

MINUTES  
LEGISLATIVE ETHICS COMMITTEE  
February 7, 2020 MEETING  
{Approved: August 5, 2020}

The Legislative Ethics Committee (RSA 14-B:2) met on Friday, February 7, 2020, at 1:00 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, Senator Sharon M. Carson, and Representative Janet G. Wall. Attorney David H. Bradley and the Honorable David H. 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 November 15, 2019.

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

ITEM #2

Follow up discussion regarding *Complaint 2019-2 (Mazerall v. Ley)*.

Chairman Gordon noted that Item #2 was added to the agenda because Representative Glen Cordelli contacted the Committee to ask if he could appear to follow up on a discussion regarding *Complaint 2019-2*, which he participated in at the Committee's November 15, 2019 meeting (see Item #2 of the Nov. 15, 2019 *Minutes*).

Representative Cordelli recounted how, at the November meeting, there was a discussion about the different roles of a legislator versus a majority leader -- a position which Representative Ley holds. He distributed copies of 2020 Senate Bill 19, "An Act relative to the privacy of certain information concerning public employees," to the Committee. (The bill requires that an employee's home address, personal email address, and home or mobile telephone numbers shall not be disclosed except to an employee organization for the purpose of collective bargaining.) He said that when the bill came to the House floor on January 9, there was a roll call vote from which Representative Ley recused. He said he thought that Representative Ley's recusal was "in keeping" with the recommendations from the Committee in the informal resolution to the complaint. He said he wanted to discuss Representative Ley's role as majority leader, a role in which he said requires Representative Ley to be the manager of the majority office. He distributed copies of a "House Democratic Caucus Info Sheet for January 14, 2020," a document that contained recommendations on whether to support or oppose bills, including SB19. Representative Cordelli reminded the Committee that in its informal resolution it stated that Representative Ley should recuse himself from participation in any legislative activities which may have a direct benefit to his employer (the American Federation of Teachers-NH). He said that as majority leader Representative Ley would have a direct influence on the recommendations contained on the caucus info sheet. He then asked whether Representative Ley, in his role as majority leader, by recommending to the caucus members how they should vote, even though he personally recused from voting, was influencing the decisions of his caucus and, therefore, acting in conflict with the conditions set forth in the informal resolution and with Ethics Guidelines Prohibited Activities II(d).

{The provision states: Legislators shall not solicit, accept, or agree to accept anything of value from another for themselves or other persons, if the legislator receives such thing of value ... (d) In return for introducing legislation, testifying before any legislative committee or state agency, voting in committee or in House or Senate session, or otherwise participating in, influencing, or attempting to influence any decision of the legislature, county delegation, or any state agency.}

Representative Cordelli said that in his opinion Representative Ley's "professional position as head of the teachers' union is in direct conflict with his legislative position as majority leader, not necessarily as a House member, but definitely in terms of his majority leader status."

Chairman Gordon said: "Other than being a majority leader, we don't know what role, if any, he played in coming up with these recommendations."

Representative Cordelli responded: "Correct. Other than as the head of the majority office, yes."

Chairman Gordon said: "And your basic contention is by virtue of the fact that he is employed by the union, that's in conflict with his role as the majority leader and basically he shouldn't be serving as majority leader, I think is the argument."

Representative Cordelli responded: "Right. And it is in direct conflict when there is legislation that impacts the union, as was the case of SB19."

Chairman Gordon asked Representative Cordelli if his argument is that Representative Ley's role with the teachers' union creates a conflict with his role of majority leader.

Representative Cordelli responded that it was.

Chairman Gordon said: "So, the follow up I have to that is, if somebody were employed by Eversource and we have legislation that involves electrical rates or net metering, should they be precluded from serving as a majority leader in either party?"

Representative Cordelli responded that he "would leave that to the Committee, but it could raise questions in my mind, and certainly when there is no obvious separation from the recommendations to the caucus. That is troubling for me."

Senator Fuller Clark asked: "So, with regard to SB19 when it came up on this list, I don't know what the nature of the discussion was in the caucus, but if he had announced before this was discussed, if it was discussed, that he was not going to enter into the discussion because of a conflict of interest, would that have satisfied your concern?"

Representative Cordelli answered: "Partially, if that did occur. I was not there but the fact that as majority leader on the recommendation sheet there was this recommendation for the entire caucus, I think is another avenue to influence without stepping aside on those issues that impact the union."

