

SPECIAL REPORT TO THE SPEAKER
OF THE HOUSE OF REPRESENTATIVES
REGARDING COMPLAINT #2004-2

I. Introduction

The Legislative Ethics Committee received a complaint in October of 2004 regarding the conduct of Representative Gene Chandler with respect to certain gifts made to him in connection with a series of “corn roasts” held each fall.¹ The complaint was made by two other members of the House of Representatives, alleging that the solicitation and receipt of such cash gifts violated the Legislative Ethics Guidelines.²

Following a review of the complaint, the Committee, in accordance with its procedural rules, conducted an extensive preliminary investigation and voted unanimously to initiate formal proceedings to inquire into the complaint. A formal statement of charges and notice of hearing was sent by certified mail to Representative Chandler on November 29, 2004, and a hearing was held before the Committee on May 20, 2005.³ Representative Chandler formally answered the statement of charges, and appeared at the hearing to testify and present other evidence through his counsel.

II. Charges

The Committee charged Representative Chandler with violations of the Ethics Guidelines, including:

¹ At the time of the complaint, Representative Chandler was then serving his second term as Speaker of the House.

² A subsequent complaint was received from a member of the public regarding the same conduct, which was dismissed as being redundant to this complaint.

³ The hearing was originally scheduled for January 13, 2005. It was delayed by agreement with Representative Chandler while awaiting the completion of the related investigation by the New Hampshire Attorney General.

1. Engaging in Prohibited Activities as set forth in Section 4, Paragraph 1, Subparagraph (b), by soliciting, accepting or agreeing to accept gifts with an aggregate value of over \$250 from others while knowing or believing that the givers were or were likely to become interested in matters pending before the Legislature.
2. Engaging in Prohibited Activities as set forth in Section 4, Paragraph III, by using his public position or office to obtain gifts with an aggregate value of over \$250 for his private benefit.
3. Failing to comply with the provisions of RSA Chapter 15-B, by disregarding the legal obligation to report gifts in excess of \$50 received by him while serving in the Legislature.

All of the above would also constitute a breach of the ethical standards set forth in the Principles of Public Service, I, II and III, as set forth in Section I of the Ethics Guidelines.

With respect to the first two specific charges, Representative Chandler's answer, as well as his position as articulated at the hearing, is that the applicable provisions of the Ethics Guidelines are invalid because they are in conflict with certain statutes.⁴

With respect to the third charge, Representative Chandler acknowledges the violation, as demonstrated by his guilty plea to a misdemeanor charge arising out of this conduct, but argues that the penalty imposed in the criminal proceeding is a sufficient sanction rendering unnecessary any further action by this Committee.

⁴ In this regard, Representative Chandler moved, through counsel at the hearing, to dismiss these charges; as set forth in this Report, the Committee has concluded that these guideline provisions are valid, and accordingly, the motion to dismiss is denied.

III. Findings

The facts underlying the charges in this proceeding are largely undisputed. Representative Chandler has served in the House of Representatives for many terms, rising to a position of leadership and eventually Speaker of the House. For seven years, beginning in the fall of 1998, Representative Chandler solicited and received substantial cash gifts from various businesses, lobbyists, and individuals in connection with an annual corn roast. The corn roast was organized by a committee of Representative Chandler's "friends". The purpose of the fund raiser was to make it possible for Representative Chandler, in light of the time required to fulfill his various leadership positions, to continue to serve in the Legislature. Representative Chandler testified that without additional funds to supplement his income, he would have been unable to financially manage his legislative demands.⁵ Although the price of tickets to the corn roast was \$10.00, gifts of larger amounts were encouraged. In fact, gifts of up to \$1000 were received.

Prior to the first event in 1998, one of the organizers contacted the Secretary of State to determine whether the committee of friends needed to register or take any other action. The Secretary's response was ultimately set forth in a letter dated July 31, 1998. Although the letter advised that the friends committee need not register or make any report, it did state the following:

"Enclosed is a copy of the Gifts, Testimonials, and Honorariums Law and the form that needs to be filed once a year by an individual who gets the net proceeds from an event like you have explained." (emphasis added)

⁵ Representative Chandler has always maintained that these funds were used for personal expenses, such as mortgage payments, transportation expenses, and laundry bills. The point of his assertion is that the funds were not used for luxury purposes, but this does not change the nature of the violations. In fact, it might well be thought that an elected official may be more beholden to those funding his necessary living expenses, than to those who might provide funds for luxury purposes.

