

MINUTES
LEGISLATIVE ETHICS COMMITTEE
November 15, 2019 MEETING
{Approved: February 7, 2020}

The Legislative Ethics Committee (RSA 14-B:2) met on Friday, November 15, 2019, at 2:30 P.M. in Room 104 of the Legislative Office Building.

The following members were present: Representative Edward M. Gordon, Chairman, the Honorable Donna Sytek, Vice Chairman, Senator Martha Fuller Clark, Representative Janet G. Wall, and Attorney David H. Bradley. Senator Sharon M. Carson and the Honorable David W. Hess were unable to attend. Also present was: 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 October 18, 2019.

Following review, Vice Chairman Sytek moved to approve the *Minutes* as presented. Senator Fuller Clark seconded the motion and the Committee voted 5 to 0 to approve the *Minutes*.

ITEM #2

Follow up discussion regarding *Complaint 2019-2*.

Chairman Gordon said that the next item on the agenda was an initial review of *Complaint 2019-5*, which would be conducted in nonpublic session. But he noted that Representative Glenn Cordelli had contacted the Committee to ask if he could attend the Committee's meeting to offer his comments on the informal resolution of the complaint. So, he asked the Committee if they would agree to hear from Representative Cordelli first so he wouldn't have to wait around. (The Committee members agreed.)

Representative Cordelli (Carroll/04) addressed the Committee and said he is currently in his fourth term serving on the House Education Committee. He said he had read the *Informal Resolution of Complaint 2019-2* in the *House Calendar* and had some questions and concerns. His first concern related to Example #4. He said that the resolution laid out 4 examples of alleged violations of the *Ethics Guidelines*, as presented in the complaint, and the Committee found that a violation had occurred in Examples #1 through #3, but not in Example #4.

(“**Example #4: SB 193 (2018) Education Savings Accounts**. It is alleged that you “lobbied” for this legislation. While your union’s membership undoubtedly has an interest in promoting education, the Committee does not find that the union will receive any direct benefit from Education Savings Accounts. The Committee does not find a violation of the *Ethics Guidelines*.”)

Representative Cordelli said his concern was that the example stated that Representative Ley had “lobbied for” passage of SB193 but that Representative Ley’s testimony before the House Finance Committee showed that Representative Ley had not “lobbied for” passage of SB193 but had testified against the bill.

Representative Cordelli said his second concern was that under the informal resolution, Representative Ley was required to recuse himself on a vote but, during a caucus, Representative Ley could still influence 230 representatives to support or oppose the legislation he was recusing from, “so there could still well be a legislative activity there.”

(The resolution stated: “the Committee proposes to resolve this Complaint through informal resolution, provided that you agree that, as long as you are employed as president of or as an advocate for AFT-NH, you will properly recuse yourself from participating in any legislative activities which may have a direct benefit to your employer or to the union membership.”)

He referenced *Advisory Opinion 2018-1*, an opinion requested by Representative Greg Hill and issued by the Committee on August 15, 2018. He said that Representative Hill had a possibility of employment with the New Hampshire School Foundation and the opinion stated that if Representative Hill were employed with the foundation and he were to introduce legislation, testify before a committee or state agency, vote in committee or House session, or otherwise participate in, influence, or attempt to influence a decision of the legislature, that would be in direct violation of the *Ethics Guidelines*. He stated, “So, here a representative with a possibility of employment was told that any attempt to influence legislation would be a violation of the *Ethics Guidelines*, but if we are to say that the majority leader could very possibly influence directly through instructions or recommendations to his entire caucus, or her entire caucus, then I think if we don’t reconsider then a double standard has been established in those instances, and I’m not sure how that would influence future ethics complaints. So, I would ask you to reconsider the findings of Example #4 regarding education savings accounts, but also to reexamine the possibility of ‘legislative activities’ and influence as a representative who is also the president of the teachers’ union, as well as majority leader.”

Vice Chairman Sytek said, “My question is: you’re concerned that he is going to talk to his caucus, is that the type of legislative activity that you think is not currently in our resolution?”

Representative Cordelli indicated it was.

Vice Chairman Sytek then quoted from the resolution and said, “I would include his work as majority leader talking to his caucus as part of his ‘legislative activities’...so that’s what the informal resolution says.”

Chairman Gordon agreed.

