

MINUTES
LEGISLATIVE ETHICS COMMITTEE
APRIL 27, 2009 MEETING
{Approved: November 19, 2009}

The Legislative Ethics Committee (RSA 14-B:2) held a joint meeting with the Executive Branch Ethics Committee (RSA 21-G:29) on Monday, April 27, 2009, at 10:00 a.m. in Room 206 of the Legislative Office Building. The following members of the Legislative Ethics Committee (LEC) were present: Attorney Martin L. Gross, Chairman, Representative Janet G. Wall, Vice Chairman, Senator Sheila Roberge, Senator Amanda A. Merrill, Representative Stella Scamman, Attorney Kimon S. Zachos, and Attorney Richard L. Russman. The following members of the Executive Branch Ethics Committee (EBEC) were present: Attorney Deborah J. Schachter, Chairman, John E. Blair, Alan W. Johnson, Attorney Patricia B. Quigley, Karol Lacroix, and Attorney James A. Normand. Dale Kuehne was unable to attend. Also present were: Attorney David Frydman, House Legal Counsel, Attorney Jeffrey A. Meyers, Senate Legal Counsel, Attorney Richard Head, Associate Attorney General, Kara-Lee Bean, EBEC Recording Secretary, and Richard M. Lambert, LEC Executive Administrator.

The joint meeting consisted of the following items:

ITEM #1

LEC Chairman Gross called the meeting to order and made the following statement:

The 2 committees are charged with meeting and conferring about our mutual work. The object of the exercise is to prevent the unthinkable from happening and that is: one committee advises one way and the other advises the other way with the same underlying law. But, I think on top of avoiding conflict of opinions, it's helpful for us to understand the work that the other committee is doing because there's some good ideas ... I've seen from their work some things that I'm wondering whether the Legislative Ethics Committee should adopt. So I think there's benefit from cross-fertilization as well as simply conflict resolution. The documents that I think will be useful are the stacks of documents which constitute the body of work of the Legislative Ethics Committee and the Executive Branch Ethics Committee advisory opinions.

{The documents were distributed.}

EBEC Chairman Schachter said:

I was struck in looking at the opinions that we were able to see that in your interpretative rulings that it is an awfully good idea to share information and I wonder if one of the outcomes of today could be a way to provide notice in real time to one another -- as helpful as it is to check in twice a year in this formal way -- so that if there are issues that are coming up before one of the bodies that may well come up before the other that we know right away, obviously the opinions are public and they are available, but I just thought that this is a nice opportunity that we could leave today with further progress in that regard. I noticed, for example, one of the interpretative rulings was something that later came directly to us around almost identical facts and it would have been great to know that this committee had already issued a decision -- that was with regard to an honorarium issue.

Chairman Gross said that was "a great idea." He also pointed out that there are differences in the body of law that supports each committee, recalling that RSA 21-G establishes the EBEC and applies to the executive branch, but is not applicable to the legislative branch, while RSA 15-B, the gifts statute, is applicable to both the executive and legislative branches, and RSA 14-B and the Ethics Guidelines comprise the LEC's underlying body of law. Because of these differences, he said, the 2 committees may not always be called upon to opine on the same underlying laws.

Chairman Schachter suggested the committees discuss the separate advisory opinions by the committees relating to use of letterhead, the EBEC opinion relating to the acceptance of gift cards, and the section of LEC Interpretative Ruling 2007-#1 relating to the \$250 annual limit for gifts received from a given source. Regarding the latter, she said the issue was something the EBEC had discussed as a possible subject of future legislation because the question had arisen in their group about what happens if there are cumulative small gifts. Chairman Gross explained that the provision establishing the \$250 limit came from the Ethics Guidelines and was not statutory. He added that in the pending amendments to the Ethics Guidelines, the \$250 aggregate limit would apply only to the acceptance of meals and beverages.

Chairman Gross suggested the committees discuss the EBEC advisory opinion relating to free transportation.

Senator Merrill suggested the committees discuss the EBEC Advisory Opinion 2007-10, about receiving discounts.

The committees then discussed the following EBEC advisory opinions:

◆ 2009-01, "Are gift cards or gift certificates 'gifts' as defined by RSA 15-B:2, V?"

