

MINUTES
LEGISLATIVE ETHICS COMMITTEE
NOVEMBER 19, 2009 MEETING
{Approved: February 11, 2010}

The Legislative Ethics Committee (RSA 14-B:2) met on Thursday, November 19, 2009, at 1:00 p.m. in Room 103 of the Legislative Office Building. The following members 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.

{Senator Merrill was unable to attend during the Committee's consideration of Items #1 and #2 due to her attendance at another legislative committee meeting, and Attorney Zachos did not attend until after the Committee's first nonpublic session had concluded.}

The Committee's meeting consisted of the following items:

ITEM #1

Consideration and adoption of the proposed Agenda.

Vice Chairman Wall moved to adopt the proposed Agenda. Attorney Russman seconded the motion and the Committee voted 5-0 to adopt the Agenda.

ITEM #2

Consideration of the draft *Minutes* from the Committee's meeting held on April 27, 2009. Following review, Attorney Russman moved the adoption of the *Minutes* as drafted. Vice Chairman Wall seconded the motion and the Committee voted 5-0 to adopt the *Minutes*.

{Senator Merrill arrived.}

ITEM #3

An Initial Review of *Complaint #2009-1*.

Chairman Gross announced that Representative Scamman and Attorney Zachos had recused from participation in the Committee's proceedings relating to *Complaint #2009-1* and that House Republican Leader Representative Sherman Packard had appointed Representative Shawn N. Jasper to serve in place of Representative Scamman and that House Speaker Terie Norelli had appointed Attorney Joseph A. Foster to serve in place of Attorney Zachos.

Chairman Gross then asked Representative Scamman to excuse herself from the table and asked the alternates, Representative Jasper and Attorney Foster, to be seated. He thanked them for their willingness to stand in on the complaint.

Chairman Gross stated: "Consistent with our normal procedures under our statute and our Procedural Rules, an initial review is conducted in nonpublic session, and so I'll entertain a motion to go into nonpublic session for the purpose of conducting an initial review of *Complaint #2009-1*."

Vice Chairman Wall moved to enter nonpublic session {pursuant to RSA 14-B:3, I(d)} to conduct an initial review of *Complaint #2009-1*.

Attorney Russman seconded the motion and the Committee voted as follows:

Attorney Foster	Yea
Senator Merrill	Yea
Senator Roberge	Yea
Vice Chairman Wall	Yea
Chairman Gross	Yea
Attorney Russman	Yea
Representative Jasper	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Attorney Foster	Yea	
Senator Merrill	Yea	
Senator Roberge	Yea	
Vice Chairman Wall	Yea	
Chairman Gross	Yea	
Attorney Russman		(not present)
Representative Jasper	Yea	

{MOTION ADOPTED}

Chairman Gross announced that the Committee in its nonpublic session completed its initial review of *Complaint #2009-1*. He then stated:

With respect to Representative [Peter] Leishman, the Committee has determined to proceed with a preliminary investigation into the complaint concerning the conduct of Representative Leishman to determine whether there is sufficient cause to warrant further proceedings as to the following: First, with respect to Representative Leishman's activities relevant to House Bill 613 of the 2009 session, did such activities violate Principle of Public Service 1.1 or Prohibited Activity 4.2(c) or 4.3 or 4.5? Second, with respect to Representative Leishman's activities in connection with renewal of the Milford-Bennington Railroad contract, did such activities violate Prohibited Activity 4.2(d)? That will be the scope of the preliminary investigation that the Committee will undertake and the Committee will keep the parties informed of the process.

With respect to Representative [Marjorie] Smith, the Committee has determined not to proceed further with respect to the allegations against Representative Smith. The complaint and materials accompanying it do not make out any conduct on her part which would violate any statute, rule or Guideline and, therefore, the Committee concludes that, as to her, the complaint is without merit. Representative Smith has consented that that determination be made public and that is why I am announcing it in this open proceeding.

And that concludes our processes with respect to *#2009-1* for today.

Attorney Peter Smith, counsel for Representative Smith, asked Chairman Gross if he could also add mention of what the vote was to dismiss the complaint against Representative Smith.

Chairman Gross responded: "The vote with respect to Representative Smith was 7-0."

