

MINUTES
LEGISLATIVE ETHICS COMMITTEE
SEPTEMBER 21, 2015 MEETING
{Approved: January 22, 2016}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, September 21, 2015, at 3:00 P.M. in Room 104 of the Legislative Office Building.

The following members were present: the Honorable Donna Sytek, Chairman, Representative Janet G. Wall, Representative David A. Welch, the Honorable John A. Graham, and Attorney David H. Bradley. Senator Sharon M. Carson, Vice Chairman, and Senator Martha Fuller Clark were unable to attend. Also present: Richard M. Lambert, Executive Administrator.

The Committee's meeting consisted of the following items:

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on March 24, 2015.

Following review, Mr. Graham moved to approve the *Minutes*. Representative Welch seconded the motion and the Committee voted 5 to 0 to approve the *Minutes*.

ITEM #2

Initial Examination of *Complaint 2015-2* {Confidential}.

Representative Wall stated: "I move to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an Initial Examination of *Complaint 2015-2*." Mr. Graham seconded the motion and the Committee voted as follows:

Attorney Bradley	Yea
Chairman Sytek	Yea
Representative Wall	Yea
Representative Welch	Yea
Mr. Graham	Yea

{MOTION ADOPTED}

{Nonpublic Session}

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

Chairman Sytek	Yea
Representative Wall	Yea
Representative Welch	Yea
Mr. Graham	Yea
Attorney Bradley	Yea

{MOTION ADOPTED}

ITEM #3

Consideration of a Request for an Advisory Opinion from Senate Legal Counsel Richard J. Lehmann, Esq.

Chairman Sytek said the request from Attorney Lehmann concerned a meeting that Senate President Chuck Morse and Senate Majority Leader Jeb Bradley attended. She said Attorney Lehmann had stated in his letter that, in his opinion, the event met the criteria for an expense reimbursement. The initial request from Attorney Lehmann included an agenda, which was a timetable, that listed policy roundtables and private briefings but didn't indicate what subjects were discussed, so Attorney Lehmann was asked to provide additional information. Chairman Sytek said the additional information talked about policy roundtables which were clearly on subjects of interest to the legislature. She said there was also a list of people who attended and they all were Republican Senate and House leaders from legislative bodies from across the country. "So," she said, "the question is: Is this an expense reimbursement for a bona fide conference?" She then reminded the members that the Committee held in previous opinions that a bona fide conference is one that is primarily about organized learning.

Chairman Sytek referenced a recent opinion issued by the Executive Branch Ethics Committee (EBEC) regarding a trip to Israel attended by executive branch officials. She said the EBEC ruled that the trip was not only a bona fide conference that qualified as an expense reimbursement, but they ruled that the officials who attended were doing so in their official capacities as executive branch officials. She said that one could make the argument that the Senate President and Senate Majority Leader attended their event in their official capacity and, if that were the case, they would not have to report their attendance. But if the event were a bona fide conference, she said, it would be an expense reimbursement and they would have to report it. She asked the Committee for their thoughts.

Mr. Graham: "I think it is an expense reimbursement based on what the Committee has done before ... and it will require them to report it so everybody in the whole world knows what happened, which is a big part of this whole ethics thing is to make sure the public knows what we're doing as elected officials... . Now people can say it probably shouldn't be because it was only one party that was invited to this meeting, but"

Chairman Sytek: "But Democrats have them, too."

Mr. Graham: "I know."

Chairman Sytek: "If you look at the agenda, there were policy roundtables that were 45 minutes and they were simultaneous. So they did two 45 minute roundtables. Is that 'primarily'? (She read from Interpretive Ruling 2013-1) 'The event must offer, as a genuine and central element, organized learning about subjects that are or may become the focus of legislative activity in New Hampshire.' I'm thinking the private briefings probably talked about that. ... So, what is your pleasure? Does it meet the criteria for an expense reimbursement?"

Attorney Bradley: "It seems to me it does ... there is nothing (in the provisions defining the expense reimbursement exception) about it being nonpartisan."

Chairman Sytek: "Oh no and both parties do it and that's not been an issue."

Attorney Bradley: "And it doesn't have to be 100% on organized learning."

Chairman Sytek: "It's got to be a genuine and central element."

After further discussion, Chairman Sytek asked if everyone was comfortable that the event qualified for the expense reimbursement exception and that the Senators have to report it. Representative Welch indicated they were and then moved to issue an Advisory Opinion advising that the event was a bone fide conference and should be reported as an expense reimbursement. Attorney Bradley seconded the motion and the Committee voted 5 to 0 in favor of the motion.

The Committee then reviewed a draft Advisory Opinion and, after making a revision, approved it. The Committee agreed to send the opinion to Senator Carson and Senator Fuller Clark for their input and possible approval.

ITEM #4

Ratification of the adoption of Advisory Opinion 2014-2 (November 21, 2014), Advisory Opinion 2015-1 (June 5, 2015), Advisory Opinion 2015-2 (August 7, 2015), and Interpretive Ruling 2015-1 (August 31, 2015).

Chairman Sytek explained that the 3 Advisory Opinions and the Interpretive Ruling were adopted via exchange of email messages and telephone conversations and that, under the rules (Procedural Rules 2, II and III) the Committee was required to ratify them.

Following review of the opinions and ruling and a brief discussion, Representative Welch moved to ratify their adoption. Attorney Bradley seconded the motion and the Committee voted 5 to 0 in favor of ratification.

ITEM#5

Update on the Status of 2015 House Bill 458, “An Act revising the legislative ethics laws and the guidelines of the legislative ethics committee.”

The Committee discussed the fact that the bill had been re-referred to the Senate Committee on Rules, Enrolled Bills, and Internal Affairs in May and that no further action had been taken on it. Chairman Sytek asked the Committee members if they had any recommendations for possible amendments to the bill based on the Committee’s experiences. Following a brief discussion, the Committee agreed that it would like to recommend changes to the provisions relating to the initial examination of complaints. The Committee focused on the requirement that a vote to discharge a complaint has to be unanimous and the language relating to the grounds on which a complaint can be discharged. There was agreement that a majority of 4 votes should be sufficient to discharge a complaint and that language should be added to allow discharge when a complaint fails to allege conduct which is contrary to the ethics law or guidelines or when a complaint is clearly outside the Committee’s jurisdiction.

Representative Welch moved to notify the Senate that the Committee would support an amendment to make the changes. Attorney Bradley seconded the motion, and the Committee voted 5 to 0 in favor of the motion. Chairman Sytek said the Committee would circulate a draft amendment to each Committee member for final approval of the language.

ITEM #6

New Business.

The Committee discussed an inquiry from Representative Susan Treleaven.

Representative Treleaven contacted the Committee to say that she received a book and some promotional gift cards in the mail from someone supporting Hillary Clinton for president and wanted to know if it would be appropriate for her to retain these items. She said that she was not sure if she would ask for a formal advisory opinion from the Committee. After a brief discussion, the Committee members agreed they would need more information in order to issue an opinion should Rep. Treleaven request one.

ITEM #7

Scheduling of next meeting.

The Committee will meet next at the call of the Chair.

The Committee's meeting adjourned at 4:26 P.M.

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