Chairman Schachter and Associate Attorney General Head summarized the EBEC's reasoning in reaching the opinion. Chairman Schachter said:

We discussed at length the evolving nature of gift cards... appreciating that there are different kinds of gift cards. We learned that there are closed loop gift cards and open loop gift cards. We discussed that there are cards for major stores -- let's say Walmart-type stores -- that can be used for a multiplicity of purposes. And so, part of our analysis was trying to understand if a gift card vested in the recipient the kind of control that cash would, because you could go in and you could get anything from food to a portrait of your grandchild at some of these megaplexes where gift cards are available versus gift cards that might entitle you to \$6 worth of gas at a particular gas station. And so, the question then was whether it fell into the statutory definition of "tangible thing" and there wasn't a transfer of money but, again, we looked at more. What is defined in the decision here is a more pragmatic, functional analysis that you could take the gift card even if it was only -- like a Walmart card -- for a particular store, but you could use it so broadly that it was akin to cash and that, therefore, the legislature wouldn't have intended a narrow construction that would enable you to kind of bypass the gift rule by just going and buying the card and presenting someone with that spending power that would be akin to cash ...

Chairman Gross said:

My first reaction was I was glad for the education because I did not know there were so many varieties of gift cards, but I stopped after RSA 15-B:2, V(a)(1), the definition of gift, "(1) Money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money," and it struck me that the gift card, just like a gift certificate, is essentially a non-negotiable instrument for the transfer of money. It enables you to go and use it as a substitute for money at the place that honors it. Now there are some gift cards, as the committee instructed us, that are more negotiable than others because they're usable in other places, and there are other kinds that can only be used in one place. But, to me, my first reaction was: this falls into the category of a non-negotiable money item, not subject to any \$25 bottom exemption because, as you'll remember, our \$25 bottom exemption only applies to things other than money. Money is an absolute no-no.

Chairman Schachter said: "If I remember the discussion correctly, we had some unclarity about whether it was negotiable or non-negotiable ... I remember we decided that we might not want to hang our hats on that distinction."

Associate Attorney General Head said:

There was at least a conversation that the definition and language of "gift" used a phrase "non-negotiable instrumentality" instead of "instrument" which was at least a difference and it also used the language "for the transfer of money" and for at least with regard to some gift cards there is not an actual transfer of money that occurs on a closed loop gift card because you're presenting a gift card to the same store where that gift card was purchased, so there wouldn't be an actual physical transfer of money. So given that and rather than hang our hat on a legal interpretation of a "non-negotiable instrument" incorporated in the UCC (Uniform Commercial Code), I think the committee chose to look at it more as a practical sense of, given the variety of gift cards given out in the future are going to look different probably than they look today, and given the types of stores that are out there, including the Walmarts where in essence you can buy and get just about anything using your gift card {Chairman Gross interjected: "I rest my case."}, it is the functional equivalent of cash and (the committee) chose to do it more on that policy basis as opposed to a strict legal interpretation of the UCC. But there was a long discussion about UCC, whether or not it was a non-negotiable instrument ... and (the committee) chose not to do it through that language.

Attorney Zachos said: "I see no problem. Whether it's non-negotiable or negotiable or anything else, it's a gift. Maybe there is no actual transfer of money, but it amounts to it."

After a brief discussion, Chairman Gross suggested to the LEC members putting the opinion to one side for consideration of whether they would want to adopt it or a variant of it. Representative Scamman so moved and Senator Roberge seconded the opinion.

- ◆ 2007-04, "Is it acceptable for a public official or a state employee to use Department/Agency letterhead to send an employment reference for a person who was not employed by, and who has not done work for, the Department/Agency?"

Chairman Schachter noted that the LEC had arrived at a different determination than the EBEC had in its opinion but observed that the result may have been appropriate as the 2 committees were working with different statutory authorities. She said the EBEC's operative provision was more restrictive as RSA 21-G: 23 states that executive branch officials may not use their positions to secure privileges or advantages for themselves or to secure governmental privileges or advantages for others.

Chairman Gross said that the provision the LEC interpreted -- Ethics Guidelines 4, III -- stops before using the term "others" and that is the basic difference between the different provisions the committees interpreted.

Senator Merrill said that she was comfortable with the language the LEC used in its opinion.

