

MINUTES
LEGISLATIVE ETHICS COMMITTEE
MARCH 18, 2011 MEETING
{Approved: June 3, 2011}

The Legislative Ethics Committee (RSA 14-B:2) met on Friday, March 18, 2011, at 2:00 P.M. in Room 104 of the Legislative Office Building. The following members were present: Attorney Martin L. Gross, Chairman, Attorney Brian M. Quirk, Vice Chairman, Senator Fenton Groen, Representative Janet G. Wall, Representative Jordan G. Ulery, and Mr. John F. Quinlan. Senator Amanda A. Merrill was unable to attend. Also present was the Committee's Executive Administrator, Richard M. Lambert. The Committee's meeting consisted of the following items:

ITEM #1

Consideration of the proposed *Agenda*.

Senator Groen moved to adopt the proposed *Agenda*. Representative Wall seconded the motion and the Committee voted 6-0 in favor of the motion.

ITEM #2

Introductions; Discussion of the Committee's history, duties and processes.

Chairman Gross said that for the benefit of the Committee's 4 new members he wanted to very briefly touch on the history of the Committee, how it came to be, what it does, and how it does it. He said: "This Committee emerged in 1992 [Chapter 105 of the New Hampshire Laws of 1991] as a result of some concern about whether there was enough to guide legislators about their ethical conduct. There had been an acute case of ethical breaches involving a House majority leader which led to his resignation a few years previous and, I think, some national legislative watchdog allowed as how New Hampshire had virtually nothing to guide its legislators' conduct in the matter of ethics. So what the legislature did was to create this committee. And what the Committee did, because the legislature said: 'Well, we're not going to adopt a code of conduct, committee you adopt it!' So the Committee, the first thing they did was adopt the Guidelines, about which more later.

"The important thing about the Guidelines ... the Committee initiates changes to the Guidelines and the Guidelines need approval of both houses, simple up or down votes, neither the House nor the Senate can amend the Guidelines under the present statute and situation. The Guidelines, as proposed by us, have to be presented to each body and voted on within 3 legislative days after we present them, so there is some up or down pressure... The Guidelines have been amended from time to time at the suggestion of this Committee, and the most recent amendments were adopted in 2009 primarily to incorporate new statutes which relate to gifts... These Guidelines are incorporated into House Rule 16 and Senate Rule 2.15, so they are actually there as part of each chamber's rules, as well as being free-standing official Guidelines....

"A very important decision was made by that first Committee, and that was what model to adopt to deal with conflicts of interest. We have, as you know, a citizen's legislature. Everybody has to earn a living, everybody has to eat, and you can't do it on what they pay you in the legislature. So, there has to be some understanding that legislators will have other interests, other than their service here. And what the original Committee did was to come up with an endorsement of what was called the 'British Parliamentary Model.' It's based on the theory that sunlight cures everything because the public knows what you're doing and, if they don't like it, they can not vote for you the next time. So, what the conflict of interest segment of the Guidelines is all about is essentially disclosure. You have 2 levels of disclosure: you've got a disclosure form that everybody's got to file at the beginning of each session...and the other level of the disclosure has got to do with what happens on particular bills. If a legislator has a particular conflict of interest with respect to a particular bill, then the legislator must make an election. He has to disclose the conflict and makes an election as to whether to participate further with respect to that particular piece of legislation, or to recuse. But it's the legislator's decision. The thing that makes it operate is the filing of

specific disclosure forms with the clerk of the House or the clerk of the Senate on a particular bill which says that a particular legislator is making an election about a particular bill. If a legislator does that and fulfills the obligations of the Guidelines as far as disclosure is concerned, then that's the satisfaction of the obligation under the Guidelines. We do not have an expulsion model if a legislator has a conflict of interest. We have a disclosure model. And that's the way it has been and, I think, that's a good way to harmonize the obligations of the citizen legislator with official business....

"The *Ethics Booklet* is our Bible...it's intended to be a one-stop source of information for legislators, as well as for us. In it you've got the Ethics Guidelines as Part 1, Part 2 is a statute – RSA 15-B, which is the gifts, honorariums, and expense reimbursement statute, which was passed in 2006 [Chapter 21 of the New Hampshire Laws of 2006] – Part 3 is RSA 14-B, which established this Committee...and Part 4 is the procedural rules of this Committee, which the Committee has adopted to further amplify how we go about our business.