Senator Fuller Clark asked: "So, when this sheet is prepared for the caucus, do you have any information about how the recommendations are arrived at and who actually drives this agenda that's shared with the rest of the caucus? Is it just the majority leader or is it a committee? How is this actually established?"

Representative Cordelli said: "I'm not sure how the Democrats do it other than the majority leader being the majority leader – in our caucus I'm the assistant Republican leader -- ranking leaders who all have input into the recommendations, but the minority leader has the final say."

Senator Fuller Clark said that in her experience the recommendations are developed by a group of legislators, not by just the majority or minority leader.

Vice Chairman Sytek said, "We don't know what happened. All we know is that this document was distributed to the Democrats. So, he could have recused himself from discussion of that, others could have put it together, and he could have announced, 'I'm not going to vote on this...' We don't know."

Representative Cordelli said: "That is true."

Senator Carson asked Rep. Cordelli: “Do you think it would have been appropriate then, under the circumstances and under the conditions of the resolution of the complaint...to say: ‘the majority leader takes no position on this bill’?”

Representative Cordelli answered “yes.”

Senator Carson said: “I think that would have been in keeping within the spirit of the decision. And now we’ve got this kind of gray area where we don’t know what happened. So, if I’m looking at this I’m saying ‘Okay, is this a recommendation that’s coming from the chair of (House Committee) Labor and Rehabilitative Services or is this coming from the majority leader himself?’ This is a document that’s produced by the office he oversees. So, I can see where it would be confusing and there’s some gray area. But, in my opinion, just the safest thing would have been to take no position on this bill, and that would have taken care of that issue.”

Chairman Gordon added: “or note that he personally didn’t participate.”

After further discussion, Chairman Gordon said: “Just to separate this from Representative Ley for a second, I think really the question we’re being asked is whether participating and making party recommendations is a legislative activity for which you should recuse yourself if you have a conflict. And that should apply to not only Doug Ley, but it should apply to any members of leadership on either side who have a conflict... I think we’ll get into this issue later when we discuss pending legislation. But clearly, one thing we can agree on is: you can’t be a paid lobbyist and be a legislator at the same time.”

### ITEM #3

Review of 2020 Financial Disclosure Forms. Vote on accepting filings and transmittal to the Secretary of State. {Pursuant to RSA 14-B:3, IV}.

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

- Senate
  - All 24 members of the Senate filed a form by the January 17, 2020 deadline.
- House
  - 393 members of the House, out of the 396 members who are qualified to serve, filed a form by the January 17, 2020 deadline.
  - 3 additional House members filed forms after the January 17, 2020 filing deadline. The names of the House members who filed after the deadline, with the date filed, are:
    - Representative Jeffrey C. Salloway (1/21/20)
    - Representative Robert L. Forsythe (1/27/2020)
    - Representative Richard B. Beaudoin (2/3/2020)
  - 6 House members filed forms lacking required initials or signatures.
- Officers
  - The Senate Clerk, the House Clerk, and the House Sergeant-at-Arms filed their forms by the January 17, 2020 deadline.
- Electronic Filing
  - 5 Senators and 57 House members filed the new 2020 Financial Disclosure E-Form. However, many of the filings appeared to be incomplete or inaccurate.

Following a brief discussion, Vice Chairman Sytek moved to accept the late filings. Senator Carson seconded the motion and the Committee voted 5-0 in favor of the motion.

Chairman Gordon said the Committee should address the issue of the incomplete or inaccurate e-form filings and asked whether the Committee should go back to the people who filed the forms and see whether they are correct and, if not, see that they are corrected, or whether the Committee should basically accept those forms and then, unless somebody raises that as an issue at some point in time, address it at that time.

Senator Fuller Clark said: “So, my concern is that if there are problems with this electronic filing, we need to understand what they are. And it is just not transmitting the information the individuals filled out? Maybe just randomly hearing from a few other members of the House. and they say Oh, I did fill this out, then it’s going to tell us that there is something wrong with the way those answers registered.”

Chairman Gordon said: “I don’t know if you had an opportunity to do it, but the process is confusing. It’s not user-friendly at all.”

Senator Fuller Clark said: “I stopped using it. It’s not user friendly.”

Senator Carson said: “I had no trouble getting into it; it just didn’t save the information I put into it. I’m glad Mr. Lambert showed me (my e-filing) and questioned it because I was a little upset. I had to testify that this information was true and when he showed it to me, for some reason when it left me and went wherever it went, all of that information disappeared.”

