

MINUTES
LEGISLATIVE ETHICS COMMITTEE
JANUARY 24, 2018 MEETING
{Approved: March 19, 2018}

The Legislative Ethics Committee (RSA 14-B:2) met on Wednesday, January 24, 2018, 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, Attorney David H. Bradley, and the Honorable David W. Hess. Senator Martha Fuller Clark and Representative David A. Welch were unable to attend. Also present: Richard M. Lambert, Executive Administrator, Attorney Richard J. Lehmann, Senate Legal Counsel, and Attorney James Cianci, House Legal Counsel.

The Committee's meeting consisted of the following items:

ITEM#1

Consideration of the draft *Minutes* from the Committee's meeting held on September 13, 2017.

Following review, Senator Carson moved to approve the *Minutes* as presented. Attorney Bradley seconded the motion and the Committee voted 4 to 0 to approve the *Minutes*.

ITEM #2

Ratification of *Advisory Opinion 2017-2*.

Mr. Hess moved to ratify the Committee's adoption of *Advisory Opinion 2017-2*, pursuant to Procedural Rule 2, IV. Attorney Bradley seconded the motion, and the Committee voted 4 to 0 in favor of the motion.

ITEM #3

Review of 2018 Financial Disclosure Forms. Vote on accepting filings and transmittal to the Secretary of State.

The Committee reviewed a report from Mr. Lambert, which indicated the following:

- All 24 members of the Senate filed a form by the January 19, 2018 filing deadline.
- All Senate and House officers filed a form by the January 19, 2018 filing deadline.
- 373 members of the House, out of the 392 who were qualified to serve in the House, filed a form by the January 19, 2018 filing deadline, while 9 additional House members filed a form after the deadline.
- 10 House members had not filed a form.
- 15 House members filed forms that were incomplete.
- 154 Senators, Representatives, and Officers filed the new electronic version of the form.

The Committee discussed whether there may have been any extenuating circumstances that might explain why the 10 House members had not filed. Paul Smith, House Clerk, addressed the Committee and said that 2 members – Representative Armand Forest and Robert Walsh – had health issues which had prevented them from attending House sessions or other legislative business.

Terence Pfaff, House Chief of Staff, addressed the Committee and said that the Speaker’s Office, House Majority Office, and House Minority Office had made a significant effort to reach out to House members to get them to file.

The Committee briefly discussed the forms that were filed but were incomplete because they lacked required initials in Section I of the form and/or signatures. The Committee then instructed Mr. Lambert to contact the members and ask them to make appropriate corrections to their forms.

The Committee reviewed a draft letter to the non-filers, which was similar to the letter sent by the Committee in prior years to members who have not filed at the time of the Committee’s review. The letter stated that the Committee would give the non-filers 7 days from the date they receive the letter to file or the Committee would consider referral of the matter to the Attorney General. Following further discussion, Senator Carson moved to send the letter to the 10 House members who had not filed. Attorney Bradley seconded the motion and the Committee voted 5 to 0 in favor of the motion.

Chairman Sytek asked if there were a motion to accept the completed forms the Committee had reviewed and to transmit both the hard copy and electronic forms, and any completed forms the Committee would prospectively receive, to the Secretary of State {pursuant to RSA 14-B:3, IV and RSA 14-B:9}. Senator Carson so moved. Attorney Bradley seconded the motion and the Committee voted 5 to 0 in favor of the motion.

ITEM #4

Further discussion of *Advisory Opinion 2017-3* (Rep. Pitre, October 30, 2017).

Chairman Sytek recounted how Representative Joseph A. Pitre had asked the Committee in October for an advisory opinion about whether it would be a violation of the ethics laws for him to accept payment of the costs associated with attendance at an auto trade show sponsored by an organization called the Specialty Equipment Marketing Association (SEMA). She said the Committee reviewed the agenda for the event that was held in Las Vegas from October 30 through November 3, 2017, and issued an opinion that the event did not appear to meet the criteria that had been established and observed by the Committee for many years. The Committee voted 6 to 1 to tell Representative Pitre that it would appear to violate the guidelines. She asked if anyone wanted to make a comment about that.

Chairman Sytek then addressed Representative Pitre and stated: “The Committee has made a ruling that it violated the Guidelines for you to accept reimbursement from the association, SEMA, for attendance at this conference. And so, the question is, “Did you accept reimbursement?”

