

MINUTES
LEGISLATIVE ETHICS COMMITTEE
MARCH 31, 2008 MEETING
{Approved: May 28, 2008}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, March 31, 2008, at 1:00 p.m. in Room 100 of the State House. The following members were present: Attorney Russell F. Hilliard, Chairman, Representative Janet G. Wall, Vice Chairman, Senator Sheila Roberge, Senator Peter H. Burling, Representative Eric Anderson, Attorney Kimon S. Zachos, and Attorney Martin L. Gross. The Committee's meeting consisted of the following items:

ITEM #1

Consideration of the draft *Minutes* from the Committee's meeting held on February 5, 2008. Following review, Senator Burling moved to adopt the *Minutes* as drafted. Attorney Zachos seconded the motion and the Committee voted 7-0 in favor of the motion.

ITEM #2

Consideration of a request for an Advisory Opinion from Representative Tara G. Reardon, Representative John B. Hunt, and Senator Robert E. Clegg, Jr., in a memorandum dated March 31, 2008, regarding a proposed "35th Annual Bill White-Junie Blaisdell Legislative Golf Tournament."

Chairman Hilliard asked the Committee if they had any objection to taking up the matter first under Agenda item "new business." {There was no objection.} After the Committee took a few minutes to read the memorandum, he asked Representative Reardon to summarize it and answer questions.

Representative Reardon said it was their proposed plan to continue the golf tournament, which she said had gone on for 34 years, originally honoring long-time Senate Clerk Bill White and now also honoring the late Senator Junie Blaisdell. She said the event would be "associated with" the American Heart Association and any excess proceeds would go to that charity. She said that in order to avoid anything of value being given to legislators participating in the tournament, the sponsors would charge participants \$40, which would more than cover the actual greens fees. The cost of any meals provided would be under \$25, she said, and there would be raffle prizes and prizes for the top finishers. She said Representative Hunt, Senator Clegg, Mr. Blaisdell, and she were looking for an advisory opinion in accordance with RSA 14-B:1(c)(3) and she said she felt the proposed event would fall within the exceptions in RSA 15-B:2, V(9)(c) and 15-B:2, V(10)(A).

Representative Anderson said his curiosity was how the \$40 tickets would be purchased and he asked how many tickets would be provided at no cost to the representatives or senators.

Representative Reardon replied: "I would hope none and that was our design -- a senator or representative would pay for their own ticket and certainly it's up to individual representatives and senators not to take anything over \$25."

Attorney Gross said that Representative Anderson's question reflected something that has been going on with the Committee and he said he "wanted to share...a concern of some members...that tickets to events like this not become currency for others to purchase for legislators as a favor." He said he took Representative Reardon's representation as that the sponsors intend legislators to buy their own tickets and that "takes this right outside of the question that we are currently grappling with." He then thanked Representative Reardon for pointing out the exceptions that she felt would apply and said that he thought that RSA 15-B:2, V(9)(B) would apply "if the Heart Association were actually the sponsor of the event." Attorney Gross said that, to him, "the issue is what a legislator gets and you've properly put aside the issue of them getting a \$40 ticket for nothing because you say they are going to be buying them themselves. The issue is what they get on top of the greens fees and I understand they get a breakfast, a lunch, and a golf cart worth either \$16 or \$8."

Representative Reardon replied: "In fact, if they were paying market price and it wasn't in a tournament format, it would be \$48 worth of value with just the greens fees and the cart. But, in fact, the course last year only charged \$37 per person so, in my mind, the \$40 was covering at least their greens fee and the cart."

Attorney Gross said he was trying to start with the \$25 exception and trying to see whether the value they get over and above the \$40, which is going to be funded by somebody, is more than \$25 or within the exemption. He asked if "basically, they're getting breakfast, lunch, golf carts, and a chance to win a trophy."

Representative Reardon said "no, gift certificates, a trophy would be easier."

Attorney Gross said that his question was "does that start to sound like \$25 or less or more?" and "if it seems like more than \$25, is there a specific exemption that would apply?" He said he had identified "(9)(B)," the charitable organization sponsorship, and Representative Reardon had identified "(9)(C)," the open attendance exemption, and "(10)(A)," the ceremonial and celebratory exemption. He asked Representative Reardon to confirm that the golf tournament would be a memorial in honor of Bill White and Junie Blaisdell and the proponents would eliminate the question of legislators would be accepting free tickets.

Representative Reardon said "it is our intention to sell the tickets to the legislators."

