

MINUTES
LEGISLATIVE ETHICS COMMITTEE
May 26, 2023, MEETING
{Approved: June 12, 2023}

The Legislative Ethics Committee (RSA 14-B:2) met on Friday, May 26, 2023, at 1:30 P.M. in Room 104 of the Legislative Office Building.

The following committee members were present: the Honorable Edward M. Gordon, Chairman, the Honorable Donna Sytek, Vice Chairman, Senator Ruth Ward, Representative Janet G. Wall, Representative Bob Lynn, and the Honorable David H. Hess. Senator Cindy Rosenwald was unable to attend. 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 February 13, 2023.

Following review, Vice Chairman Sytek moved to adopt the *Minutes* as presented. Representative Wall seconded the motion and the Committee voted 6-0 to adopt the motion.

ITEM #2

Initial Review of *Complaint 2023-5, Murphy v. Bean* and *Complaint 2023-6, Murphy v. O'Hara*.

Chairman Gordon stated that the respondent in *Complaint 2023-5*, Representative Harry H. Bean (Belk./06) and the respondent in *Complaint 2023-6*, Representative Travis J. O'Hara (Belk./04), had waived their right to confidentiality, therefore the Committee would conduct its initial reviews of the complaints in public session. He also stated that the respondents in both complaints had requested that the complaints be taken up together. The complainant, Mr. David Murphy, agreed to the request and the Committee proceeded with its initial review of *Complaints 2023-5* and *2023-6*.

Chairman Gordon stated that the parties to the complaints had been invited to attend and allotted up to 10 minutes each to provide the Committee with their perspectives on the complaints.

The Committee then began its initial review of *Complaint 2023-5*.

Mr. Murphy addressed the Committee and Committee members then asked him questions.

Representative Bean addressed the Committee and Committee members then asked him questions.

The Committee then began its initial review of *Complaint 2023-6*.

Mr. Murphy addressed the Committee and Committee members then asked him questions.

Representative O'Hara addressed the Committee and Committee members then asked him questions.

Chairman Gordon thanked the parties for attending and stated that the Committee would deliberate on the complaints in nonpublic session.

ITEM #3

Initial Review of *Complaint 2023-7*.

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an Initial Review of *Complaint 2023-7*. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Chairman Gordon	Yea
Senator Ward	Yea
Representative Wall	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Chairman Gordon	Yea
Senator Ward	Yea
Representative Wall	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “We just came out of nonpublic session on *Complaint 2023-7*. We’re in the process of considering our initial review and we’re going to continue the initial review to the next hearing.”

ITEM #4

Deliberation on *Complaint 2023-5* and *Complaint 2023-6*.

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to deliberate on the complaints. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Chairman Gordon	Yea
Senator Ward	Yea
Representative Wall	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Chairman Gordon	Yea
Senator Ward	Yea
Representative Wall	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “We just came out of nonpublic session, having considered our initial review of *Complaints 2023-5* and *2023-6*. We are continuing the initial reviews until our next meeting, which we will be scheduling later today.”

After the parties to the complaints and other attendees returned to the room, Chairman Gordon further stated: “We just had a nonpublic session in which we were in our initial review of *Complaints 2023-5* and *2023-6* and we discussed those at some length. I made a terrible, egregious error earlier with regard to *Complaint 2023-7* and we’re going to continue the initial review on *2023-7*, and we’ve decided to continue the initial review on *2023-5* and *2023-6* so that we can complete them all together. And we’re going to do that at our next meeting, which we’re going to schedule today, hopefully in a couple of weeks.”

ITEM #5

Consideration of a Motion to Reconsider the Committee’s action on *Complaint 2023-3*.

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to consider a motion to reconsider the Committee’s action on *Complaint 2023-3*. Vice Chairman Sytek seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Chairman Gordon	Yea
Senator Ward	Yea
Representative Wall	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

Representative Wall moved to exit the nonpublic session. Representative Lynn seconded the motion and the Committee voted as follows:

Vice Chairman Sytek	Yea
Representative Lynn	Yea
Mr. Hess	Yea
Chairman Gordon	Yea
Senator Ward	Yea
Representative Wall	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “We’ve just come out of nonpublic session with regard to *Complaint 2023-3* and in our nonpublic session a motion was made and approved to deny the request to reconsider the Committee’s action on the complaint.”