Representative Pitre responded: “Well, it was in-kind and actually in the past I’ve actually reimbursed them. That’s what I’m waiting for now is get to finalize this opinion from the ethics committee and I’ve attended other conferences. As a matter of fact, one in September which I filed timely and I see no difference. They’re both educational conferences. There were 130 seminars, which I’ve shown. They’re on the website.”

Chairman Sytek said: “And the Committee looked at that and ----“

Representative Pitre responded: “Well, it says in your Guidelines ‘improper conduct based on clear and convincing evidence’ and I submit this – I didn’t know if you’ve received this – it was on the website. One-hundred and thirty seminars. I have a letter from a lawyer which I attended a couple of the seminars. One was on Proposition 65. Another was on emissions compliance that he attended with me. He’s a lawyer that representatives SEMA and I don’t know that you have this.”

Chairman Sytek: “What we have is the link to the website that you sent us with your inquiry.”

Mr. Pfaff: “Madam Chair, in support of the representative’s reconsideration, I have a letter I put to file after a review and a meeting with the representative with the former Speaker {Shawn Jasper}, and it was also in reading the dissent by one of your members who seemed to point out this was a bona fide or actual event. And we tended to agree (inaudible). We do think it is a bona fide and educational event for legislators. Previous legislators have attended. I think the content of it and the breath and the scope of what the legislature here takes up is easily covered within the scope of what that bona fide meeting was all about. It wasn’t a junket. It wasn’t a site seeing tour. It’s educational in the opinion of the previous Speaker and mine. But I think it was, again, a bona fide event and it wasn’t set out for junkets. We have people who ask us questions relative to junkets and we tell them ‘no’ right away. They’re pretty clear that they’re junkets. I have members come up and say I have this group that intends to send me to the races in Texas. Is there any educational component to it? Is there anything going on? No. That’s pretty clear it’s a junket. You can’t go. You can ask the Ethics Committee, they’re gonna give you a no. It gets shot down because it’s clear cut. This one certainly isn’t as clear cut, I don’t believe.

“Previous members – even the President of the Senate – have attended these events before. Not just for car shows, but looking forward to other things that have happened over the years. This legislature and previous legislatures have taken up any number of internet issues relative to car purchases, parts purchases, and other things that take place now in our changing society. So I think it is applicable to what the representative went to there and the previous Speaker agreed as well.

“We did research back into the actual minutes and we agree with Representative Hess’s dissent. But we did research back to the minutes when Martin Gross was chair and looked at that and the House Counsel assembled a packet. And it is interesting that they had a similar discussion about ‘Is it bona fide?’ but never defined it. So we went into the actual executive branch ethics, who did define it. So I just would implore you to reconsider this. We do think it’s a bona fide event for a legislator.”

Attorney Bradley: “I have no problem that the event happened and that he attended. In that sense it’s bona fide. We had a dissent, but the majority of us felt that the standards adopted back in *Interpretive Ruling 2013-1* were appropriate and what I haven’t heard from you, or seen, is that the central element – or a central element – was on subjects that are or may become the focus of legislation in New Hampshire.”

Mr. Pfaff: “The opportune word there, Attorney, is ‘may.’ Certainly it may and there’s a number of things that may come before the legislature and who can tell what they may be...the

technological changes certainly. If you look at the exercise the legislature went through when we changed the emissions testing standards, for instance...”

Chairman Sytek: “But the issue here is the question was asked. It was answered. We said ‘no,’ and the representative went in violation of the ruling of the Committee.”

Mr. Pfaff: “No, it’s not a ruling, it’s an opinion, an advisory opinion. It’s not a rule.”

Chairman Sytek responded: “Which is based on an interpretive ruling from 2013 {*Interpretive Ruling 2013-1*}. Yes, and it’s in the (Ethics) Booklet and I’m just troubled as a member of a Committee that is charged with responsibility to have the decision of the Committee adopted through the process outlined in the law and in the Guidelines, to have the leadership overrule the Committee, that’s troubling to me.”

Mr. Pfaff: “I recognize that and that’s why we’re here to try to explain it because you based that advisory opinion on the interpretive ruling previously. But you did it on limited information. We’re hopeful that this new information will illustrate that it was more educational than a quick glance at an agenda ---.”

