

MINUTES
LEGISLATIVE ETHICS COMMITTEE
SEPTEMBER 13, 2017 MEETING
{ Approved: January 24, 2018 }

The Legislative Ethics Committee (RSA 14-B:2) met on Wednesday, September 13, 2017, at 2:30 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, Representative Janet G. Wall, Senator Martha Fuller Clark, Representative David A. Welch, Attorney David H. Bradley, and the Honorable David W. Hess. 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 August 29, 2017.

Following review, Senator Fuller Clark moved to approve the *Minutes* as presented. Representative Wall seconded the motion and the Committee voted 7 to 0 to approve the *Minutes*.

ITEM #2

Ratification of *Interpretive Ruling 2017-2*.

Senator Fuller Clark moved to ratify the Committee's adoption of *Interpretive Ruling 2017-2*, pursuant to Procedural Rule 2, IV. Attorney Bradley seconded the motion, and the Committee voted 7 to 0 in favor of the motion.

ITEM #3

Consideration of the adoption of *Interpretive Ruling 2017-1*, responding to a request from Representative Shawn N. Jasper, Speaker of the House, regarding whether it is permissible for legislators to accept free legal services in relation to certain matters pending before legislative committees. {Continued from the August 29, 2017 meeting. }

Chairman Sytek summarized the Committee's "robust" discussion at the August 29, 2017 meeting and the decision to ask Senate Legal Counsel Rick Lehmann to provide a new draft based on the general consensus reached by the Committee. Two versions of draft were then distributed for the Committee's consideration: one a draft by Attorney Lehmann, and the other a version of Attorney Lehmann's draft with changes suggested by Chairman Sytek.

Chairman Sytek pointed out that Attorney Lehmann's draft divided the Speaker's question into two parts. The first part presented a rationale for a matter pending before a House or Senate committee and was based on there being a lack of an attorney-client relationship. It said that the attorney in that circumstance is providing the free service for the public good and stated that it is their duty as lawyers to provide pro bono services. She then asked the Committee for their reaction to that part of the draft.

Attorney Bradley questioned whether it made sense to have two separate answers, one for matters before any House or Senate committee and one for matters or complaints before the

Legislative Ethics Committee, and why the distinction should be made on the basis of an attorney-client relationship.

Senator Fuller Clark said she also didn't want to make the distinction between pro bono service provided for matters before any House or Senate committee and matters before the Legislative Ethics Committee.

After extensive discussion, Chairman Sytek asked the Committee to look at the draft they reviewed at the August 29 meeting. She said that draft – before the Committee started having the discussion about separating the question into whether an attorney-client relationship existed – simply hung on the purpose of RSA 14-C, the basis, she said, that the Committee used in forming the decision in a recent complaint.

Senator Fuller Clark recommended taking out the language regarding the attorney-client relationship.

After further discussion, Chairman Sytek suggested the Committee go back to “Draft 4.” The Committee agreed.

Chairman Sytek recounted how Draft 4 differed from Draft 3, saying that in Draft 4 she removed the section regarding denying voters of a district the right to have their elected representative as a reason why they might be entitled to free legal counsel and, therefore, why it wouldn't be a prohibited gift. She asked the Committee if they agreed with that argument as presented in Draft 3.

Attorney Bradley said it sounded like a nice thought, but he didn't think the decision should turn on that.

Senator Carson said she wanted to go on record to say that she thought the Committee was going “too far afield.” She said the issue needs statutory guidance. She said it seemed like the Committee was “trying to close up all these little loopholes” and she asked whether “we have a good grasp of what the bigger picture is” and said “in my opinion, I think it's about the acceptance of free legal services and under what circumstances it is acceptable, and I just don't think we have enough statutory guidance to make that kind of decision.”

Chairman Sytek said the Speaker had asked the Committee the question and indicated it would be preferable for the Committee to answer it. She suggested that the Committee could include in the opinion that legislative guidance would be welcome. She said that the Committee has decided previously that it is okay to accept free legal services under two conditions: 1) nobody is currying favor, and 2) there is no benefit to the lawyer if he is not a lobbyist.

Mr. Hess said that in his view the first thing the Committee ought to do is say when pro bono service is a gift to the individual legislator. He said it seemed to him that, when no attorney-client relationship exists, it is presumably not a gift because it is presumably extended for the benefit of the legislature generally, or the public as a whole.

He said when an attorney-client relationship exists it is presumably a gift because then it is the legislator deriving the quasi-exclusive benefit of the service and not the public at-large. Mr. Hess said the next question to ask is whether it is a prohibited gift within the intent of the Ethics Guidelines and statute. He said he falls back to the thought that where expulsion or some other sanction can be imposed on a legislator, a legislator is entitled to legal counsel, whether the legislator can afford it or not, and therefore, that renders that service outside the intent of the statute unless there are other factors involved, like the lawyer has bills pending before the committee.

Chairman Sytek reminded the Committee that the reason the Committee asked the Speaker to ask the question was so the Committee could promulgate their thinking on the issue for when it could come up again. She said it had never come up before. She pointed out that

“Draft 4” is the generic version of the decision reached in a recent complaint which is confidential.

The Committee then closely reviewed Draft 4 and made some minor revisions.

After further discussion, Senator Fuller Clark moved to adopt “Draft 4” of *Interpretive Ruling 2017-1*, as revised. Representative Wall seconded the motion and the Committee voted 5 to 1 in favor of the motion.

ITEM #4

Discussion of publication of a new edition of the *Ethics Booklet*, consideration of a revised version of *Interpretive Ruling 2016-5*, and consideration of a revised version of *Ethics Reminder 2017-1*.

Mr. Lambert explained that a decision had recently been made to publish a new edition of the *Ethics Booklet*, given the significant number of changes to the Ethics Guidelines enacted during the 2017 session since the publication of the December 2016 edition. He further explained that the booklet’s appendix includes two interpretive rulings, one of which (*Interpretive Ruling 2016-5*) is outdated due to the changes to the guidelines. He also said that *Ethics Reminder 2017-1*, which appears on the Committee’s website, is also outdated.

The Committee reviewed revised versions of *Interpretive Ruling 2016-5* and *Ethics Reminder 2017-1*. Following review, the Committee voted to approve the revised versions of the ruling and reminder.

ITEM #5

New/Other Business.

Senator Carson raised the matter of the upcoming filings of Financial Disclosure forms for 2018. She suggested that the Committee should place reminders in the Senate and House calendars beginning in November to inform legislators that the forms will be sent to them in early December and to remind them of their responsibility to file them and the deadline to do so. The Committee agreed with Senator Carson’s suggestion.

Mr. Lambert reminded the Committee members that they previously agreed that the electronic Financial Disclosure Form needs to be made to be more user friendly. After a brief discussion, Senator Carson suggested that Mr. Lambert should pursue this matter with the General Court Information Systems and the Senate President and House Speaker, if necessary. The full Committee agreed.

ITEM #6

Scheduling of the next meeting.

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

The Committee’s meeting adjourned at approximately 4:00 P.M.

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