"The single most important section of this -- in my point of view -- is the statute that says what we are supposed to do. We have the following functions: we recommend Guidelines and changes to the Guidelines; we issue advisory opinions to legislators who want to have us tell them what they should do in a particular situation where they feel they may have an ethics problem. As far as I'm concerned, that's the single most important function that we have because I'd rather see legislators comply with, rather than run afoul of, the Guidelines. The best complaint is the one that never has to be made because the legislator has asked for advice. The third function that we have is to issue interpretive rulings of statutory materials or our Guidelines.... And the last thing that we do – and it's the one that gets the most press – is to adjudicate complaints for violations of the Guidelines. It's the one that gets the most attention, but as far as I'm concerned, it's an indication that to some degree or other the system isn't working right because ideally we should try to encourage a situation where legislators are fully informed as to what their obligations are....As far as I'm concerned, compliance is our major objective and if we succeed in encouraging compliance in what we do, then we're succeeding in our role."

Chairman Gross then went over a packet distributed to the Committee members containing samples of the Committee's materials, including a printout of its website's homepage, an advisory opinion, an interpretive ruling, a decision resolving a complaint following initial review, and a decision resolving a complaint following preliminary investigation. He observed: "the important thing about legislators asking for an advisory opinion is that it provides a safe haven. If a legislator asks us for one of these and we give advice to the legislator, then the legislator as a matter of law is entitled to rely on it and can't be prosecuted or anything else for having followed our advice, which makes it so useful and which means, I think, we ought to encourage legislators to do more of that."

Chairman Gross also discussed the complaint process, including the confidentiality requirement, stating: "The level of confidentiality that is imposed arises by statute....there is a legitimate concern on the part of those who hold public office that the procedures which are otherwise very good ones will somehow be turned into political fodder, and when I was working with the {House Election Laws} Committee in 2006 on the new legislation, those things were known as 'gotchas,' that somehow the opportunity to file a complaint against a legislator could turn into a political gotcha. And so, what they did to minimize the likelihood of a scurrilous complaint was to provide a step-by-step process. Number one, we have a very preliminary review. If it looks like it's scurrilous we can discharge it without further proceeding. If it's not scurrilous then we proceed to initial review, and the point of initial review is ... to determine whether we have jurisdiction to pursue it, and next, to determine whether there appears to be merit on the face of the complaint that we should proceed. And when we decide there's merit, then everything goes public, but if we dismiss at the initial review stage, then it remains confidential for reasons I've said..."

"It has been the tradition of this Committee – which I'm very sure we'll continue – that we leave partisan politics at the door. We can all have our strong opinions, but once we assemble as a committee here we're not doing politics, we're doing important work to keep ethical conduct at the level it should be. Our object should be to encourage legislators to know and comply with our Guidelines and that's not a partisan matter at all. And the other principle I'd like to leave you with is: we need to be independent of political pressure, and that's pressure not just from outside partisan politics, but also we need to be independent of pressures from members and from leadership of the chambers. And it happens. Believe me, it happens....Even though from time to time we get signals from leadership about what they would like us to do, we have to use our own best judgment. And sometimes their recommendations are sound and we follow them, and sometimes they aren't and we don't ..."

ITEM #3

Consideration of the draft *Minutes* from the Committee's meetings on November 16, 2010, and February 15, 2011.

Following review, Vice Chairman Quirk moved to approve the *Minutes* from the November 16, 2010 meeting as drafted. Senator Groen seconded the motion and the Committee voted 5 to 0 to adopt the motion, with Representative Ulery abstaining.

Representative Ulery moved to approve the *Minutes* from the February 15, 2011 meeting as drafted. Mr. Quinlan seconded the motion and the Committee voted 6 to 0 to adopt the motion.

ITEMS #4 and #5

Initial Review of *Complaint #2011-1* and status review of a request for further Committee action regarding *Complaint #2010-4*.

Senator Groen moved to enter nonpublic session {pursuant to RSA 14-B:3, I(d)}.