Chairman Schachter asked if the EBEC interpreted the statute more broadly than they needed to.

Chairman Gross said that was a good question.

Chairman Schachter said that the EBEC "erred on the side of broadly interpreting the statute, saying 'you shouldn't use your position to benefit others.'"

- ◆ 2007-05, "May a State employee accept free transportation to an event that the employee is attending in his or her official capacity from a person who is employed by an entity regulated by his or her agency?"

Chairman Gross said that his first reaction when he read the opinion was that it isn't a gift unless the transportation is worth more than \$25.

Chairman Schachter said the opinion says that it's not a gift -- it's not governed by RSA 15-B -- but the EBEC believed officials have a duty to avoid a conflict of interest, that if it looks like it could compromise your impartiality or give rise to a possible conflict of interest, don't do it.

Chairman Gross said his recollection was that what the House Election Law Committee had in mind when they wrote the specific exception in the statute the opinion references -- RSA 15-B:2, V(b)(10) where it talks about acceptance of meals, lodging and transportation associated with

attendance at an event representing the state or legislature in his or her official capacity -- was, when you go as the speaker of the house or the senate president or a committee chairman in your official capacity to an event, you can accept reimbursement for that, but it wasn't intended to give a free pass, for example, to take a trip with someone in a Gulf Stream jet for a couple of hours.

Chairman Schachter asked Chairman Gross if he thought the statute as drafted needed to be tweaked. She said the EBEC "defaulted" to the conflict of interest provision in the statute that uniquely applies to the executive branch because they were uncomfortable with having an open door to any transportation when a public official is traveling in an official capacity.

Chairman Gross said that if the LEC were to take on the issue he would advise the committee to interpret the provision narrowly and said that although the LEC "would probably not be at variance in their conclusion with where the you came out," he would say advise the LEC that "the statutory provision is not interpreted as applying to a situation where somebody with red hot legislative business offers free transportation to a legislator."

Chairman Schachter asked if he felt the EBEC was too quick to say that RSA 15-B doesn't apply.

Chairman Gross replied: "Under the interpretation that I would urge on my colleagues, yes."

Chairman Schachter said: "What I would say is: I think that if there's concern, if this needs further clarification, then maybe that's a statutory matter because I think that the language of the current statute is pretty all-encompassing: if there's transportation associated with attendance at an event where I'm attending in my official capacity representing the state, or the Senate or House, then it's not a gift."

Chairman Gross said: "Just addressing the underlying authorities here, so far since I've been associated with our committee and long before then, I don't think our committee has felt that it was obliged to apply a statute literally if the spirit of the regime suggested that there should be a narrower interpretation, and we'll come to one on our list on attendance at charitable events, and the gift exemption from that, which has been the subject of some discussion."

Chairman Gross asked the LEC if it would agree to put the issue on its list of things to consider. Representative Scamman so moved and Senator Roberge seconded the motion.

- ◆ 2007-10, "Is receipt of a discount offered to all state employees by a business entity a prohibited gift?" Senator Merrill observed that the issue of when a group is getting something versus when only a subset of the group is getting something has been a theme that the LEC has dealt with over the years.

Chairman Schachter said the EBEC took the same approach here as they took in the decision regarding free transportation: they did their analysis under the gift statute and concluded that, if it's generally available, then it passes muster under the gift statute, and they then resorted to the conflict of interest provisions for the executive branch and determined that there needed to be a second level of inquiry so that, if a public official has responsibility for oversight of a business entity that's offering the discount, the official shouldn't accept the discount.

Chairman Gross said it occurred to him when he looked at the opinion to ask: "What is the difference between a 'generally available discount' and a gift card?"

Senator Merrill said she found herself saying "a discount is a kind of gift."

Chairman Gross asked: "What is the difference between a merchant saying 'all state employees are welcome and I'll give you 10% off'" and the same merchant obtaining the names and addresses of all state employees and sending them a gift card worth 10% off or \$10? He asked if there was an articulable difference.

Chairman Schachter said she thought there was but wanted to hear from other members of the committees.

Vice Chairman Wall said she was thinking of the 15% discount that Verizon Wireless offers to all state employees and said that she assumed that "because it was available to all state employees that it was perfectly okay if one wanted to take advantage of that opportunity." She also talked about the discounts that Concord-area hotels offer legislators and said: "Once again, that applies to all legislators, but only certain ones -- the ones that travel great distances -- really use it."

