take action on the rules as however they may wind up to be amended. Is that a satisfactory process?" (The members of the Committee agreed it was.)

Chairman Gross went through each page of the proposed amendments and there were only 2 issues raised. One was regarding Section 2, subparagraph VI (b) and whether the Committee should add language from RSA 15-B:2, V 9(b)(13) which establishes an exception to "gift" regarding acceptance of monetary or other awards under the suggestion and extraordinary service award program under RSA 99-E. Following discussion, Attorney Zachos said that the language should not be added as it would be unnecessary because of the addition of the catchall in Section 4, subparagraph VII (h) stating that anything permitted under 15-B is automatically permitted. Vice Chairman Wall and Attorney Russman said they agreed with Attorney Zachos and the Committee agreed not to insert the language.

The other issue was raised by Senator Merrill who said there had been discussion and inquiries concerning whether the term "spouse" in the definition of "family members" included civil union partners. Chairman Gross said it was his view that it did. He asked the Committee if there was an interest to make the language more specific, saying it was the time to do so if that was what the Committee wanted. After a brief discussion, the Committee agreed that there was no need to amend the language.

Chairman Gross asked for the following motion to approve the recommended amendments to the Ethics Guidelines and a transmittal letter to the Senate President and House Speaker:

"That the proposed revisions to the Ethics Guidelines be distributed to the members of the Senate and House of Representatives with the request that the Guidelines as revised be brought to a vote within a period of 3 legislative days after distribution as prescribed in RSA 14-B:3, II."

Attorney Russman so moved and Vice Chairman Wall seconded the motion. The Committee then voted as follows:

Attorney Zachos	Yea
Vice Chairman Wall	Yea
Chairman Gross	Yea
Senator Merrill	Yea
Representative Scamman	Yea
Attorney Russman	Yea

{MOTION ADOPTED}

ITEM #3

Discussion of an agenda for the joint meeting with the Executive Branch Ethics Committee (EBEC) scheduled on April 27, 2009.

The Committee reviewed the EBEC's 2 proposed agenda items: "Discuss potential recommended statutory changes including possible joint approach to clarifying legislation," and "Revisit discussion regarding education and outreach efforts," and discussed what agenda item or items it would like to add. Following discussion, the Committee agreed to add an agenda item for a review of the 2 committees' advisory opinions and rulings with emphasis on any advice or interpretations that have differed.

ITEM #4

New/Other business.

1) A Discussion of a website for the Committee.

Attorney Frydman mentioned that the EBEC has its advisory opinions posted on the Attorney General's website along with other information relating to that Committee.

Chairman Gross observed that the Legislative Ethics Committee's only presence on the internet consists of a posting of the *Ethics Booklet* in a difficult to access place that is "lumped in" with information regarding lobbyists and directions about how to get to the State House. He suggested that the site should be much easier for the public to access and should provide more information about the Committee's opinions, provisions, and processes, including how to request an advisory opinion and how to file a complaint. Following further discussion, Chairman Gross stated that it was the consensus of the Committee that Mr. Lambert, Attorney Frydman, and Attorney Myers look into upgrading the Committee's presence on the General Court's website.

2) Discussion of a Press Release relating to the proposed amendment to the Ethics Guidelines.

Attorney Russman suggested the Committee should consider issuing a press release that would identify the importance and significance of the amendment and summarize the changes.

After a brief discussion, the Committee agreed with that suggestion.

The Committee's meeting adjourned at approximately 11:50 a.m. The Committee scheduled its next meeting for April 27, 2009 at 10:00 a.m. The meeting will include a joint meeting with the Executive Branch Ethics Committee.

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