{Representative Jasper and Attorney Foster left the meeting, Representative Scamman rejoined the meeting, and Attorney Zachos joined the meeting.}

ITEM #4

An Initial Review of *Complaint #2009-2*.

Chairman Gross asked for a motion to go into nonpublic session for the purpose of conducting an initial review of *Complaint #2009-2*.

Vice Chairman Wall moved to enter nonpublic session {pursuant to RSA 14-B:3, I(d)} to conduct an initial review of *Complaint #2009-2*.

Attorney Zachos seconded the motion and the Committee voted as follows:

Attorney Zachos	Yea	
Senator Merrill	Yea	
Senator Roberge	Yea	
Vice Chairman Wall	Yea	
Chairman Gross	Yea	
Attorney Russman		(not present)
Representative Scamman	Yea	

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Attorney Zachos	Yea	
Senator Merrill	Yea	
Senator Roberge	Yea	
Vice Chairman Wall	Yea	
Chairman Gross	Yea	
Attorney Russman		(not present)
Representative Scamman	Yea	

{MOTION ADOPTED}

Chairman Gross announced that the Committee in its nonpublic session completed its initial review of *Complaint #2009-2* and voted to dismiss the complaint as not sufficiently founded. He also announced that he would be writing the respondent a letter stating that the Committee is dismissing the complaint, accepting the respondent's assurance that he didn't intend to threaten, and stating that the Committee will issue an Interpretive Ruling to clarify relevant Ethics Guidelines provisions.

ITEM #5

Consideration of a request for an Advisory Opinion from Representative Robin Read.

Chairman Gross summarized Representative Read's request as wanting "to know what he can and should not do in respect to inquiring about potential intern positions that might be available for his daughter, who will be completing her first year at Georgetown University Law School in the spring of 2010."

Chairman Gross asked the other members for their thoughts.

Attorney Zachos said he thought it should be okay for Representative Read to support his daughter's efforts to find an intern position.

Chairman Gross said there are 2 provisions in the Ethics Guidelines Prohibited Activities section that could potentially be involved: 4.1(c), which states that a legislator shall not solicit or accept anything of value from a person likely to be interested in legislative matters, and 4.1, prohibiting the use of a legislator's position to obtain anything of value. He said he thought that the issue is: "Is a mere inquiry about the availability of an internship program a solicitation or the use of a legislator's position?" He said: "there could be some opportunity for mischief if, for example, he calls up Shaheen, Phinney, Bass & Green and speaks to Bruce Berke [the head of the law firm's lobbying arm] and says, 'Do you have any internships available in your firm?' and if he identifies himself as a legislator on that call, so I'm saying to myself, 'Well you know, if he doesn't identify himself as a legislator in this, I have no problem and if he calls only people that he knows personally and not because of their contact with the legislature, I haven't got a problem, but if he starts calling around to the lobbying firms asking on behalf of his daughter 'Do you have any internship programs available...somebody is going to get annoyed at that, that could expose him to a charge and if we give him an advisory opinion which says 'you're clear, this is not a problem,' then he has that advisory opinion as a safe harbor, and so, I'm not inclined to just say, 'no problem.'"

Vice Chairman Wall asked: "So how does it work if someone knows you're a legislator and you didn't identify yourself as one? There's a very fine line there, I think."

Chairman Gross agreed. He suggested the Committee could respond by saying that Representative Read's actions as described do not seem to create any major problem because he's been merely inquiring about the availability of intern positions, but even there, inquiries could be construed as a solicitation from a person likely to be interested in legislation if inquiries are made to people who are in front of the legislature all the time.

Senator Merrill suggested the Committee "say something to the effect that technically you are within your bounds, but legislators should be aware of potential reactions." She also pointed out that in Representative Read's case, he said in his letter: "I have no intention of assisting [my daughter] beyond what I've done to this point, except possibly to informally ask lawyers that I know personally."

Chairman Gross said that the Committee's consensus appeared to be that it should respond "that to the extent that he describes what he's done, we don't perceive there has been a violation, but legislators should be aware that even that kind of solicitation could be construed as a violation of 4.1(b) if it's made to people who are professionally involved with the legislature." He said he would circulate a draft for the Committee's consideration. After further brief discussion, the Committee agreed to that approach.

The Committee's meeting adjourned at approximately 5:30 p.m. The Committee's next meeting will be at the call of the Chair.

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