Chairman Schachter said her committee was trying to distinguish between a promotion that is really a marketing strategy that isn't intended to influence anybody's exercise of their governmental authority but is intended to get business, versus a gift card which "looks more like 'here you go, Marty, because you and I like each other and by the way I have some business I'd like to discuss with you,' which is unethical under the statute." She said "the advisory opinion tries to permit the former-- marketing strategies that are undifferentiated by my particular authority -- versus something that would be clearly prohibited and within the kinds of things the legislature was trying to prevent."

Attorney Russman said his question was whether Verizon provides the discount generally, adding: "I'm sure they don't, they probably don't give everybody who works at Dunkin' Donuts a 15% discount. Now if they do and if that's the kind of thing they do with a lot of different groups -- a promotion to get large groups of people -- I guess I don't have a problem with that, but if it's just state employees and it's not generally available to other folks or other groups, I see that as a bit of a problem ...because there is obviously a reason why they're doing it just for state employees."

Chairman Gross said: "If all Verizon is doing is extending what would normally be a friends and family discount program ... to state employees, that would be less offensive than just picking out the state employees as a special favored group and giving them a discount that nobody gets."

After further discussion, Chairman Gross asked the LEC members if they wished to flag the issue of discounts for work by the Committee.

Attorney Zachos so moved and Attorney Russman seconded the motion.

Chairman Schachter asked what would happen to the items going on the LEC work list. She said "our committee has been working in a world where we respond when folks request an advisory opinion from us or raise a complaint, but you're initiating issues."

Chairman Gross responded: "I have no doubt that when something comes to our attention that is a frequently-asked question, that we are not obliged to wait for either a legislator or a legislative staff member to come to us and say 'hey what about that?'; the Committee has authority to issue interpretive rulings sua sponte without having to wait for anybody to ask us."

Attorney Russman read LEC Advisory Opinion 1992-#2, issued on March 9, 1992: "The definition of anything of value does not include the receipt of discounts so long as such discounts are offered to legislators generally, including those from other states" and then observed: "But to me that's even worse if it's just legislators who get the discount; it's clear that you'd be grateful for having got that discount when it comes time to potentially vote ___"

Associate Attorney General Richard Head said that the discount Verizon offers is available to all public employees and said: "It's so broadly applied that it gives no benefit to anybody... it is a benefit to such a broad group it gains them no advantage, in my mind."

Chairman Gross said he would come up with a suggested process prior to the Legislative Ethics Committee's next meeting about how it could go about addressing the subjects flagged for further discussion. He also said that if the amendments to the Ethics Guidelines are adopted, the Committee will have to go through its old opinions and prune out the ones that are no longer applicable.

The committees discussed having the staff from the 2 committees develop a uniform index of their advisory opinions and interpretive rulings. Chairman Gross said the LEC at its prior meeting had begun a process to improve the way it displays its work on the General Court website. He agreed that having a joint index would be a very useful thing.

The committees discussed the following ruling of the LEC:

◆ Interpretative Ruling 2007-#1:

Chairman Schachter asked to hear about the LEC's thinking on Ruling 2, Issue A, "Tickets at no charge to an annual dinner sponsored by a chamber of commerce or similar organization." She said she was "surprised to see what seemed like a requirement that is not in the statute ... that, in addition to the event being charitable or ceremonial or a political event, and the sponsoring organization meeting the statutory definition as a charity, that you added the requirement that '(a) it is offered directly by the sponsoring organization.'"

Chairman Gross responded: "My recollection is that the thinking of the Legislative (Ethics) Committee was that the last thing the people who wrote the statute wanted to do was create yet another currency for people to buy favor, and tickets to events could be that. It could be a sky box to the Red Sox and nobody would doubt that was a prohibited gift. And so the question was 'what was the breadth of the exemption for a dinner sponsored by a chamber of commerce or a similar organization?' ... and the question arose about what happens when a lobbyist buys a table and the ticket says on it: 'Compliments of Fancy Lobbying Firm' and the lobbyist goes around to favored legislators and says: 'Gee, would you like to sit at my table at the New Hampshire Charitable Foundation Annual dinner?'...and so the legislator goes and sits at the lobbyist's table. What does that look like? That was the context before our committee and I think one member of the committee said: 'Well gee; we ought to limit this exception to make it consistent with the general overall provision of our Guidelines that says you're not supposed to use your office to obtain anything of value.' So that's why we did it and, yes indeed, it has been brought to our attention by counsel for the House and the Senate this is not in the statute and this is currently a matter which is under consideration, but I think the last time the Committee spoke on this, they were going to stick with this particular ruling for the present time."

