

MINUTES
LEGISLATIVE ETHICS COMMITTEE
AUGUST 20, 2013 MEETING
{Approved: October 2, 2013}

The Legislative Ethics Committee (RSA 14-B:2) met on Tuesday, August 20, 2013, at 10:00 a.m. in Room 104 of the Legislative Office Building. The following members were present: Martin L. Gross, Chairman, Representative Janet G. Wall, Vice Chairman, Representative Jordan G. Ulery, Senator Jim Rausch, Mr. David A. Welch, and Attorney Wilfred L. Sanders, Jr. Senator Martha Fuller Clark 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 and Adoption of *Agenda*.

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

ITEM #2

Consideration of the draft *Minutes* from the Committee's meeting held on March 12, 2013.

After review, Attorney Sanders moved to adopt the *Minutes* as drafted. Senator Rausch seconded the motion and the Committee voted 6 to 0 in favor of the motion.

ITEM #3

Ratification of the adoption of *Advisory Opinion 2013-1* and *Advisory Opinion 2013-2*.

Chairman Gross summarized both of the opinions, and after brief discussion Senator Rausch moved to ratify *Advisory Opinion 2013-1*. Mr. Welch seconded the motion and the Committee voted 6 to 0 in favor of the motion.

Attorney Sanders moved to ratify *Advisory Opinion 2013-2*. Vice Chairman Wall seconded the motion and the Committee voted 6 to 0 in favor of the motion.

ITEM #4

Initial Examination of *Complaint 2013-4*.

Vice Chairman Wall moved to enter nonpublic session {pursuant to RSA 14-B:3(d)}. Mr. Welch seconded the motion and the Committee voted as follows:

Representative Ulery	Yea
Senator Rausch	Yea
Vice Chairman Wall	Yea
Chairman Gross	Yea
Attorney Sanders	Yea
Mr. Welch	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Representative Ulery	Yea
Senator Rausch	Yea
Vice Chairman Wall	Yea
Chairman Gross	Yea
Attorney Sanders	Yea
Mr. Welch	Yea

{MOTION ADOPTED}

Chairman Gross made the following statement: “Okay. We have conducted our initial examination of *Complaint 2013-4* and the Committee’s determination is that the complaint be dismissed. Now, let me remind you that that’s all we can say by law, that these remain confidential. Everything about them remains confidential unless the complaint proceeds to preliminary investigation, and that’s not the case here. So none of us will have any comment on this and, if someone tries to come to you to tell you about this, I would suggest that you not include it because revealing confidential matters is a misdemeanor under our statute. But I will add this: that this complaint has nothing to do with anything that has been happening recently. This complaint came to us in May and the reason why it’s taken this long to take it up is that we were waiting for some additional documentation that we had asked the complainant about. But what went on last week has nothing to do with this complaint.”

ITEM #5

Discussion of “Preliminary Memorandum Re Potential Interpretive Ruling 2013-1.”

Chairman Gross:

“And the subject matter here is what I have called ‘sponsored travel by legislators’ This is a subject that came up recently because of some legislative travel. It’s not the simplest portion of our statute and rules about what is allowed and what isn’t. So I’ve suggested to the Committee that we put together an interpretive ruling that would tell legislators what’s allowed and what isn’t. And the short of it is that, if a trip was taken to a bona fide conference where there is a substantial element of public policy discussion, by and large then it’s permitted to get reimbursed for that kind of travel. But if you’re tripping, and junketing, and sightseeing, and absorbing the glories of the destination, you’re outside of the statutory permission to get compensated for it. On the whole, this has got to be a matter of honesty by legislators, but that honesty is backed up by the fact that when they turn in a report of a reimbursement for travel they have to include a copy of the agenda of the occasion that they went to. And if somebody wants to raise a problem with it, then that is what we have a complaint proceeding about. I would hate to see it come to that, which is why I think we ought to issue an interpretive ruling along the lines that I’ve suggested to you, because my attitude is: the best complaint that we can have is the one that never happens. And so it’s our role to try and interpret and administer this law without having to find that there has been a violation. You all have seen a copy of my preliminary memorandum. That’s not ready for prime time. But if you think we should proceed with that, I’ll re-draft it and circulate it.