ITEM #6

Consideration of a Request for an Advisory Opinion from Representative Jordan G. Ulery (Hills./13).

Representative Ulery’s request stated:

I have been told that Members of the House or Senate cannot directly solicit funds from lobbyists. We have eschewed such direct solicitations thus far.

However, recently I was watching solicitations directly from Members for the Golf Tournament Fund Raiser for Liberty House. I would like clarification as to whether or not I or other members of the NH Chapter of American Legislative Exchange Council (ALEC), an IRS qualified charity not-for-profit, can solicit directly funds from lobbyist groups to go into a Scholarship Fund to help pay for Member to attend the various events offered by ALEC.

We have set-up the NH Scholarship Fund as a blind trust type so that no Member of NH ALEC knows who has made contributions, only what funds are available for distribution. Distribution requests are made to ALEC in VA and then approved or disapproved by the Co-Chairs in NH and the reimbursement is issued from VA. Approval is based upon actual attendance at the events and participation based upon attendance at the task forces (committees) assigned to the Member. No Member of NH ALEC handles funds in any fashion (does not receive solicited funds nor deposit solicited funds, other than to authorize disbursement). I would comment that attendance at ALEC sponsored events, as well as those of NCSL and CGS, are paid from the Speakers educational fund on a limited basis.

Ken (Representative Kenneth L. Weyler) and I are co-chairs of ALEC for NH and eagerly await clarification. All we are looking to do is be able to ask others to make a contribution to the scholarship fund, not to individual legislators. Several "names" have expressed interest in speaking in NH (I wonder why?) and we are looking to get sponsors to pay for the meals, etc. Proceeds from the program would go only to the Scholarship Fund.

The Committee then discussed the request.

Representative Lynn stated that he recently became a member of ALEC and would recuse from all participation in the Committee’s consideration of the advisory opinion. He did not participate or vote.

Mr. Hess said: “I think the critical issue is the language of the statute, ‘Legislators shall not solicit or accept anything of value from another for themselves or other persons...’ and Jordan’s question is asking, ‘Can I or other members of ALEC solicit directly from lobbyists?’ and the answer is ‘No’. The statute says you can’t do that.” {See *Ethics Guidelines* Section 3, Prohibited Activities, Paragraph II(b).}

Vice Chairman Sytek said that she agreed that the answer is no. She added: “It’s interesting, there’s a provision in here for legislative officers and staff to be able to solicit. We carved that out when (House Clerk) Paul Smith was head of the Clerk’s Association when they were going to have a

clerks' meeting here." She added: "Right now legislators can't ask lobbyists for money and can't accept it."

The Committee reviewed *Advisory Opinion 2012-3*, which advised:

...we are concerned that direct solicitation and receipt by legislators of cash contributions for the proposed event, from any source, would violate the prohibitions set forth in RSA 14-C:3 and Ethics Guidelines Section 3, II(b). We have previously approved of legislators organizing and promoting legislature-related events and activities, so long as there is no direct solicitation or receipt of cash by legislators, and the contributions are directed to charitable organizations which sponsor the event. See *Advisory Opinions 2008-2* (White-Blaisdell Golf Tournament) and *2009-3* (Concord Hospital-Payson Center Rock 'n' Race). ... We therefore advise that for this event, violation of the statute and Guidelines may be avoided if arrangements are made for sponsorship by a charitable organization registered as such with the New Hampshire Department of Justice, announcement of the event is limited to publication in legislative calendars or other general means of communication, and all cash contributions are directed to the sponsoring charitable organization, rather than to any legislator.... (Emphasis supplied.)