Chairman Schachter asked if there was any concern raised about "the other end of the spectrum: the innocent re-gifting of a ticket that doesn't implicate the scenario you suggest where it's part of something that would be perceived as untoward but, in other words, there are times when one is in receipt of a ticket to a charity event that they themselves did not procure from the organization that is sponsoring it where no question would be raised about attempt to influence..."

Chairman Gross responded: "I think the issue is: what is the source? If it's simply a personal gift from, say, one legislator to another, it doesn't fall within the ambit of the prohibition at all because it's simply a personal transaction."

Chairman Schachter replied: "But the way it's defined here ... if I were reading this I would conclude that unless I were offered it directly by the sponsoring organization I couldn't take a free ticket to a charitable organization."

Chairman Gross said: "I think the underlying context of this whole thing is that somehow it's got to fall within what is regulated by our statute and our Guidelines and the only thing that is regulated there is conduct by a legislator as a legislator or as a legislative employee. Neither source attempts to regulate purely personal and interpersonal encounters and transactions. If I were a legislator, and a fellow legislator, or my next door neighbor, comes up to me and said: 'I got a ticket to this event and I can't use it, can you?' it would never occur to me that that was regulated, but when a lobbyist comes up to me -- somebody who has clear business that I have something to do with -- then it occurs to me that something may be amiss. We had a rather lengthy discussion about this 2 meetings ago and Kimon (Zachos) was of the view that ... this interpretation (may) get in the way of fundraising and another member ... said 'well, you know, if somebody really wants to help fundraise they can buy a table and give it back to the charitable organization and say 'here, you distribute it to worthwhile individuals' and that gets by the process of this creation of a currency that was a concern to this committee."

Attorney Russman said: "There was a concern that there would be a potential chilling effect on some of the larger lobbying firms buying tickets... because they can't give out the tickets themselves and they can't give out a list of people they would like to see the organization give the tickets to. They may say: 'Why would we buy a table for \$1000 or more if that's the case?' and there certainly is the potential for that chilling effect. At the same time, I think we as a committee just felt that to have the lobbyists have their friends sitting at their table, it didn't look right..."

Senator Merrill asked what the provision is in the statute or Guidelines that is applicable in terms of "it doesn't look right"?

Attorney Russman said that while Chairman Gross was looking for the citation he would like to say that "part of it was the notion that obviously if the lobbyist invites the key members of the committee the lobbyist works with routinely and then gives them these nice tickets to go to this nice function, that does curry favor, it's just another form of currency to further their goals of lobbying, and maybe they're doing it out of the goodness of their heart, but at the same time, not all lobbyists do that, they have a reason."

Chairman Gross said the specific provision is Ethics Guidelines Section 4, Prohibited Activities, paragraph I (a) {"Legislators shall not solicit, accept, or agree to accept anything of value from another for themselves or other persons, if the legislator receives such thing of value: (a) Knowing or believing the other's purpose to be the influencing of an action, decision, opinion, recommendation, or other official activity"}. He then said: "I think our Committee's thinking -- although it may have not been explicitly articulated -- was that everything we do has to be consistent within the major principles here ... to answer that question consistently not only with the statute, but with our Guidelines, we needed to put that restriction in there because I just don't think there is any way a legislator can conscientiously accept a ticket to an expensive event from a lobbyist without knowing or believing the other's purpose to be influencing an action."

Attorney Frydman asked: "If the source that's being relied upon for the interpretation that you're discussing is Section 4 of the Legislative Ethics Guidelines, as you know, there are amendments to those Guidelines that are coming up before the House and the Senate in the next few weeks, one of those amendments says that: 'Nothing in this section on prohibited activities shall prohibit acceptance of anything permitted to be accepted under RSA 15-B,' and so my question is: In light of that, and in light of the statement here that 15-B does not require at least on its face, without ambiguity, that it be given directly by the sponsoring organization, does that interpretative ruling still apply going forward, and how that impacts your thinking regarding this?"