Representative Ulery:

“Just for the benefit of the individuals here, when you speak of primarily legislative programs, you’re talking about an event being held wherever that talks about legislative initiatives, not only in New Hampshire but elsewhere in the country, that may impact New Hampshire now or in the future?”

Chairman Gross:

“Just to read off the words, ‘The exemption in the expense reimbursement section in RSA 15-B allows legislators to accept payment for the cost of travel to and attendance at an event, for example: fares, meals, accommodation, registration or attendance fees. The exemption applies only where the event is a bona fide conference, meeting, seminar, or educational or informational program that relates to the legislator’s duties.’ That’s a lift right out of the statute, pretty much, and that’s the expression of the limitation that you’re speaking about. So, if “The Friends of San Diego” invite a bunch of legislators to go to San Diego to go to enjoy the warmth and hospitality of the community, that ain’t a bona fide conference. Nor is it included in that where, at a bona fide conference, a lobbyist from New Hampshire decides he wants to take the whole New Hampshire delegation to dinner, because that would need its own exemption because that doesn’t fall within this one.”

Senator Rausch said that “Going to seminars to enlighten the legislative process, I concur with because, hopefully, it makes you a better legislator. But some of the travel is foreign and that’s the one that troubles me more because we as legislators really do not have the ability to engage in legislation that is foreign in nature.... That’s where our Congressional delegation comes into play. So, I’m concerned about foreign travel and foreign, I guess, enlightenment that I don’t see how that interacts with what we do as legislators because we don’t deal with foreign legislation.”

Representative Ulery said that we have the New Hampshire–Canada Trade Council, that Mexico is the state’s 7th largest trading partner, and that immigration issues could be considered by the General Court.

Chairman Gross observed that “there’s nothing in the statute that says foreign travel is out of bounds.”

Vice Chairman Wall:

“I am a member of the New Hampshire–Canada Trade Council and right now there are a half-dozen members of the council who are in Quebec. The purpose of that trip is to share information which directly affects the Department of Resources and Economic Development and legislation on trade that may be filed. So I believe that this is a legitimate trip that is taking place even though it’s to a foreign country. There have been questions raised about a previous trip earlier this year. But with regard to the one to Quebec, from what I know about the agenda, there will be important business matters discussed which will affect New Hampshire and potential legislation that we will be drawing up this year.”

Representative Ulery:

“I believe that there was also one for the Council of State Governments that was held in Quebec last year dealing with agricultural activities and there is some – a hell of a lot – of trade between New Hampshire and Canada.”

Senator Rausch:

“Well I agree with that.”

Chairman Gross:

“Let me also add that these reports of expense reimbursement or honorariums are required by statute and they are public documents, and they are filed in the Secretary of State’s office, and so if someone wants to audit any legislator’s travel, all they have to do is go to the Secretary of State’s office and say, ‘Let’s see your expense reimbursement forms.’ And if they want to raise a problem about that, if they want to file a complaint that there’s been a violation, then that’s what it’s all about. But, as I said earlier, I think it would be helpful to legislators for us to articulate, perhaps more clearly, what the dos and don’ts are so then they wouldn’t get in trouble. Also a part of this is to tell them which report to file because there seems to be some confusion about that.”

Vice Chairman Wall:

“And then what happens if the member accidentally files the wrong report? Who has responsibility for bringing that to the attention of the legislator?”

Chairman Gross:

“Well, I don’t know, and hopefully there won’t be any more of that funny filing.”

{“RSA 15-B:10, Examination of Reports. – It shall be the duty of the attorney general to examine the reports which are made under this chapter to the secretary of state and to compel such returns be made to comply with the law.”}

After further brief discussion, Chairman Gross asked if there was a motion to authorize him to formalize his memorandum into an interpretive ruling which he would circulate to the Committee for approval. Attorney Sanders moved to authorize Chairman Gross to draft an interpretive ruling. Vice Chairman Wall seconded the motion and the Committee voted 6 to 0 in favor of the motion.

ITEM #6

New Business.

Inform the Committee about 2013 HB410/Chapter 211, “Establishing a Commission to Study and Update the Rules and Procedures of the Legislative Ethics Committee under RSA 14-B and the Laws Governing Legislative Ethics under RSA 15-B.”

