

MINUTES
LEGISLATIVE ETHICS COMMITTEE
APRIL 25, 2016 MEETING
{Approved: June 3, 2016}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, April 25, 2016, at 1:00 P.M. in Room 104 of the Legislative Office Building.

The following members were present: the Honorable Donna Sytek, Chairman, Senator Sharon M. Carson, Vice Chairman, Senator Martha Fuller Clark, Representative Janet G. Wall, Representative David A. Welch, the Honorable John A. Graham, and Attorney David H. Bradley. 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 21, 2016.

Following review, Representative Wall moved to approve the *Minutes*. Mr. Graham seconded the motion and the Committee voted 6 to 0 to approve the *Minutes*.

ITEM #2

Consideration of a request for an Interpretive Ruling from Shawn N. Jasper, Speaker of the House.

Speaker Jasper asked the following: "Is Part II, Article 7 of the New Hampshire Constitution or Ethics Guidelines, Section 1, Principles of Public Service, violated by a legislator who attempts to separate himself or herself from his or her office by identifying himself or herself as a representative of a public interest group while presenting testimony in advocacy of the group's position on a bill at a hearing before a legislative committee? Is the legislator required to disclose a conflict of interest in accordance with Ethics Guidelines Section 5?"

Following extensive discussion, a majority of the Committee reached agreement on the following response: 1) there would be no violation of NH Constitution Part II, Article 7; 2) there would be no violation of the Ethics Guidelines' Principles of Public Service; and 3) the legislator would be required to file a Declaration of Intent Form and disclose the conflict of interest."

Senator Fuller Clark moved to issue an interpretive ruling expressing the response as stated. Senator Carson seconded the motion and the Committee voted 6 to 1 in favor of the motion.

ITEM #3

Discussion of a letter from Senate Legal Counsel Rick Lehmann regarding Interpretive Ruling 2016-2.

Attorney Lehmann's letter, dated April 25, 2016, requested clarification of hypothetical examples (1) and (3) in the ruling. Specifically, he stated that example (1) applies the correct standard to the facts presented and arrives at a correct conclusion, but the example would be more helpful if the rule being applied were stated expressly. He also stated that in example (3) he believed that the wrong standard was applied and the example reached an incorrect result. He said the conclusion that the legislator must file a specific Declaration of Intent because the legislator would benefit "in a way that most other individuals in the state would not" is not the standard

established in the Ethics Guidelines. Instead, he said, “the relevant group that the legislator must consider is other members of his or her business, profession or occupation, not other individuals in the state generally.”

He also expressed concern about the use of a hypothetical situation in example (3) that involves the potential relationship between the legislator owning a "sports bar" and the game of Keno. He questioned using a "sports bar" in the example and stated that he was unaware of any specific statutes establishing or regulating "sports bars" as a class of establishment and said “it appears that a ‘sports bar’ is merely an establishment with a liquor license as a restaurant or cocktail lounge or restaurant with a sports theme, and would therefore be no different than a ‘country and western bar’ or any other establishment that has adopted a theme.”

He appeared before the Committee for discussion.

Following discussion, the Committee determined that it disagreed that greater clarity would be achieved by repeating the rule in each hypothetical example. There was agreement that the Ethics Guidelines’ disclosure standards are clearly laid out in the sections of the ruling preceding the hypothetical examples and repeating them would only make an already lengthy ruling even longer, which could discourage legislators and other interested individuals from reading it.

The Committee agreed with Attorney Lehmann’s point that the standard applied in example (3) was incorrect and that the standard applied should have been “an owner of an establishment with a liquor license versus owners of other restaurants and lodging businesses.” However, the Committee determined that the conclusion reached in the example was correct.

Chairman Sytek then stated that the example was purely hypothetical and did not reference any actual bill or sponsors.

The Committee determined that a hypothetical bill allowing Keno only in establishments with liquor licenses would affect a relatively small subset of the larger group of owners of restaurants and lodging businesses in the state. Chairman Sytek said that the larger group includes everything from coffee shops and donut shops, to fast food chain restaurants, to restaurants without liquor licenses, to bed and breakfasts, to motels and hotels, to the grand hotels. The Committee agreed that a legislator who owns an establishment that has a liquor license and checks off “(i) Restaurants and lodging,” and makes no further disclosure on the Financial Disclosure Form, would be required to file a Declaration of Intent Form prior to participation in any official activity relating to the bill allowing Keno in establishments with liquor licenses.