Chairman Gross responded: "Come see us after both houses adopt those amended Guidelines and I'm sure we'll be glad to consider it further. You may have a point."

Chairman Schachter asked about the annual aggregate limit of \$250 in Ruling 4 of the interpretative ruling, "A legislator has a private breakfast, lunch or dinner meeting with individuals interested in issues before the legislature, at which they discuss these issues...May the legislator accept an offer from these individuals to pay for the legislator's meal?"

Chairman Gross said the \$250 annual aggregate limit had been in the Guidelines for a long time before the legislature enacted the gift statute and explained that the proposed amendments to the Ethics Guidelines would impose the \$250 annual aggregate limit on only the reportable meals.

Attorney Quigley said that she surveyed a number of other states and found that many of the states, in addition to prohibiting a specific gift amount, also prohibit an aggregate amount annually.

Chairman Schachter said: "The meals just seem to be an obvious example. If you took someone out to lunch every day and made sure to keep the bill under \$25 there would be a point at which ... a reasonable person would suggest that that was a problem."

Chairman Gross said: "Well, under \$25 is still free reign. It's only the reportable meals

_____ "

Chairman Schachter said: "I guess that was our point, that there would be circumstances where cumulative small gifts would not pass the sniff test, and therefore, perhaps the statute should address them. That was the question."

The EBEC discussed other possible subjects for future legislation, including changes to allow their members to participate in federal election campaigns, now prohibited in RSA 21-G:29, IV.

The committees discussed education and outreach efforts. Chairman Gross said the LEC was working to improve its website, including displaying its rulings and advisory opinions with a short catch line, as the EBEC does on its website, in a way that would be indexable. After further discussion, the committees agreed to communicate about the possibility of pursuing establishing a joint index of their opinions. The committees also discussed creating an internet-based brochure.

The joint meeting adjourned at approximately 11:45 a.m. The committees agreed to schedule their next meeting as soon as possible and agreed that it should be held in approximately 6 months.

The Legislative Ethics Committee then held a separate meeting at approximately 12:00 p.m. consisting of the following items:

ITEM #1

Consideration of a request for an Advisory Opinion from Richard Lambert, a senior researcher in the Office of Legislative Services.

Chairman Gross read the request verbatim:

Dear Chairman Gross:

I am requesting an advisory opinion from the Legislative Ethics Committee with respect to the following situation: I am the captain of a team ("Legislative Bodies") that participates in Concord Hospital's annual Rock 'N Race. All proceeds from this event go to Concord Hospital's Payson Center for Cancer Care. Concord Hospital is a nonprofit organization. This year the hospital has automatically created a fundraising page on their website for every team and for each team member who registered online. They have created fundraising pages for "Legislative Bodies" and for the 8 members of our 12-person team who registered online.

Is there any violation of applicable ethics statutes or the Ethics Guidelines if a legislative employee, officer, or legislator has his or her name attached to a fundraising page for the event or directly accepts a sponsorship check -- made out to Concord Hospital -- from individuals?

Chairman Gross then read 2 e-mails he had sent to Committee members which referenced the Ethics Guidelines provisions involved in the request: Section 4, I (a) and (b), concerning legislators {"Legislators shall not solicit, accept, or agree to accept anything of value from another for themselves or other persons, if the legislator receives such thing of value: (a) Knowing or believing the other's purpose to be the influencing of an action, decision, opinion, recommendation, or other official activity. (b) Knowing or believing that the giver is or is likely to become subject to or interested in any matter or action pending before or contemplated by the giver or another member of the legislature"}, and Section 6, III(b), concerning legislative employees {"A legislative employee or officer shall not use or attempt to use the employee's or officer's official position to (a) personally obtain any privilege, exemption, special treatment or any other thing of value, or (b) obtain any such benefit for others except as required to perform duties within the scope of employment"}.

Attorney Zachos asked to take up the question involving legislators first and said that in his opinion legislators are "certainly not excluded under '(a)'...because they'd have to actually know that the guy that's giving them \$50 or \$25 or whatever... is doing it to influence him..."