Representative Chandler was made aware of this letter. Despite receiving the proceeds from the corn roasts, he did not interpret the quoted provision as requiring him to report receipt of the funds in accordance with RSA Chapter 15-B, because members of the friends committee did not have to report and he considered himself to be a member.⁶

In 1998, as in subsequent years, the flyers promoting the corn roasts were mailed to registered lobbyists and others having an interest in pending or contemplated legislation, and North Country individuals who knew Representative Chandler. In some years, the flyers included reference to significant legislative issues which would be addressed in the upcoming session. Representative Chandler testified that he was aware of the content of the flyers prior to being sent and that he maintained the mailing list from year to year. The proceeds of the corn roast were turned over to Representative Chandler, who had the sole discretion over how the funds were spent.

The Friends of Gene Chandler Committee had no formal legal identity. There were few, if any, formal meetings of the Committee members. Although it had bank accounts established under its name, the tax identification number was Representative Chandler's Social Security number and he had sole check writing authority. Representative Chandler acknowledged that he was actively involved in the fundraising efforts of the Committee which were directed toward his personal benefit.

Representative Chandler did not conceal the fact that he was engaging in this fund raising activity. The corn roasts were public events which were reported on by the press and the flyers made it clear that the proceeds were to be used for the benefit of Representative Chandler. The Committee found no evidence that Representative Chandler

⁶ The flyers promoting the annual corn roast generally set forth the membership of the friends committee, but did not include Representative Chandler.

used legislative resources to raise funds or that any donor received any specific benefit as a result of making a corn roast gift.

With the exception of a filing under RSA 15-B in 1999, which was made at the insistence of the then Speaker of the House Donna Sytek, as communicated to Representative Chandler by her Deputy, Donnalee Lozeau, Representative Chandler did not report receipt of the gifts he received each year, many of which exceeded \$250 per donor. In his written and oral testimony, Representative Chandler made clear that prior to these issues arising in the fall of 2004, he was not familiar with the \$250 per year per donor limitation set forth in the Ethics Guidelines.

IV. Analysis

After considering the testimony and documentary evidence entered at the hearing, the Committee has determined, by a clear and convincing standard, that each of the charges is true. With respect to each charge, the Committee's analysis is as follows:

1. Prohibited Activities, Section 4, Paragraph I, Subparagraph (b).

Representative Chandler concedes that he solicited, accepted, and agreed to accept gifts with an aggregate value of over \$250 from others, while knowing or believing that the givers were or were likely to become interested in matters pending before the Legislature. In addition to his initial response that he was unaware of the \$250 limitation, his defense is simply that his activities were otherwise lawful and therefore the guideline provision is invalid because it is inconsistent with RSA Chapter 15-B, as interpreted by a 1998 Opinion of the Attorney General. The Committee disagrees.

First, we deal here with ethics guidelines, rules of conduct adopted by the Legislature to impose limitations on its own members. This Committee was created, and these guidelines proposed and adopted, to provide standards of behavior for legislators in ethical matters, and to increase public confidence in the independence and integrity of the legislative process.⁷ These are not criminal code violations subject to restrictive interpretation and "beyond a reasonable doubt" prosecution by law enforcement authorities. Accordingly, it is not appropriate to engage in complex analysis or technical argument to defend non-compliance with the Ethics Guidelines.⁸

Second, engagement in such a comparative examination of the various statutes, Attorney General Opinion, and guideline provisions does not reveal any such invalidity. RSA Chapter 14-B authorizes and directs the promulgation of ethics guidelines which are "consistent" with other statutes. Although Representative Chandler argues that, given the Attorney General's Opinion that RSA Chapter 15-B implicitly repeals the application of RSA 640:5 (gifts to public officials) with respect to such gifts that are reported, this does not prevent the Legislature from imposing a limitation on its own members with respect to the receipt of such gifts. There was nothing "inconsistent" in doing so, and this initiative constituted an

⁷ The same motivation obviously prompted the adoption of RSA Chapter 15-B in 1987, in particular to require public disclosure of testimonial proceeds.

⁸ This is particularly so given Representative Chandler's alleged ignorance of the provision at the time the substantial funds were being raised, received, and used.

admirable response to public concern about the impact, real or perceived, of such gifts on the legislative process.

It is certainly within the authority of the Legislature to establish higher standards of behavior for its members than the minimum standards of the criminal law. It is also within the authority of the Legislature to expect and enforce compliance with those standards, otherwise, they are meaningless words. It is the responsibility of each member of the Legislature to understand, comply with and defend the standards of ethical conduct which have been properly adopted by the membership.

Accordingly, this charge has been proved as a matter of fact, as a matter of law, and as a matter of general ethical standards expected of members of the New Hampshire Legislature.