Chairman Gross asked Mr. Lambert to inform the Committee.

Mr. Lambert:

“There is such a commission that has been signed into law and some of the members have been appointed, including Senator Rausch and Senator Fuller Clark, and from the House Representative Shawn Jasper and Representative Katherine Rogers. And there are supposed to be 3 public members and they have not been appointed to my knowledge yet. But the commission’s reporting deadline is December of 2014, so they have time to get organized. And they are to study all aspects of legislative ethics: the Committee and its statute and guidelines and rules, and the gift law under RSA 15-B.”

Chairman Gross:

“You say the public members have not been appointed yet?”

Mr. Lambert:

“No. Not according to what I’ve heard.”

Chairman Gross:

“Well, can the commission meet in the absence of those appointees?”

Mr. Lambert:

“No. And they are appointed jointly by the Speaker and Senate President.”

Senator Rausch:

“Who is the chair?”

Mr. Lambert:

“The chair will be elected by the commission. Oh, and Representative Gary Richardson and Representative John Graham have also been appointed by the Speaker.”

Chairman Gross:

“Well, I would assume that when they get down to business that we will cooperate with them in every way we can short of showing them our confidential files, which I still don’t think is authorized. Do you, Rich?”

Mr. Lambert:

“No.”

ITEM #7

Old Business.

Update on status of compliance with NH Laws 2012, Chapter 126.

Chairman Gross:

“That was the law that amended our existing statute to require that essentially everything required to be filed by legislators with the Secretary of State and House and Senate Clerks be put in electronic form on our website. And it’s been some time since we have been able to sort that out. We started very early but we ran into some – how should I say it? – logistical difficulty. But now that’s been resolved. So why don’t you tell them how that’s been resolved, Rich?”

Mr. Lambert:

“House Chief of Staff Ryan Mahoney has spoken extensively with House Clerk Karen Wadsworth and talked with me, and yesterday there was a meeting hosted by Ryan with Karen and me and Scott Rupp, the manager of General Court Information Systems, and Dani Lyford of the House Sergeant-at-Arms Office. And a process has been worked out whereby Dani will be in charge of getting the Declaration of Intent Forms, scanning them, and sending them to GCIS, and I will oversee that the forms are posted on our website.”

Chairman Gross:

“Now just for clarification, all the other filings are already in electronic form and are relatively easily put up on our website. The one part of that that wasn’t, and still isn’t originally in electronic form, is the so-called declarations required with conflicts of interest, which are supposed to be filed by legislators whenever they come across a bill or other official activity in which they have a definable conflict. They’re supposed to file a declaration with the clerk of their respective body stating what the conflict is and also stating whether they are going to abstain from voting or from the activity, or whether they are going to participate. Up until now, those forms have been in paper form only. Some time ago, we were able to arrange a methodology with the Senate whereby they would arrange for electrification, if that’s the word, of the written declaration and it would go on our website. It’s taken us a bit longer to establish that with the House, but now that it’s done and so now nobody can say we’re violating the law anymore. Any questions of Rich?” {There were none.}

ITEM #8

Scheduling of next meeting. Proposed joint meeting with the Executive Branch Ethics Committee.

Chairman Gross:

“This is a required meeting ... we are required to meet by statute ... and they always have something interesting to say. Let me just deliver myself of this one: What has been remarkable to me is that their function in dealing with complaints, which is very much like ours, has not been used more. There have been situations in which executive branch members have been accused of misconduct and so they send it to the Attorney General and so it never gets to the Executive Branch Ethics Committee. The Attorney General merely says, ‘Well, there’s no criminal violation here.’ But I haven’t seen the Attorney General refer these things to the executive branch committee either. So just a comment; just sayin’. I’m sure there have been some circumstances, in fact I can name 2, but I won’t, in which the executive branch committee should have been consulted and weren’t. I think I told them the same thing the last time we met and it didn’t do any good.”

The Committee scheduled a joint meeting with the Executive Branch Ethics Committee on October 2, 2013, at 10:00 a.m. The Committee may also hold a regular meeting after the conclusion of the joint meeting.

The Committee’s meeting adjourned at approximately 11:30 a.m.

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