Representative Cordelli said that wasn’t clear to him as he read the resolution.

Chairman Gordon said: “And I think that’s what (Representative Ley) understands.”

Senator Fuller Clark said: “It just seems to me ‘any legislative activity’ would include what’s going on in a caucus that’s related to legislation. So, our intent is to make sure that’s applicable everywhere, whether it’s in a private caucus or in a public hearing.” She also said that “this conversation will be in our minutes and we can make sure to send a copy of these remarks to Representative Ley so that the clarification is formal.”

Chairman Gordon said: “With regard to the other point, the fourth allegation that was made by the complainant and our finding on that, I think we quoted the word “lobbied” in there, and found that his lobbying in that particular case didn’t constitute a violation, and it may be an error in that we viewed that *lobbying for* rather than *lobbying against*. I think the issue is whether or not that changes the disposition of that particular allegation...I’m not sure it really changes the disposition because it was the *lobbying*, whether it was one way or the other, that would make the difference and I don’t really think it does, but it may warrant correction. ...So, what I’m thinking, Senator Fuller Clark, is that we’ll send out a letter after our meeting just indicating that we may have been misrepresenting *lobbying for* and it should have been *lobbying against*. I’ll send that to

Representative Ley as well as indicating that you had raised a concern with regard to the extent of his recusal and what activity he must recuse from, and again cite the opinion that it means all activities and not just voting on issues.”

Chairman Gordon then added: “We’re going to have a further discussion later about the issue of recusal overall and whether or not that should perhaps be further addressed because, as you read through the *Ethics Guidelines*, there’s not one mention of recusal at all in our *Ethics Guidelines* and so we have – and if you actually read the *Ethics Guidelines* it sort of implies that it’s sort of up to the legislators to decide whether or not they should be recused or shouldn’t recuse. And so, it’s been a really difficult subject matter for us to deal with, as you might expect. I’m sure our resolution did not make everybody happy, but I think it’s the best resolution we could come up with. And I think we’ll address the idea that maybe we can amend our *Guidelines* to specifically address that issue of recusal, so it will give more instruction to everybody in the legislature.”

Chairman Gordon then thanked Representative Cordelli for his comments and Representative Cordelli thanked the Committee for the opportunity to speak to them.

ITEM #3

New/Other Business.

Chairman Gordon recognized Terry Pfaff, who is the Chief Operating Officer of the General Court of NH, to address the Committee regarding the status of creating an electronic Financial Disclosure Form for 2020.

Mr. Pfaff said that one of his charges as COO is to oversee the IT department. He said: “We’re looking at coordinating and getting launched for testing by the end of next week... your e-filing by legislators. Interestingly enough, I think it’s December, the Secretary of State is having on the executive branch side for their folks, they’re launching an electronic filing as well. It’s going to come on, so all that stuff will be up as well. As you know we deposit our forms over there afterwards but it’s all going to come into us, and you know we had a pilot program 2 years ago that was a vendor that we had reached out to and used on a trial basis. That was going to be too expensive in the long run for us to use. But we’re doing it in-house and we have our engineer Scott Kelley working on it and he indicated just recently that that’s going to be available for testing. We have one more document, I think, to load up and get into the system and once we do that it will be prepared, hopefully, by the end of the week for testing and we’ll be ready to launch. Our goal, and plan, is to have e-filing this year ready to go, thanks to our engineering.”

Vice Chairman Sytek said: “It makes it so much easier.”

Mr. Pfaff said: “Much easier for everyone involved. As we’re evolving, and you’ve heard me say, some of you have heard me say before, we’re getting to where the digital natives are starting to become members, so all that digital stuff, electronic stuff, is second nature, it’s first nature.”

Vice Chairman Sytek said: “That’s the expectation.”

Mr. Pfaff said: “The expectation is huge, so that whole division (General Court Technology Services), we’ve revamped our whole platform ...when we develop a system, we future proof it. So, basically what I’m looking at is 6 years, you know, 3 terms. In 3 terms people of our generation are going to be going away, more than likely, and it’s going to be a higher population of these digital natives. So, the demands on the system are going to be larger. We have a high expectation. They’re born with one of these things (holding up a cell phone), I think. So that’s where we’re headed and that’s who we’re trying to make the systems work for. It takes a little bit of vision and a little bit of dough, and it takes some talent in engineering. We’re doing baby steps right now, but we’ll have your e-filing up and running with our in-house staff.”