Chairman Sytek: “Okay. So you’re making a different argument.”

Mr. Pfaff: “I’m making multiple arguments.”

Chairman Sytek: “First you’re saying it’s not binding because it’s only an opinion. Well the rules of the House and of the Senate say that our opinions are valid.”

Mr. Pfaff: “But still it would have to be adjudicated. He would have his ability to defend himself.”

Chairman Sytek: “Yes. If this resulted in a complaint.”

Representative Pitre: “Before I left – and Mr. Lambert can attest to this – it wasn’t that I couldn’t go if I’d reimburse myself.”

Chairman Sytek: “Yes. You could go on your own dime.”

Representative Pitre: “And that’s what we’re here for is because the Speaker’s Office volunteered to pay. But I would like to take this through the process and not have to pay for this. There is a legislative caucus made up of 750 members. You can see it on-line.”

Chairman Sytek: “So was there any meeting of that caucus. Were there any meetings specifically for legislators?”

Representative Pitre responded: “Well, we talked among ourselves. As a matter of fact, I have a, Senator Manendo, he’s a Nevada senator, and he knows me by my first name, and we discussed the race track...and there are other issues that are there...”

After further discussion, Chairman Sytek said: “Okay. So, one of the central reasons for the decision was that the event must offer as a genuine and central element organized learning about subjects that are or may become the focus of legislative activity. The letter you’ve got says you went to 2 sessions.” She then asked Representative Pitre: “So you went to 2 seminars? Were there any meetings of legislators at all?”

Representative Pitre: “Well, I went to more than that. But these 2 sessions the attorney went with me. We were together. Actually he was teaching me.”

Chairman Sytek: “Because I looked on the website that you directed us to and I looked at the legal and regulatory and said ‘okay, what would be associated specifically with the legislature. So I looked at the legal and regulatory and there were 3 panels that were under legal and regulatory and so apparently you went to a couple of them?”

Representative Pitre: “Well I went to more than one, but he could verify that I was with him full time.”

Chairman Sytek: “So was there any meeting of legislators at all? Was there a panel for legislators?”

Representative Pitre: “Yes. There was a dinner we go to that’s probably about 3 hours and we – as a matter of fact if you call this Senator Manendo he can verify that we discussed (inaudible).”

Chairman Sytek: “So there was a dinner that was specifically for the legislators who were at the conference?”

Representative Pitre: “Yes.”

Senator Carson: “Do you have an agenda – an actual agenda of all of the activities that were going on during this conference? Because if there was a dinner, it would be listed in the agenda.”

Representative Pitre: “Yes. I believe I can find that.”

Chairman Sytek: “I looked through it and I couldn’t find anything that looked like it was a legislative group. It could be the legislators there said ‘let’s go out to dinner.’ Was there a presentation? Usually you have a meal and there’s a presentation.”

{Representative Pitre’s answer wasn’t responsive to these questions.}

Attorney Bradley asked Representative Pitre and Mr. Pfaff if they were going to leave materials with the Committee.

Mr. Pfaff: “Well I’m sure you’re aware of the minutes of the – I can leave what we put together if you like. It just shows you (inaudible) it just basically supports the dissent.

{The referenced materials were not provided to the Committee.}

Chairman Sytek: “But the dissent does not control.”

Mr. Pfaff: “I know. But it’s directly back to what you’re considering is the controlling (inaudible). What we agree to disagree on.”

Chairman Sytek asked if there were any further questions from the Committee. {There were none.} She then said, “If not, then we will take it up in executive session and figure out whether -- what to do.”

ITEM #5

Discussion of the status of the *Ethics Guidelines* and the process to amend the *Guidelines* as a result of the 2016 ethics law (2016, 328).

{The Committee incorporated this issue as part of their discussion of Item #6.}

ITEM #6

Update on the status of 2018 Senate Bill 343, “An Act relative to legislative ethics guidelines.”

Senator Carson, the bill’s prime sponsor, said she went before the Senate Rules Committee and testified on the bill and presented the case as to why she filed it. She said she was told that there was a need for more information that (Senate Rules Committee member) Senator Martha Fuller Clark requested and that the bill remained before the committee.