2. Prohibited Activities, Section 4, Paragraph III.

Representative Chandler used his public position or office, first when he was a member of the House leadership team, and eventually as Speaker of the House, to obtain gifts with an aggregate value of over \$250 for his private benefit. The same analysis applies to this charge as the preceding one, with the additional observation that there is no doubt that the lobbyists and business corporations with regular business with, and interest in the actions of the Legislature, donated these substantial sums of cash to Representative Chandler because of his leadership positions. In addition, notwithstanding suggestions made at times during the course of these proceedings, there was no evidence received by the Committee that any

other member of the Legislature engaged in a conscious and concerted effort to solicit cash gifts for personal benefit from individuals or organizations with interests in legislation pending before the Legislature since the adoption of the Ethics Guidelines.⁹ This appears to be an isolated instance, and not indicative of any “culture” in the New Hampshire Legislature.

Finally, in the course of his defense, Representative Chandler seemed to cast blame on the Office of the Attorney General for failing to regularly review RSA 15-B filings in accordance with its obligation under RSA 15-B:6.¹⁰ Through his counsel he also noted that the Office of the Secretary of State made little effort to see that legislators comply with filing requirements. In addition, he pointed out that the Legislature has no “ethics officer”. Whether these criticisms are justified or not, they are no defense. It is the duty of each member of the Legislature to understand and comply with his or her ethical responsibilities. Attempting to blame others for one’s failure to comply with established ethical standards is inconsistent with the purpose and spirit of the Ethics Guidelines.

Accordingly, this charge has been proved by clear and convincing evidence.

⁹ There are fund raising events which are organized by other legislators, but the proceeds benefit candidates or political committees which have a duty to report both receipts and expenditures.

¹⁰ The Attorney General’s office testified that it did not have the resources to regularly monitor compliance with the RSA 15-B requirement.

3. Failure to Report in Accordance with RSA Chapter 15-B.

As noted, this violation was the subject of a criminal prosecution, in which Representative Chandler pled guilty. Accordingly, no extended analysis is required to find that the charge has been proved by clear and convincing evidence.

V. Conclusion

Having determined that the specific charges are true by clear and convincing evidence and thus also the breach of ethical standards set forth in the Principles of Public Service, Section 1, Paragraphs I, II, and III, the remaining, and most significant task of the Committee is a recommended sanction.¹¹ These violations are serious in and of themselves, but made even more so because they were committed by a member of leadership, and have caused substantial public concern regarding the independence and integrity of the legislative process. This is not surprising, in view of the large sums paid by those having an interest in the workings of the Legislature to an individual having substantial control over such workings, all without public scrutiny. Accepting Representative Chandler's assertions, it is not, in the view of the Committee, a mitigating circumstance that he was unaware of the guideline provisions, but is more likely an aggravating condition, as these provisions have been reviewed and adopted by the Legislature. To have the leader of the institution claim ignorance of them creates even more cynicism and distrust of the process. The violations create an aura of suspicion as to other public officials, an erroneous and unfortunate assumption, given the hard work done

¹¹ In considering sanction, the Committee is cognizant of Representative Chandler's long service in the Legislature, as well as personal losses he has suffered in the recent past. The focus, however, of the Committee's attention must be the nature of the violations, and their impact on the Legislature and the public.

by all other members of the Legislature. If nothing else, the receipt of tens of thousands of dollars in cash gifts from those having a great stake in his legislative action should have raised a red flag sufficient to create an ethical concern.¹² To the contrary, in his testimony, Representative Chandler made clear that, he thought it was legal, and that made it permissible. The Ethics Guidelines establish a higher standard, and the members of the public expect and deserve more.

Based on all of the circumstances, the Committee unanimously recommends that Representative Chandler be expelled from the House of Representatives for the remainder of the 2005-2006 term of office. To do otherwise would demean the ethical standards established by the Legislature for its membership. Representative Chandler chose to solicit and take financial gifts from donors who had business before the Legislature. He may have been unaware of the guideline requirements or he may have disregarded them. Either circumstance is equally egregious. It is an honor to be chosen to serve in the Legislature and one must take his or her ethical duties seriously. That includes knowing and complying with accepted standards of ethical conduct. This is especially true when the member holds the highest leadership position. The Committee recognizes that Representative Chandler has had a distinguished public career and that he has many supporters. But, this violation of the ethics guidelines warrants a severe punishment, and he should not be accorded special treatment in its administration.

¹² For instance, Representative Chandler received substantial contributions from tobacco, health care, telecommunications, banking, insurance, construction and other interests.

Dated at Concord, New Hampshire, this 25th day of May, 2005.

Respectfully submitted,

Edward M. Gordon, Chairman

Representative Larry Ross

Representative Janet G. Wall, Vice Chairman

Senator Joseph A. Foster

Russell F. Hilliard

Senator Sheila Roberge

Kimon Zachos