

MINUTES
LEGISLATIVE ETHICS COMMITTEE
OCTOBER 3, 2016 MEETING
{Approved: January 26, 2017}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, October 3, 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, the Honorable John A. Graham, and Attorney David H. Bradley. Representative David A. Welch was 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 September 15, 2016.

Following review, Mr. Graham moved to approve the *Minutes* as presented. Attorney Bradley seconded the motion and the Committee voted 6 to 0 to approve the *Minutes*.

ITEM #2

Consideration of the adoption of *Interpretive Ruling 2016-4* and *Interpretive Ruling 2016-5* and discussion of how and when to publish and distribute the rulings.

Chairman Sytek stated that at the prior meeting the Committee decided to revise two previously issued rulings – *Interpretive Ruling 2007-1* and *Interpretive 2016-2* – that had “raised some hackles” and required revision in light of the new ethics law and guidelines. She said that she and Mr. Lambert had spent a lot of time going through and updating and changing the format so that each ruling would be more easily read for people who don't want to “get down in the weeds.” The result, she said, was two new rulings: *Interpretive Ruling 2016-4*, concerning receptions and travel, and *Interpretive Ruling 2016-5*, about disclosure of conflicts of interest, including the new verbal disclosure.

The Committee first discussed *Interpretive Ruling 2016-4*.

Senator Carson said she liked it and that it makes a lot of sense to see examples in black and white. She said legislators are invited to go to dinners and events like are presented in the ruling all the time.

Mr. Graham said he agreed with Senator Carson and that having the ruling with frequently-asked questions and answers all in one place would help to clarify a lot of things for a lot of members.

Representative Wall said she liked the format and that it was well done and very readable.

Senator Fuller Clark asked if the ruling would be included in the new edition of the *Ethics Booklet*.

Chairman Sytek said that wasn't the intent.

Senator Fuller Clark asked “But why wouldn't put it in the *Ethics Booklet*?”

Mr. Lambert said the ruling “still could” go into the booklet because the draft hadn't yet been sent to the printer. He also said that the Committee used to include the opinions and rulings in earlier versions of the booklets, but as the ethics provisions changed and became more

complicated, and as the number and frequency of opinions increased, the booklets quickly become outdated, so the Committee stopped including them. He pointed out that all opinions and rulings are now posted on the Committee's website and are published in the House and Senate Calendars. He also said the Committee could combine some of its opinions and rulings into a printout that could be handed out to legislators.

Senator Fuller Clark said that the new rulings were very explicit and detailed and asked, "How outdated do you think these opinions will become in the next five years?"

After further brief discussion, Chairman Sytek asked Mr. Lambert if there would be any problems with the printer if the Committee added more pages to the booklet.

Mr. Lambert indicated there would be no problem other than there would be some increase in cost.

Senator Carson said "I do think it's worth it because (the answers) will be in black and white... you can see the most commonly asked questions."

Senator Fuller Clark said that if the two rulings are in the booklet, "No one will have an excuse, no one (can) say they didn't see it or didn't understand it... its part and parcel of the booklet about overall ethical behavior...(if the rulings were) just a piece of paper... it's going to slip through their hands."

Chairman Sytek asked if just the two new rulings should go into the booklet.

Attorney Bradley said "yes." He said that a lot of work went into the rulings and that they were very up to date and well written. But he asked if the Committee were to print the two, would it be committed to include other opinions.

Chairman Sytek said she thought that *Interpretive Ruling 2016-4* is an answer to the suggestion that there ought to be something with "frequently asked questions" about ethics, and that *Interpretive Ruling 2016-5* is about the verbal disclosure requirement, which will be a new area for legislators.

After further brief discussion, there was agreement that the two new rulings – and only the two -- should be printed in the new *Ethics Booklet*.

Chairman Sytek said she wanted to run by the Committee how she wanted to use specifics in the examples in *Interpretive Ruling 2016-4*, such as "Rockingham County Republican Party Lincoln-Reagan Dinner" versus "a political dinner," the "Annual Nackey Loeb First Amendment Awards" instead of a generic ceremonial or celebratory event, and the Delta Dental reception, instead of using just a reception.

The Committee members expressed approval of the use of specific, real-life examples.

Following further discussion, Mr. Graham moved to adopt *Interpretive Ruling 2016-4*. Senator Fuller Clark seconded the motion and the Committee voted 6 to 0 to adopt *Interpretive Ruling 2016-4*.

The Committee then discussed *Interpretive Ruling 2016-5*.

Senator Carson discussed how some members of the public, and some legislators, don't understand the concept of what constitutes a conflict of interest, particularly whether a legislator who has a conflict can still vote or sponsor legislation.

Chairman Sytek said, "The first question the commission that came up with the new guidelines struggled with was: 'You have a conflict, could we require you to not vote?' And we looked into the constitutional implications of that. People have been elected by their constituents and do we have the right to bar you, to deny someone elected by the people the right to vote? And we said, 'We're not feeling good about that.' So what is the remedy? The remedy is disclosure. And that's why we have this whole superstructure around disclosure, so that the

people who elect you can know that, even though you may have a conflict, you're deciding whether you're going to participate or not. So we said, 'Disclosure is the best we can do given the constitutional structure, where we can't prohibit somebody from voting.' That was our thinking."

Turning to the draft, the Committee discussed whether it would provide any guidance to people to help them understand the disclosure requirements.

Senator Fuller Clark said the definition of "personal interest" was very useful.

Chairman Sytek said, "We were struggling to come up with examples that weren't a personal interest because you're on a nonprofit board, and so that the best we could come up with is, 'You're a member of the pharmacy board and married to the legislator.'"