Chairman Gross asked Attorney Zachos: "Suppose that a member of the government relations department in your law firm decides to make a contribution to a legislator who is on this team, isn't that a problem under 4, I (b)?"

Attorney Zachos replied: "I guess it depends on how you interpret that." He went on to say that unless the lobbyist gave the contribution to the legislator because he had a bill coming up in front of the legislator's committee, he wasn't going to say that the contribution couldn't be made.

Vice Chairman Wall said she agreed with Attorney Zachos and added: "If I am on a team and if someone were to contribute to me ... it would be because of my participation in the Rock 'N Race, it would have nothing to do with the fact that I'm on the Judiciary Committee or the Ethics Committee."

Attorney Russman said: "I would respectfully disagree. I think that part of what we do is ask: 'What is in the eye of the public? What is the public perception?' and, frankly, but for the fact that you're a legislator, I don't think (a lobbyist) would give you any money...The issue is lobbyists, that's the problem ... lobbyists give out money to people to influence decisions. Let's suppose Speaker Norelli asks a lobbyist -- and she's on the Rock 'N Race team -- and she asks someone for money, it goes back to the thing with Speaker Chandler ... people were afraid not to give because they were concerned that they may not be looked upon as favorably as they would otherwise... It's how the public perceives it, not how we as legislators perceive it, it's how the average citizen on the street if they would think: Is it okay for a legislator to ask a lobbyist for money and get money from a lobbyist believing it's strictly out of the goodness of their heart because they want to help Concord Hospital or is it really because they want to get some favor with that legislator and they don't dare say no to a legislator?"

Vice Chairman Wall said: "I believe we step outside our roles as legislators when we become a participant on this team and we simply participate in a fundraiser for Payson Center at the hospital."

Chairman Gross said that was "really an important point." He asked: "To what extent do you identify yourself as a legislator or legislative employee?"

Vice Chairman Wall replied: "We have t-shirts that say 'Legislative Bodies' and that's it."

Chairman Gross said there are 2 ways to do this: "1) either not solicit outside the legislative family, or 2) don't make use of anything that any fair-minded person could say 'you're taking advantage of your legislative position.'"

After further discussion, Chairman Gross said his thought had been that whether identifying the team as "Legislative Bodies" amounts to use of official position is a matter of judgment for the Committee. He then said: "My own judgment is that it's so attenuated that it doesn't trouble me as long as there's no identification on the website of team members as 'Representative,' 'Senator,' or the 'legislative staff.'"

Attorney Zachos then moved to advise: "If legislators and legislative staff members are not individually identified as such, and that the mere identification is under the name of the team as 'Legislative Bodies,' then we do not believe that amounts to use of official position which would implicate the Guidelines."

Chairman Gross said he would like to add language stating: "Contributions should never be accepted in cash and should never be accepted in a form other than payable to Concord Hospital." After further discussion, Chairman Gross said he would also like to add language regarding who may be solicited and suggested adding wording such as: "Care should be taken to avoid the soliciting of any person who could be construed as seeking legislative favor." The Committee agreed to these additions.

The Committee then voted 6 to 0 in favor of the motion.

ITEM #2

Consideration of the draft *Minutes* from the Committee's meetings held on March 23, 2009, and April 13, 2009.

Chairman Gross said he had found some typographical errors in the 2 drafts and these had been corrected. After review, Attorney Russman moved to adopt the *Minutes* as corrected, Attorney Zachos seconded the motion and the Committee voted 6 to 0 in favor of the motion.

ITEM #3

Update on status of Senate Bill 155 and the proposed amended Ethics Guidelines.

The Committee discussed the fact that Senate Bill 155, "An Act relative to financial disclosure by legislators," had passed the House with an amendment and was awaiting action in the Senate, which was expected to concur with the House amendment.

The Committee also discussed the Committee's proposed amendment to the Ethics Guidelines, which was pending before both bodies. During the discussion, Attorney Zachos suggested that Chairman Gross should convey to the Speaker of the House and President of the Senate the Committee's feeling that the Ethics Guidelines amendment cannot be amended on the floor. The Committee agreed with the suggestion.

The Committee's meeting adjourned at approximately 12:30 p.m.

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