Chairman Sytek explained that the bill addresses Senator Carson’s dissent in the Committee’s recent ruling {*Interpretive Ruling 2017-1*} regarding whether it is a prohibited gift for a legislator to receive free legal services in a matter before the Legislative Ethics Committee or other legislative committees. She pointed out that the Committee included in the ruling language stating that guidance from the legislature would be helpful, and said that the bill was trying to provide that guidance by saying that accepting free legal services on an individual basis when someone enters into an attorney-client relationship with an attorney would fall under the definition of a prohibited gift. She summarized the bill’s effect by saying: “So someone against whom a complaint has been filed, if they have a lawyer representing them, they would have to pay for the free legal service if it was an attorney-client relationship.”

Senator Carson said that under the bill attorneys could continue to give advice to legislators, but couldn’t represent them.

Mr. Lambert pointed out that the bill amends RSA 14-C but doesn’t amend the Ethics Guidelines, which have almost identical language relating to prohibited gifts. He suggested that a decision should be made on how to amend the Guidelines.

Attorney Lehmann said: “You can amend the Guidelines by statute if you wanted to and you probably should just so they run parallel.”

Chairman Sytek asked what would happen “if you had a conflict between what was in a statute and what was in the Guidelines?”

Mr. Hess said that the statute would govern.

Attorney Lehmann said: “I’m not sure I agree with that in this context. I think that the {N.H.} Constitution gives each house – the Senate and the House – authority to determine its own rules of proceedings and I think that includes ethics rules and I think that the Senate and the House can adopt ethics guidelines without relying on the governor to sign it into law. Certainly no governor should veto legislative ethics guidelines that the bodies themselves want to adopt.”

After brief discussion, Chairman Sytek said, “So if the bill goes forward make sure it amends the Guidelines, too, so we don’t have a problem. {The other Committee members appeared to agree.}

ITEM#7

Initial Review of *Complaint 2017-3* and deliberation on another matter {Confidential}.

Senator Carson moved to enter nonpublic session pursuant to RSA 14-B:3, I(d). Representative Wall seconded the motion and the Committee voted as follows:

Attorney Bradley	Yea
Chairman Sytek	Yea
Senator Carson	Yea
Representative Wall	Yea
Mr. Hess	Yea

{MOTION ADOPTED}

{Nonpublic Session}

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

Attorney Bradley	Yea
Chairman Sytek	Yea
Senator Carson	Yea
Representative Wall	Yea
Mr. Hess	Yea

{MOTION ADOPTED}

Chairman Sytek announced that in its non-public session the Committee voted to send a letter to the complainant in *Complaint 2017-3* giving the complainant an opportunity to revise the complaint.

Continuation of ITEM #4

Further discussion of *Advisory Opinion 2017-3* (Rep. Pitre, October 30, 2017).

The Committee voted whether to reconsider its adoption of *Advisory Opinion 2017-3*. Representative Wall moved to reconsider. Attorney Bradley seconded the motion and the Committee voted against reconsidering the opinion by a vote of 1 to 3.

Attorney Bradley then moved to ratify the Committee’s adoption of *Advisory Opinion 2017-3*, pursuant to Procedural Rule 2, IV. Representative Wall seconded the motion, and the Committee voted 4 to 1 in favor of the motion.

ITEM#8

Consideration of an inquiry regarding whether there is any prohibition in the *Ethics Guidelines* or laws on holding a press release in the lobby of the LOB, or other legislative space, announcing publication of a book that a legislator authored.

Following discussion, it was the sense of the Committee that use of the Legislative Office Building lobby, or other legislative space, to promote publication of a book, the sales from which a legislator would receive financial gain, would violate Ethics Guidelines Section 3, III (e) and III (f).

ITEM #9

Consideration of whether the Committee should adopt an interpretive ruling to define the “private & personal” exception to the gift prohibition as it relates to funds established to assist legislators and legislative employees with certain catastrophic events or to celebrate certain events.

Chairman Sytek asked if the Committee wanted to do anything about the issue.

Mr. Hess said: “One of the things that our judicial system has learned early on is that to take up an issue in relative isolation without a clear fact pattern is an invitation to disaster and that’s my first reaction here. To try to define “private & personal” in a vacuum would be infinitely difficult and almost guarantee issues that weren’t thought of and would be a very time-consuming project.”

The Committee agreed not to pursue an Interpretive Ruling at this time.

ITEM #10

New/Other Business.

{ There was no new or other business. }

ITEM #11

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 4:40 P.M.

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