

MINUTES  
LEGISLATIVE ETHICS COMMITTEE  
JANUARY 24, 2022 MEETING  
{Approved: April 4, 2022}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, January 24, 2022, 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 Sharon M. Carson, Senator Cindy Rosenwald, Representative Janet G. Wall, the Honorable David H. Hess, and Attorney John S. Brandte. Also participating was Richard M. Lambert, Executive Administrator.

The Committee's meeting consisted of the following agenda items:

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on December 20, 2021.

Following review, Senator Rosenwald moved to adopt the *Minutes* as presented. Attorney Brandte seconded the motion and the Committee voted 5-0 to adopt the motion.

ITEM #2

Continued Preliminary Investigation of *Complaint 2021-5*.

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to continue the Preliminary Investigation of *Complaint 2021-5*. Senator Carson seconded the motion and the Committee voted as follows:

Mr. Hess	Yea
Attorney Brandte	Yea
Representative Wall	Yea
Senator Carson	Yea
Chairman Gordon	Yea
Vice Chairman Sytek	Yea
Senator Rosenwald	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Mr. Hess	Yea
Attorney Brandte	Yea
Representative Wall	Yea
Senator Carson	Yea
Chairman Gordon	Yea
Vice Chairman Sytek	Yea
Senator Rosenwald	Yea

{MOTION ADOPTED}

Chairman Gordon stated that the Committee, in its nonpublic session, continued its Preliminary Investigation of *Complaint 2021-5* and determined that the complaint has been resolved through an Informal Resolution and that no further action is to be taken.

### ITEM #3

Consideration of a Request for an Advisory Opinion from Rep. Oliver J. Ford (Rock. 04).

Rep. Ford appeared before the committee to discuss his request concerning whether he would have a conflict of interest if he participated in his committee's consideration of a bill he sponsored that could affect his wife's financial interests.

The Committee reviewed Rep. Ford's written request in which he stated he had been appointed chair of a subcommittee of the House Committee on Education to consider 2022 House Bill 1530, "An Act relative to bachelor's degrees offered by the community college system of New Hampshire," and that his wife, Dr. Mary Ford, is currently the Director of Inclusive Career Pathways with an organization called the National Collaborative for Digital Equity. He wrote that his concern was that his wife's organization has an interest in the bill's passage and someone from the organization – possibly his wife – would likely testify before his subcommittee in support of the bill. He also asked for advice regarding whether his participation in the consideration of future legislation involving institutions with which his wife is employed could create conflicts of interest.

Chairman Gordon asked Rep. Ford if his wife currently holds any position with any of the organizations which might testify before his subcommittee.

Rep. Ford replied "yes."

Mr. Hess asked if his wife is likely to get paid more as a result of how his committee votes on the bill.

Rep. Ford replied that she would not, but he was concerned about the appearance of a conflict of interest.

Senator Rosenwald asked Mr. Ford if he had declared on any of the ethics forms that his wife works in education.

Rep. Ford replied that he couldn't remember.

Chairman Gordon said that he was trying to get at the issue of his wife's employer and whether they are a nonprofit agency that is just interested in education or if her employer serves other people and advocates for other people.

Rep. Ford said: "No, that's not their role."

Rep. Ford left the meeting, and the Committee then discussed the matter.

Senator Carson discussed her own situation in which she is an employee of the Community College System. She said that whenever any bill comes up relating to the community colleges, she recuses, whether it's in a committee or a vote on the Senate floor. She suggested that Rep. Ford might want to take that route and recuse, or he could choose to participate after making his disclosure on a Declaration of Intent Form. She also referenced the requirement in the Ethics Guidelines to make verbal disclosure of conflicts of interest. She said it was up to him to decide.

Mr. Hess said he concurred with Senator Carson.

Chairman Gordon said that if he understood Rep. Ford's situation correctly, he needs to file a Declaration of Intent and indicate he has a conflict of interest. He added: "If there's no remuneration at all, if his wife isn't being paid to advocate or isn't receiving some financial benefit, or her employer isn't receiving some financial benefit for the advocacy, then I don't think he has to recuse himself. But if she is, it seems to me he's got to recuse himself. And so, I think in the response to him that's probably what it needs to say."

Vice Chairman Sytek said she agreed with Chairman Gordon.

Chairman Gordon said his other concern was that Rep. Ford made it seem like the question was only about whether he could vote on the bill. He pointed out that under the Ethics Guidelines "it's not just about voting on it, he can't discuss it at all."