Following further discussion, the Committee members agreed that the facts presented in Representative Ulery's request were substantially similar to those in *Advisory Opinion 2012-3* and the prior opinions cited therein. Following discussion, Mr. Hess moved to advise Representative Ulery that he cannot solicit or accept contributions from lobbyists or other individuals to the scholarship fund. Vice Chairman Sytek seconded the motion and the Committee voted 5 to 0, with Representative Lynn abstaining, in favor of the motion. Chairman Gordon stated that he would draft a response and distribute it to the Committee members for their review.

ITEM #7

New/Other business.

Consideration of a Request for an Advisory Opinion from Representative Deborah L. Hobson (Rock./14).

Rep. Hobson in her request stated:

"I have just recently started to work part time for Americans for Prosperity. I understand that Americans for Prosperity provides policy and will testify for and against particular pieces of legislation. However, I have signed up to canvas for them on a short-term basis and have been told by the New Hampshire director that my work will not directly influence policy or advocate for particular positions. I am writing today to make sure that this part time work would not be viewed as a conflict of interest with my legislative responsibilities."

Chairman Gordon summarized Representative Hobson's request. Mr. Hess said: "In the *Ley* decision {*Complaint 2019-2*}, the thrust of that was since he's a paid employee of the union, that he should recuse himself from voting on legislation that directly impacts the union. This sounds like it's almost identical, or a close enough analogy, analogous factual situation, to warrant the same conclusion. It doesn't prevent her from being a legislator. It just prevents her from participating."

Representative Lynn said: "Isn't this a little different in that she is proposing to, she already apparently does work for Americans for Prosperity, but she's also going to be soliciting for, apparently for money?"

The Committee discussed what Representative Hobson meant by “canvas.” Vice Chairman Sytek said that canvassing usually involves dropping off information with voters and does not usually involve asking for money. Mr. Hess said canvassers are trying to find out how people are going to vote.

Vice Chairman Sytek and Mr. Hess referenced *Advisory Opinion 2018-1*, which was issued in response to a request from Representative Greg Hill. Mr. Hess summarized the opinion by saying, “We told him he couldn’t testify or vote or lobby for any bill that involves his prospective employer.”

Chairman Gordon said: “And this, to some extent, is worse only because it is specifically a lobbying organization... So, if I have somebody who works for Jim Demers and is a legislator, are they disqualified from participating in anything?”

Mr. Hess said: “Certainly. I think they are prohibited from participating in any bill in which Demers’ firm is involved in because that’s a direct pecuniary connection.”

Senator Ward said: “I don’t think you can be a legislator and work for a lobbyist.”

Chairman Gordon asked: “So, how is that different than Deb Hobson?”

Vice Chairman Sytek said: “I don’t think it is different.”

The Committee considered NH Constitution, Part II, Article 7, which states:

Art.] 7. [Members of Legislature Not to Take Fees or Act as Counsel.] No member of the general court shall take fees, be of counsel, or act as advocate, in any cause before either branch of the legislature; and upon due proof thereof, such member shall forfeit his seat in the legislature. *September 5, 1792*

They also considered *Ethics Guidelines* Section 3, Prohibited Activities, Paragraph II (b), which states:

II. 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: ****

(b) Knowing or believing that the giver is or is likely to become subject to or interested in any matter or action pending before or contemplated by the legislator or the General Court.

Following further discussion, Chairman Gordon moved to respond that should Rep. Hobson accept employment with AFP, she would need to recuse herself from participation in any legislation on which AFP takes a position. Vice Chairman Sytek seconded the motion and the Committee voted 6 to 0 in favor of the motion. Chairman Gordon stated that he would draft a response and distribute it to the Committee members for their review.

ITEM #8

Update on the status of pending legislation affecting the Legislative Ethics Committee: HB 301, “An Act relative to recusal by members of the general court for conflicts of interest,” and HB 157, “An Act relative to the joint committee on legislative facilities and sexual harassment policies.”

Mr. Lambert informed the Committee that both bills were retained by the House Committee on Legislative Administration, which plans to hold work sessions on the bills this summer.

ITEM #9

Scheduling of the next meeting.

The Committee's next meeting on Monday, June 12, 2023, at 1:00 P.M.

The Committee's meeting adjourned at approximately 4:00 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}