After further brief discussion, Chairman Gordon thanked Mr. Pfaff for his comments.

ITEM #4

Discussion about whether a legislator who serves as a member of a board of directors of an organization may raise money for the organization.

Chairman Gordon noted that House Legal Counsel James Cianci was in attendance and asked if he was “just monitoring” the Committee’s meeting.

Attorney Cianci said: “Right, Mr. Chairman. I had submitted informational materials to Rich (Lambert). I don’t think I need to address it. I just wanted to make sure the Committee had them.”

Mr. Lambert said: “That was a letter from the Senate President and House Speaker and also a sample of the letter they would send out to entities that might contribute to the CSG (Council of State Governments) conference.”

Chairman Gordon said: “Right. Well this was Agenda Item #3, which was a discussion about whether a legislator could solicit funds and raise money for an organization.”

Mr. Lambert stated that he had forwarded the materials from Attorney Cianci via email to the Committee members and that hard copies were in their packets.

Chairman Gordon said: “It looks like the intention of the Speaker and Senate President is to raise funds for this and I guess the issue is whether or not that’s ethically allowed.”

Attorney Cianci said: “Well, Terry (Pfaff) can address this as well because he’s been involved in the CSG process. CSG, I believe, had approached the working group that leadership had put together about sending it out. And so, we looked into it a bit and the Speaker and Senate President – and it was their intention that they would like to move forward with it.”

Mr. Pfaff said: “As a matter of fact, the leadership is moving forward with it, quite frankly. It’s a great honor for the President and Speaker to be even able to host it. It only comes up once every 20 years. They are the principle officers of the legislature, so they consider themselves officers of the court and, in fact, are. So, their intent is to go forward, and be the signatories. It’s more of an announcement or an invitation to participate in it. And many of you who have participated in events at CSG we put on in the past, and we were honored to host it in 2000, I believe Madam Speaker (Sytek), in 2001 at Attitash back then. It was a great success. Seven-hundred or so of our colleagues from around the eastern region came to us along with the Province of Quebec. So, they’re excited to do it. They actually stepped up to do it. We invited them and we’re doing it. And we’re hosting in Manchester.”

Vice Chairman Sytek said: “It’s interesting. Before Attitash, and previously in NH, meetings were held in Manchester. It was in the early 80s and most of our storefronts were boarded up. It was really awful. It will just be nice to bring them back, with a different group obviously, when Manchester’s downtown is thriving.”

Mr. Pfaff said: “It really is thriving. There’s great restaurants on-scene, so that’s why they always plan for 3 days and nights...it’s a good tool for tourism, as well, bringing all those folks in.”

Attorney Cianci said: “And I think when you get into the letter itself, clearly the intent is the Speaker and Senate President, as the presiding officers, thought it would be appropriate to sign onto the letter. But really, to the extent that there was any solicitation of funds ...it’s just that they felt in addition to the members of the host committee, including one of the members of the Committee who is not here, the presiding officers felt that in terms of contributing to this event that it would be appropriate for them to sign onto the letter. And so that’s why we wanted to at least make this Committee aware of it.”

Chairman Gordon asked Attorney Cianci: "So, as the House attorney, have you read the *Guidelines*, and do you think it complies with the *Guidelines*?"

Attorney Cianci responded: "Yes we have, and the presiding officers have, and they certainly feel it's appropriate for them to sign on."

Chairman Gordon said: "Well, that's really not what the question is. The question is not whether it's appropriate, the question is whether it complies with the *Ethics Guidelines*."

Vice Chairman Sytek said: "Because (quoting from the proposed letter) 'we invite you to participate in and support the 2020 conference as a corporate sponsor'. They're asking for money. There was a bill passed. It was HB122 for (House Clerk) Paul Smith, who was raising money for his clerks' group, and the original version of the bill said anybody could raise money for any organization we pay dues to. And it was narrowed to apply only to staff because the Committee felt it seemed unseemly to have legislators asking people who were interested in legislation for money. We didn't feel as offended that staff would do it. Staff can't do favors for donors. Legislators might be able to. And so, it was narrowed so it applied only to staff. So, the legislative intent was that the legislators shouldn't be able to do it. And this asks for money."