Chairman Gordon said: “I had the same problem the first time I did it.”

Vice Chairman Sytek said: “I helped my husband (Representative John Sytek) with his...and I know what he filed, and when I looked on line at what it says he filed and it only has the first source of income and he has 3 or 4, and I know that he entered them...”

Chairman Gordon said: “This actually requires you to sort of narratively add information where you really need to have a system, to make it work for 400 people, where you just fill in boxes.”

Every Committee member appeared to agree with that.

Following the discussion of the problems incurred with the electronic filing program, Senator Carson moved to return printouts of e-filings to every filer for their review so that any inaccuracies could be corrected. Vice Chairman Sytek seconded the motion and the Committee voted 5-0 in favor of the motion.

The Committee instructed Mr. Lambert to contact the House members who filed incomplete forms to ask them to sign or initial their forms as required.

Senator Fuller Clark then moved to accept the filings and to transmit the Financial Disclosure Forms to the Secretary of State with a letter explaining that some of the forms that were filed electronically may be inaccurate and would be updated and resubmitted in the near future. Representative Wall seconded the motion and the Committee voted 5-0 in favor of the motion.

Mr. Lambert asked if he could give some recognition to the legislative staff members “who did a tremendous amount of work in the two-week period members had to file.” He said that Eileen Kelly, the House Chief of Staff, Dan Mason, Rachel Cole, and Zack Sheehan, of the House Democratic Majority Office, Aaron Goulette, Megan Stone, and Jeremy Baker, of the House Republican Minority Office, and Donald Manning, the Senate Chief of Staff, and members of the Senate President’s Office, Senate Republican Office, and Senate administrative assistants, “would constantly be calling and e-mailing, and chasing members down in committee and caucus, and doing a tremendous amount of work at a time in the session when they are many things to be done.”

#### ITEM #4

Discussion of the 2020 Financial Disclosure E-Form.

Mr. Lambert summarized the problems that occurred with the system and distributed a report based on feedback from legislators who attempted to use the e-form, which stated the following:

##### Overview

The E-Form process was not sufficiently user-friendly. Members complained there were too many steps, there was insufficient instruction, and the process was complicated and confusing.

##### Specifics

##### Getting into the E-Form

Many members said they couldn’t log in at all. Some were instructed by the app to set up a new account and were unable to do so.

After attempting to log in, some members were told “the system doesn’t recognize” them (Examples: Speaker Shurtleff, Sen. Fuller Clark, Sen. Rosenwald, Sen. Hennessey, Rep. John O’Connor, Rep. Sherry Frost, Rep. Chris True, Rep. Raymond Howard, Rep. Polly Campion). Some members said they were sent a passcode but the app wouldn’t accept it. Other members said they didn’t understand what to do with the passcode.

Some members said they were unsure of their email address/password.

#### Incomplete filings

Many members’ forms were submitted with no disclosure(s) in Section 1 or Section 2 despite the fact the members said they had entered disclosures. (Examples: Sen. Carson, Sen. Starr, Sen. Giuda, Sen. Dietsch, Sen. Birdsell, Sen. Sherman, Rep. Michael Cahill, Rep. Julie Gilman, Rep. Michael Gunski, Rep. James Horgan).

#### Inaccurate filings

Data entered for “Legislator” transposed to “Household Member” or vice versa (Examples: Rep. Steven Smith, Rep. Julie Gilman, Rep. Gary Merchant, Rep. Peter Leishman).

#### No Confirmation

Initially there was no automatic confirmation. Later IT developed an automatic confirmation e-mail response, but it was set up to be sent only after I approved a member’s form.

#### Accessing Another Member’s App

At least 2 members said they accessed other legislators’ log in screens or forms. (Examples: Rep. William Brody, Rep. Lee Oxenham).

### ITEM #5

Discussion of pending 2020 ethics bills: HB 1694, AN ACT relative to recusal by members of the general court for conflicts of interest; SB 521, AN ACT relative to prohibiting legislator participation or advocacy in matters directly related to their employment; and SB 500, AN ACT relative to financial disclosures by legislators.

### ITEM #6

New/Other business.

Mr. Lambert informed the Committee that there were no copies remaining of the November 2018 Edition of the Ethics Booklet and reminded them that the booklet needed some revisions to incorporate amendments to the statutes and Guidelines adopted since the 2018 edition. The Committee agreed that printing an updated booklet was a good idea and discussed what color the cover should be.

### 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 2:30 P.M.

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