The Committee members expressed approval of the example.

Representative Wall suggested that, in addition to educating the legislators about the disclosure requirements at Orientation and at a Continuing Education session, when the House and Senate committees are organized at the beginning of the 2017 session, the chairmen should work with their members to help them understand how the personal interest and verbal disclosure requirements should work.

The Committee agreed.

Chairman Sytek summarized the disclosure provisions by saying, "It's about transparency. It should be: 'Would the public be interested to know your relationship with this subject matter?'"

Senator Fuller Clark suggested that the second paragraph of the draft, which discusses the definitions of "conflict of interest," "special interest," "financial interest," and "personal interest," would read more clearly if it stated that "a special interest is" and then numbered them as "1) financial interest and 2) personal interest" and provided the definition of each.

After further discussion of possible revisions, Chairman Sytek summarized the consensus reached as agreeing to reformat the paragraph by breaking it up into two paragraphs, adding a sentence stating "There are two types of special interest: 1) financial interest and 2) personal interest, and changing which terms are in bold typeface.

The Committee agreed.

Chairman Sytek called the Committee's attention to the subparagraph in the ruling's section on verbal disclosure stating: "**If the legislator does not speak on the bill and has filed a declaration, the legislator is not required to make a verbal disclosure.**" She said that the new Ethics Guidelines provisions regarding verbal disclosure were silent as to whether legislators had to make a verbal disclosure before voting on legislation on the House or Senate floor if they had filed a Declaration of Intent Form. She said she talked about the language with House Speaker Shawn Jasper, who had been a member of the Ethics Study Commission, and he agreed with her recollection that that was the commission's intent. (Commission member John Graham had also stated that at the Committee's prior meeting.)

The Committee agreed with the language.

Other revisions included adding the term "detriment" in the discussion of financial interest and adding the definition of "official activity" to the section on "Timing of Declaration of Intent filing."

Representative Wall said that it will be important to have blank Declaration of Intent forms available in committee rooms.

Senator Fuller Clark moved to adopt *Interpretive Ruling 2016-5*, as amended by the Committee. Senator Carson seconded the motion and the Committee voted 6 to 0 to adopt *Interpretive Ruling 2016-5*.

Senator Fuller Clark then moved to include *Interpretive Ruling 2016-4* and *Interpretive Ruling 2016-5* in the new edition of the *Ethics Booklet*. Senator Carson seconded the motion and the Committee voted 6 to 0 to include the rulings in the booklet.

ITEM #3

Further review of previously-issued *Interpretive Ruling 2007-1*, *Interpretive Ruling 2016-2*, and *Interpretive Ruling 2013-1*.

Chairman Sytek said that the new interpretive rulings were designed to take the place of the old rulings, *Interpretive Ruling 2007-1* and *Interpretive Ruling 2016-2*. She asked if, with the adoption of the new “revised and improved” rulings, the Committee should remove *Interpretive Ruling 2007-1* and *Interpretive Ruling 2016-2* from the Committee’s website.

Following discussion, Mr. Graham moved to remove *Interpretive Ruling 2007-1* and *Interpretive Ruling 2016-2*. Senator Carson seconded the motion and the Committee voted 6 to 0 to remove the rulings.

The Committee reviewed a revised version of *Interpretive Ruling 2013-1*. After it was pointed out that the ruling goes into more detail about expense reimbursements and honorariums than *Interpretive Ruling 2016-4* does, there was consensus that the ruling should be kept with the revisions.

Senator Carson moved to post *Interpretive Ruling 2013-1* with the revisions. Representative Wall seconded the motion and the Committee voted 6 to 0 to post *Interpretive Ruling 2013-1*, as amended.

ITEM #4

Consideration of the publication of a new edition of the *Ethics Booklet*.

The Committee viewed several color samples for the new booklet’s cover. Representative Wall and Senator Carson said that a bright color could help members find – and not lose – their copies of the booklet among their voluminous legislative materials. After discussion, Senator Carson chose a bright green color. The Committee members agreed with her selection.

The Committee also agreed that *Interpretive Ruling 2016-4* and *Interpretive Ruling 2016-5* should go at the end of the booklet. Senator Fuller Clark suggested the addition of an introductory paragraph stating that all of the Committee’s advisory opinions and interpretive rulings are available on its website, and providing the address.

The Committee approved the draft *Ethics Booklet* for publication.

ITEM #5

Discussion of whether any new ethics legislation should be filed for the 2017 legislative session.

Senator Fuller Clark recalled that the Committee had recently struggled over the meaning of “official capacity” in its consideration of a request for an advisory opinion. She asked if there was any interest in legislation for the 2017 session to better define the term.

Senator Carson said it was her opinion that “we just did a pretty big overhaul (of the ethics laws and guidelines), so, I think at least for a year, the first year of the biennium, let’s not make any changes. Let’s let it sit.”

The Committee agreed.

Senator Fuller Clark asked Mr. Lambert to keep an on-going list of areas of concern or problems that could be addressed in future legislation. The definition of “official capacity” could be one item. Attorney Bradley added consideration of whether the term “appearance” should be part of the definition of “honorarium.”

Chairman Sytek said, “It’s really up to the Committee to ... interpret (the ethics laws and Ethics Guidelines) to the best of our ability and if (the legislature doesn’t) like it, they can help clarify by submitting legislation.”

The Committee agreed they should not propose or endorse legislation for the 2017 legislative session.

ITEM #6

New/Other Business.

There was no new/other business.

ITEM #7

Scheduling of next meeting.

The Committee’s next meeting will be at the call of the chair.

The Committee’s meeting adjourned at 2:50 P.M.

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