Attorney Cianci said: "I was just going to say I just think both the Speaker and Senate President feel as the hosts of this program ----"

Mr. Pfaff interjected: "and officers of the General Court."

Attorney Cianci continued: "and the presiding officers of the General Court that at the very least they should be able to endorse the program through this letter. I mean, I know the intent of the law is to prevent the conflicts of interest and along with that we thought with the legislators asking for money from a lobbyist. But I'd say this situation is sort of a unique situation in the sense that we only host these things once every 20 years. These are the presiding officers of the General Court and I don't know who else would do that, quite frankly. I don't know which staff would sign on."

Vice Chairman Sytek said: "No, it's appropriate. This is the way it's always been done. But it conflicts with the *Ethics Guidelines* and that's a tiny problem."

Chairman Gordon asked: "Do you know if back 20 years ago, or whenever the last one was, at Attitash if there was a solicitation made by legislators at that time?"

Mr. Pfaff replied: "I was (House) Chief of Staff for Speaker Gene Chandler at that time and yes, there was. It's basically the way most NCSL (National Conference of State Legislatures) or CSG events are. The host committee is expected to do that. We have a certain nut that you have to make and that's the common practice, and as presiding officers, I believe that the *Guideline* does say officers, does it not?"

Vice Chairman Sytek said: "It says legislative employees or officers."

Mr. Pfaff said: "I don't know if they're officers, but they're certainly presiding officers and they're officers of the General Court, and they're administrative officers..."

Vice Chairman Sytek said: "This was legislative employees or officers. They meant the clerk. This was put in for the clerk and it specifically excluded legislators. I mean, you could change the law. I understand what you're trying to do, and I think that you should do it. Because it's appropriate for them to do it. But I don't think it's consistent with the *Ethics Guidelines* as they stand now. So, opening day bring in a bill and fix it. We've done that before."

Chairman Gordon said: "I don't think anyone disagrees with them doing it. If what you're looking for is for the Ethics Committee to ---"

Mr. Pfaff said: "No, we're just informing. We're specifically not asking a thing. We're here just as a matter of transparency to make you folks know what's going on and you're prepared when you hear of it or something."

Attorney Cianci said: "We didn't want you to hear about it secondhand."

Mr. Pfaff said: “So, we just came forward to let you now and we’ll move on. Nice to talk with you.”

Chairman Gordon said: “Nice to chat with you.”

Mr. Pfaff said: “Have a great weekend folks.”

Chairman Gordon said: “Yeah, take care. Thanks for coming.”

ITEM #5

Initial Review of *Complaint 2019-5*. {Confidential}

Representative Wall moved to enter nonpublic session pursuant to RSA 14-B:3, I(d) to conduct an Initial Review of *Complaint 2019-5*. Senator Fuller Clark seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Attorney Bradley	Yea
Senator Fuller Clark	Yea
Chairman Gordon	Yea
Representative Wall	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

Vice Chairman Sytek moved to exit nonpublic session. Senator Fuller Clark seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Attorney Bradley	Yea
Senator Fuller Clark	Yea
Chairman Gordon	Yea
Representative Wall	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “The committee voted to come out of nonpublic session. In nonpublic session, the Committee voted to dismiss *Complaint 2019-5*. A letter to be sent to the complainant informing him of the decision.”

ITEM #6

Discussion of possible legislation to require recusal for certain types of conflicts of interest.

Chairman Gordon said: “This sort of follows up on Representative Cordelli’s concerns and questions. And what prompted this was the piece that NHPR (New Hampshire Public Radio) did. And NHPR noted that in the informal resolution we said because there was there was no bright line – this was for recusal – the matter could be addressed by the legislature. They pointed out, ‘well, there are legislators on the Committee, but we had done nothing about it.’ So, I went through the (Ethics Booklet) and went through the *Ethics Guidelines* and, again, there’s no reference to recusal at all. There’s reference to ‘these are prohibited acts, things that you cannot do,’ which is basically what we found with Representative Ley. He shouldn’t have engaged in those activities. But there’s no guidance at all with regard to recusal. If you’re a legislator and you actually read through there you get to the point where it says ‘Declaration of Intent’ and then says it’s up to you basically to decide whether you’re going to participate or you’re not going to participate....So, I’m just wondering if we wanted to consider doing some legislation that specifically addressed recusal and, more specifically, sort of adopted the standard that we had in the informal resolution. If, in fact,

you have an employer and the employer is going to receive a direct benefit and you're being compensated by your employer, or in the event that you have a business and your business is going to get a direct benefit, or if you're on a board somewhere and your board or whatever is going to get some direct benefit, you do have a duty to recuse yourself."