Vice Chairman Sytek pointed out that Rep. Ford probably would appreciate knowing the Committee's response as soon as possible as he was at that very moment chairing a meeting of the subcommittee he asked about. The Committee then agreed to invite Rep. Ford to return to its meeting.

When Rep. Ford returned, Chairman Gordon said that the Committee would be providing him with a written advisory opinion, but before doing so would provide him with some counsel. He stated: “It would appear perhaps, particularly if your wife is appearing before your committee, and if she is advocating for a particular position, that you should file what’s called a Declaration of Intent Form, a form which would indicate that you have a conflict of interest. Once you do that you have a choice, and your choice is whether to say, ‘I have a conflict of interest but I’m going to continue to participate in the discussions and the vote,’ or you could recuse yourself. That’s your decision to make at the time...once you decide to recuse yourself you have to recuse yourself entirely, so you would not be able to participate in those discussions as well as not being able to participate in the vote. The issue that we’re not exactly sure about -- and the question to you -- is whether or not your wife would receive any financial benefit as a result of enacting this legislation, and I think you indicated no, but that is a concern because if in fact she was going to receive any financial benefit – or perhaps her employer would receive some financial benefit – then you probably would have to recuse yourself.”

After further brief discussion, Rep. Ford thanked the Committee for considering his request and the Committee thanked him for appearing.

#### ITEM #4

##### Continued Initial Review of *Complaint 2021-10*

Mr. Hess moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to continue an Initial Review of *Complaint 2021-10*. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Mr. Hess	Yea
Attorney Brandte	Yea
Representative Wall	Yea
Senator Carson	Yea
Chairman Gordon	Yea
Vice Chairman Sytek	Yea
Senator Rosenwald	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Mr. Hess	Yea
Attorney Brandte	Yea
Representative Wall	Yea
Senator Carson	Yea
Chairman Gordon	Yea
Vice Chairman Sytek	Yea
Senator Rosenwald	Yea

{MOTION ADOPTED}

Chairman Gordon stated that the Committee, in its nonpublic session on *Complaint 2021-10*, voted to dismiss the Complaint.

#### ITEM #5

Update on 2022 HB 1398, An Act relative to recusal by members of the general court for conflicts of interest.

Chairman Gordon informed the Committee that the bill was presented to the House Committee on Legislative Administration the prior week. He said he thought the hearing went well but didn't know what the bill's fate would be. The Committee then briefly discussed the substance of the bill.

#### ITEM #6

New/Other business.

The Committee discussed the issue of whether its jurisdiction to consider complaints can or should extend to matters involving certain behavior by legislators on social media and elsewhere.

Chairman Gordon said that Mr. Hess had expressed concerns that arose during the Committee's consideration of a recent complaint. He said the concerns involved the Ethics Guidelines' Principles of Public Service, whether the House itself should be taking action on certain matters as opposed to having those matters come to the Committee, and the implications of the U.S. Supreme Court decision in *Bond et al. v. Floyd et al.* (1966). He asked Mr. Hess to address those concerns.

Mr. Hess said:

- 1) The Principles of Public Service are not enforceable because they're vague, subjective, discretionary, and nobody is alerted as to what is permissible and what is in violation of the language of the principles. While it obviously doesn't rise to the level of criminal law, where the "void for vagueness" doctrine comes from, the principles still set forth criteria by which a legislator would be found in violation of ethics if he or she acts contrary to the principles. I realize and understand that the legislature passed a bill saying the principles are ethical standards, but that doesn't mean that they meet the minimum standards for holding people accountable in their behavior. They don't notify people about what is right and what is wrong.
- 2) The Committee is being asked to police and oversight behavior which the Committee has no business doing. We're an ethics committee, not a public speaking committee or First Amendment Committee. Our mission does not charge us to penalize people for using their First Amendment rights. It's only for a violation of ethics, and most of the things that people say are not ethical violations. They may be bad judgment, they may be offensive, but they're not ethical violations.
- 3) The Committee should bring the decision in *Bond* to the attention of House leadership as its application impacts the First Amendment rights of our legislators.

Representative Wall suggested that the Committee write an official letter to the House and Senate leaders to express their concerns.

After further discussion, the Committee members agreed to invite the Speaker of the House and House Minority Leader to attend its next meeting to discuss the issues. Chairman Gordon agreed to draft an outline of the Committee's concerns for use in the discussion.

#### ITEM #7

Scheduling of the next meeting.

The Committee tentatively scheduled a meeting on April 4, 2022, at 1:00 P.M.

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

{Prepared by Richard M. Lambert, Executive Administrator}