

MINUTES
LEGISLATIVE ETHICS COMMITTEE
OCTOBER 28, 2013 MEETING
{ Approved: January 27, 2014 }

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, October 28, 2013, at 1:00 P.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, Senator Martha Fuller Clark, and Attorney Wilfred L. Sanders, Jr. Mr. David A. Welch 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.

Attorney Sanders moved to adopt the proposed Agenda. Vice Chairman Wall seconded the motion and the Committee voted 5 to 0 in favor of the motion.

ITEM #2

Consideration of the draft Minutes from the Committee's meeting held on October 2, 2013.

After review, Senator Rausch moved to adopt the Minutes as drafted. Attorney Sanders seconded the motion and the Committee voted 5 to 0 in favor of the motion.

{ Representative Ulery joined the meeting immediately prior to Item #3 }

ITEM #3

Initial Review of Complaint 2013-5.

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

Senator Fuller Clark seconded the motion and the Committee voted as follows:

Representative Ulery	Yea
Senator Rausch	Yea
Senator Fuller Clark	Yea
Vice Chairman Wall	Yea
Chairman Gross	Yea
Attorney Sanders	Yea

{ MOTION ADOPTED }

{ NONPUBLIC SESSION }

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

Representative Ulery	Yea
Senator Rausch	Yea
Senator Fuller Clark	Yea
Vice Chairman Wall	Yea
Chairman Gross	Yea
Attorney Sanders	Yea

{ MOTION ADOPTED }

Chairman Gross made the following statement:

“We are now back in public session and I want to share with the folks in the room and others, as the matter goes forward, what we were discussing and where we have come out. We were discussing initial review of Complaint 2013-5, which is a complaint brought by Representative Rick Watrous against Senator Peter Bragdon, alleging certain violations of the ethics rules and guidelines. The Committee has voted in nonpublic session to proceed to preliminary investigation in order to get additional information to make an informed decision on the merits. And in order to get that additional information, we have no choice under the statute but to proceed to preliminary investigation. And what that means is that all of the documents, except our work product, now will become public and that’s where our statute says: if we don’t dismiss on initial review, then all of the material becomes public.

“I’d like to say that this does not constitute in any manner or means a finding that Senator Bragdon violated the rules. I want to emphasize that it’s simply the only way that the statute lets us go forward to get the additional information we think we need in order to make an informed judgment about the truth of the allegations in the complaint.

“The materials that will become public are: the complaint, and my letters to Senator Bragdon, and a preliminary response provided by Attorney Russell F. Hilliard on behalf of Senator Bragdon with his point-by-point response to the allegations of the complaint. And a little later will also become public will be our written requests to Attorney Hilliard for further information, and that is the information that we don’t believe we can get unless we go into preliminary investigation. ... So that’s what you’ll see if you want to find out what’s on file. And as we go forward when we get responses from those information requests, that will be public. And when next we meet to decide what we want to do in preliminary investigation that will be public. That is unfortunately the only way we can get the additional information that we think we need, and that is to go into preliminary investigation. We have done this before, I won’t name names because I don’t want to dredge up sad memories, but that’s what we decided to do this time.”

ITEM #4

New Business.

Chairman Gross:

“Under ‘New Business’ I would like to take up with you a circumstance that came up just the other day. We received an email inquiry from Representative Howard Moffett asking for informal guidance on whether he had to file a Declaration of Intent under Section 5 of our Guidelines with respect to an LSR, a Legislative Services Request, that he was submitting. I outlined for him what I thought the statute and the Guidelines require, and suggested that he go and file a Section 5 Declaration promptly so no one could criticize him for not doing so. And he did and got back to us and said ... the House Clerk had told him that she was not accepting Declarations of Intent at the LSR stage..... It’s pretty clear under Guidelines Section 5. The key to this basically is that it would require filing a Declaration of Intent whether they’re going to participate or not whenever there is a specific conflict of interest with regard to that participating legislator that is not held in common with members of the group that they identified under Section 3 of the Guidelines. And what is important here to me is that the words that said ‘official activities.’ An ‘official activity’ includes filing an LSR, I don’t think there can be any argument about it. And then Paragraph 3 of the Guidelines’ Section 5 states: ‘The information required in subparagraph (b) shall be filed with the clerk of the member’s respective body within 24 hours of the time of the official activity and be made available for public inspection during normal business hours.’ So I think if this Representative, who was so careful, should all of a sudden find that someone is saying, ‘Gee, you filed this LSR and you didn’t file a Declaration of Intent,’ and he only get’s to say, ‘Well, the Clerk wouldn’t accept it.’ So we need to do something about this.”

Following discussion, the Committee authorized Chairman Gross to write a letter on the Committee's behalf to House Clerk Karen Wadsworth stating that the Committee believes that filing an LSR is an official activity and that the Guidelines require Declarations to be filed with her office whenever a House member believes that filing an LSR would constitute a conflict of interest.

ITEM #7

Old Business.

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

Chairman Gross:

"I want to bring to your attention that we have finally succeeded in getting into compliance with Chapter 126 of the Laws of 2012, which required us to put up on our website anything that was filed with the Senate or House Clerk or the Secretary of State in connection with ethics rules or guidelines. And we had no problem -- Rich had no problem -- getting the Senate Clerk's Office's total cooperation, but we did have a bit of an issue, as I shared with the Committee the last time, with the House Clerk and, thanks to the good offices of the House Chief of Staff, that has been resolved, and a way has been found for those Declarations to be put into electronic form so they can go up on our website. And Rich I think sent out an email to you announcing that the problem has been solved and if you go to our website right now, you'll find House Declarations of Intent on it."

ITEM #8

Scheduling of next meeting.

The Committee's next meeting will be at the call of the Chair.

The Committee's meeting adjourned at approximately 2:45 P.M.

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