Representative Wall seconded the motion and the Committee voted as follows:

Senator Groen	Yea
Representative Ulery	Yea
Vice Chairman Quirk	Yea
Chairman Gross	Yea
Representative Wall	Yea
Mr. Quinlan	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

Representative Ulery moved to exit nonpublic session. Representative Wall seconded the motion and the Committee voted as follows:

Senator Groen	Yea
Representative Ulery	Yea
Vice Chairman Quirk	Yea
Chairman Gross	Yea
Representative Wall	Yea
Mr. Quinlan	Yea

{MOTION ADOPTED}

Chairman Gross made the following statement:

"I'd like to state for the record that while we were in nonpublic session the actions we took were: number 1, we dismissed *Complaint #2011-1* following initial review, and our normal process has been that Rich and I draft a written decision on this, we will circulate it to you, and if we don't get any beefs back we'll issue it. But the Committee action is to dismiss and that will be embodied in the written decision.

"The other action that we took in nonpublic session was to ratify an informal vote that we previously took by email which was to issue an explanatory statement regarding the outcome in *Complaint #2010-4*. That explanatory statement has been issued dated March 10. It has been provided to Representative Gionet and he now has it. He has been advised that he is now at liberty to disseminate it to whatever extent he cares to but he is not at liberty to disclose anything about the proceeding other than what is contained in the explanatory statement. Again, the provisions for confidentiality that govern our activity are very strong and clear: if anybody violates them, they are exposing themselves to a misdemeanor charge and I don't want anybody to do, or potentially do, it. So we warn everybody over and over again about that."

ITEM #6

New/Other business.

a) Review of a letter received from Representative D.J. Bettencourt, House Majority Leader, dated January 12, 2011.

Chairman Gross said he would like to bring the Committee's attention to the letter, included in the Committee's packet, in which he said Representative Bettencourt "states for the record that he is in a relationship with the Speaker's Communications and Constituent Services Director." Chairman Gross suggested that the appropriate action by the Committee would be to acknowledge the letter and place it on file. He noted that as Representative Bettencourt was not asking for any advice, "the best thing to do is let him know that we have received this and we've filed it." He asked if there was such a motion.

Senator Groen so moved. The motion was seconded by Representative Ulery and the Committee voted 6 to 0 in favor of the motion.

b) Review of a letter from Vice Chairman Quirk to Secretary of State William Gardner, dated February 15, 2011, transmitting the Financial Disclosure Forms filed for 2010.

Chairman Gross noted that the letter had been included in the meeting packet for information only and no action was necessary.

c) Consideration of a suggestion to post Declaration of Intent filings on the Committee's website.

The Committee reviewed an e-mail message sent by Mr. Lambert to Chairman Gross summarizing a discussion at a Senate informational session on ethics held on February 9. The session was led by Senate Legal Counsel Rick Lehman and Mr. Lambert. At the session, there was consensus that there should be more "sunshine" on the financial interests and potential conflicts of interest that members have and that to accomplish that there should be one website where all of the financial disclosure forms filed by each senator and representative could be easily accessed by the public. Some of the senators and staff attending the informational session expressed appreciation for the Committee's efforts in creating its website and noted that the annual Financial Disclosure Forms are posted on it, but questioned why the Declaration of Intent forms that senators and representatives file are kept at the Senate and House clerks' offices, and are not posted on any internet website. All present seemed to agree with the suggestion that the current "Financial Disclosure Filings" subpage on the Committee's website should be set up so that each legislator's name would be listed and would be a link to a display of the legislator's Financial Disclosure Form and to any Declaration of Intent Form(s) the legislator files during the legislative session.

Representative Wall expressed concern about a possible significant increase in the Committee staff workload. Chairman Gross agreed with that concern and suggested that the House and Senate clerks' offices should scan the filed forms to file and electronically forward them to Mr. Lambert, who could then see that they are posted.

Following further discussion, Senator Groen suggested that the Committee should start with posting the Senate forms as a test case. There was consensus on Senator Groen's suggestion. The Committee asked Mr. Lambert to contact Senate Chief of Staff Jay Flanders and Senate Counsel Lehman and inform them about the Committee's discussion.

The Committee's meeting adjourned at approximately 3:00 P.M. The Committee will meet next at the Call of the Chair.

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