Attorney Bradley said: "And where it says in the book that it's prohibited, you're suggesting that the words 'and you need to recuse yourself' or 'you're required to recuse yourself' when it's prohibited, or something along those lines?"

Chairman Gordon said: "Right. Because we found this thing that there's no bright line. We sort of set a standard in that informal resolution saying, 'you know that if your employer is going to get a direct benefit, you need to recuse yourself.' And I'm just wondering if it makes sense to include in there 'Hey, there are times when you have to recuse yourself. You just cannot participate.' And perhaps Representative Cordelli, his point is well taken, too. You have to make sure you don't just recuse yourself from voting, you have to recuse yourself from all of the activities."

Attorney Bradley: "From any activity, yeah."

Vice Chairman Sytek said: "When we had the study commission that proposed the revamping of the *Guidelines*, one of the initial questions was did we have the authority to tell a legislator they couldn't vote. And we found that we couldn't. Isn't that right?"

Mr. Lambert said: "Well, the question was raised as to whether it was a constitutional issue or not, because the chairman, (Representative) Gary Richardson, I think, wanted to require recusal."

Vice Chairman Sytek said: "Right, and (Senator) Jim Rousch didn't, I think."

Mr. Lambert said: "And Representative Shawn Jasper didn't either, in fact, he was very strong about that. But according to NCSL, 30 states or territories or districts, mostly states, do require recusal for conflicts of interest. So, I don't know if there's anything different in their constitutions, or different in ours, that would make a difference, but they all do, quite a few." He read the recusal provision from the California legislature: "Legislators may not participate, by voting or any other action, on the floor of either house, or in committee or elsewhere, in the enactment or defeat of legislation in which he or she has a personal interest."

After further discussion, Chairman Gordon said: "So, if you read the instructions in (the *Ethics Guidelines*) and you do have a conflict, then you have to file a Declaration of Intent and then make a choice as to whether you are going to participate or not participate. And as I said, that sort of implies that you always can participate."

Vice Chairman Sytek said: "And the rationale for that was disclosure. 'Okay, I declare this. I'm letting you know voters I may have a conflict but I'm going to participate anyway. Let the voters decide.' And that was the rationale for it."

Senator Fuller Clark said: "But I think that what we're now dealing with is people who are actually paid and they're also a legislator, and they're paid to represent a particular entity or interest... Do we want to make it clearer that if you're being financially remunerated that you must recuse yourself?"

Vice Chairman Sytek said: "If we can constitutionally do it, it would be really helpful for people."

Senator Fuller Clark said: "I think it would. And we wouldn't continually have complaints coming here and not knowing what to do about them because it's not explicit."

After further discussion, Vice Chairman Sytek asked: "So, what would the legislation look like?"

Chairman Gordon said: "I'm thinking Rich just read off the California legislation and I think it was very well done except for the very last words when we get to a personal interest or a personal

benefit, and I think instead of doing that maybe substitute the standard that we set forth in the informal resolution, and that is if in fact you have a direct benefit.”

Vice Chairman Sytek said: “I think it would be helpful the more we can clarify for everybody. Let’s establish the bright line.”

Chairman Gordon said: “Exactly.”

Vice Chairman Sytek said: “So, they’re having late entry for house bills Tuesday. House Rules is meeting.”

Chairman Gordon said: “That’s when I’ll go. I’ll make it a point to go to that and see if we can get late entry for that.”

Vice Chairman Sytek asked: “So, do you need a motion that would direct the chairman to ask for a late entry of a bill clarifying when recusal is required?”

Chairman Gordon said: “That would be nice. If you intend to make a motion?”

Vice Chairman Sytek then so moved. Senator Fuller Clark seconded the motion and the Committee voted 5-0 in favor of the motion.

Chairman Gordon said: “Before I sign off on anything, I’ll send it out to you.”

ITEM #7

Scheduling of the next meeting.

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

The Committee’s meeting adjourned at approximately 3:40 P.M.

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