The Committee agreed with Attorney Lehmann about the use of the term “sports bar,” and agreed it would have been better to simply say “an establishment with a liquor license.”

Following further discussion, the Committee concluded that it would not revise and republish the ruling, noting that the 2016 legislative session was drawing to a close and that the ruling, as well as every previously-published opinion of the Committee, will have to be reviewed and revised if HB 458 becomes law.

ITEM #4

Discussion of an inquiry concerning whether income from stocks needs to be disclosed and how.

Representative Susan Almy submitted an email message dated April 1, 2016, to the Committee asking for clarification relating to Interpretive Ruling 2016-2. Chairman Sytek summarized the inquiry, stating that Representative Almy asked if legislators are required to list in section 1 of the Financial Disclosure Form sources of income from stocks that exceeded \$10,000. Representative Almy questioned the wording used in the ruling in a sentence explaining the Financial Disclosure Form that states: “Section 1 requires a legislator to identify sources of income in excess of \$10,000 received by the legislator or a legislator’s family member during the preceding

calendar year.” She said that the sentence implies that legislators are required to report “all” sources of income in excess of \$10,000, while the language in RSA 14-B:8 and on the Financial Disclosure Form does not require reporting of income derived from sources such as stocks, bonds, and mutual funds.

The Committee then discussed the inquiry. Chairman Sytek referenced a legislative history of the Ethics Guidelines prepared by Mr. Lambert showing why stock or bond ownership were not included as things that must be disclosed on the Financial Disclosure Form. After reviewing the material and further discussion, the Committee agreed that Representative Almy’s reading of the language used in the ruling was correct in that a reader could draw the inference that there is a requirement to report all sources of income in excess of \$10,000. They also agreed that Section 1 of the form does not require reporting of all sources of income in excess of \$10,000, but only certain sources of income as defined on the form and in RSA 14-B:8, II.

Following further discussion, the Committee voted 6 to 0 to respond to Representative Almy with a letter stating that her reading of the language used in the ruling was correct, but since the form and the statute are very specific about what needs to be reported, the Committee would not revise the language in Interpretive Ruling 2016-2.

ITEM #5

Discussion of inquiries concerning retirement gifts to legislators from other legislators.

Representative Wall said that she had been asked by House members about limits the ethics gift law (RSA 15-B) places on the giving and accepting of retirement gifts given by legislators to other legislators.

After discussion, the Committee agreed to publish a notice in the House and Senate Calendars that would include the relevant provisions of the gift law (RSA 15-B). Specifically, RSA 15-B:2, V (a)(1) and (2), RSA 15-B:2, V (b)(4), and RSA 15-B:3.

ITEM#6

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 noted that the bill was going to a committee of conference for consideration of a couple of minor changes and that the committee of conference had not yet been scheduled.

ITEM #7

Preliminary Investigation of *Complaint 2016-2, Complaint 2016-3, and Complaint 2016-4.*

Mr. Graham moved to enter nonpublic session pursuant to RSA 14-B:3, I(d) to deliberate on *Complaint 2016-2, Complaint 2016-3, and Complaint 2016-4.* Representative Wall seconded the motion and the Committee voted as follows:

Attorney Bradley	Yea
Senator Fuller Clark	Yea
Vice Chairman Carson	Yea
Chairman Sytek	Yea
Representative Wall	Yea
Mr. Graham	Yea
Representative Welch	Yea
{MOTION ADOPTED}	

{Nonpublic Session}

Mr. Graham moved to exit nonpublic session. Senator Carson seconded the motion and the Committee voted as follows:

Attorney Bradley	Yea
Senator Fuller Clark	Yea
Vice Chairman Carson	Yea
Chairman Sytek	Yea
Representative Wall	Yea
Mr. Graham	Yea
Representative Welch	Yea
{MOTION ADOPTED}	

Chairman Sytek announced that the Committee, in its nonpublic session, voted to informally resolve *Complaint #2016-2, Complaint 2016-3, and Complaint 2016-4* by issuing letters of admonishment.

ITEM #8

New/Other Business.
There was no new/other business.

ITEM #9

Scheduling of next meeting.
The Committee tentatively scheduled a meeting on May 23, 2016, at 1:00 P.M.

The Committee's meeting adjourned at 3:15 P.M.

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