Attorney Gross asked: "Who is going to be receiving the money from donations solicited from business interests?"

Representative Reardon said that Representative Hunt was willing to open a separate checking account that would be used only for that purpose.

Attorney Gross said he thought it was a great idea to keep a separate book and added that he was "a little concerned if a legislator has any control over that because that starts to sound like dollars flowing to legislators, and that's a concern."

Chairman Hilliard noted that Senate Legal Counsel Jeffrey Meyers and House Legal Counsel David Frydman, who were present, had been copied Representative Reardon's memorandum and he asked them if they had any input, comments, or questions.

Attorney Frydman said he thought the Committee had rightfully identified the issues clearly. "The question is," he said, "does it fall under any of the exemptions to 'gift?'" He added that he guessed "there is a discussion as to whether (9)(B) applies, or (9)(C), or (10)(A), that's a judgment call, I think it falls between them somewhere, or whether it doesn't fall under any of those, if the value to the legislator of the items above the \$40 exceeds \$25."

Chairman Hilliard said he just wanted to make sure the Committee wasn't missing anything that the two counsels had identified.

Richard Lambert, the Committee's Executive Administrator, asked the Committee if they remembered the advice they had given to Representative Dale Sprague at their prior meeting and whether they were sure they were being consistent. {See *Minutes* of February 5, 2008, Item #5.}

Attorney Gross reviewed the February 5, 2008 *Minutes* and said the Committee had had questions about sponsorship and thought it was not appropriate for a legislator to sponsor the event.

Mr. Lambert asked if it was also true that the Committee didn't want any money being received by a legislator.

Attorney Gross said "yes."

Senator Burling said Representative Reardon was "trying to do something terrific" and observed that sometimes the Committee's "nitpicking" must make people crazy. He said the only thing that struck him in the proposal was the fact that there is a \$100 fee for all other players and a \$40 fee for legislators and "the only difference is you have to be a legislator to get the \$40 fee." He said "that leaps off the page at me." He asked if there were any way to do the event so everybody pays the \$40 greens fee and there is a donation encouraged.

Representative Reardon replied that there were legislators who paid \$90 to play last year, so she thought there would be legislators who would pay \$100 this year. She said "what we are going to do is subsidize the meal with sponsorships, so we could certainly charge everybody the same amount."

Senator Burling said he would like to hear what his colleagues thought about the differentiation and whether it is a problem.

Attorney Gross thanked Senator Burling for "crystallizing that" and said it did not strike him as a problem if the event can clearly come within an exception because what Senator Burling's question suggests is that "there's a \$60 thing of value that is flowing to a legislator that would take this well above the \$25 basic exception...even if that's the case, if this can be structured so as to properly fit within one of the exceptions, then that doesn't become a matter of concern, at least to me." He said he had to say, with all due respect to Representative Reardon, that "there is probably something worth more than \$25 here, which is why I was focusing on a specific exception."

Senator Burling asked if it were true that "all of that...is resolved if, for instance, there is a sponsorship organization."

Chairman Hilliard said "that's one way it is resolved."

Attorney Gross said "that's one way, or if my colleagues believe that this fits under (10)(A): meals, beverages, lodging, transportation associated with attendance at an event for which the primary purpose is ceremonial or celebratory." He said that he was satisfied that "given that this is a memorial for 2 major legislative characters, that this would be ceremonial or celebratory."

Chairman Hilliard recognized Robert Blaisdell to speak to the Committee.

Mr. Blaisdell said that the reason Representative Reardon, Representative Hunt, Senator Clegg and he decided to get together was because Sandy Wheeler is going to retire and, in the last couple of years, they had seen a dramatic decline in the participation rates in the event. Historically, he said, the event has always been held at the end of the session and some years there was a waiting list for people to drop out. Realizing that Sandy Wheeler would be retiring and realizing the decline in participation, he said, they tried to come up with a way to get participation to the point where it was in the past. He said that recognizing the new ethics laws and the cost of everything, the proposal was an attempt to make the event happen and to give some money left after costs to the Heart Association.

Attorney Gross said he fully accepted what Mr. Blaisdell said. But the thing is, he said, because of the new ethics laws, his motivation was to see if he could help them to do the event in such a way that "all of a sudden people don't think it's 'green light city' for golf tournaments or whatever." He said the Committee had a similar request at the last meeting and "we had to deal carefully with that, so that's why we're dealing carefully this time."

Chairman Hilliard asked if there were any further comments.

Attorney Gross then said he was willing to move that "we advise Representative Reardon and Mr. Blaisdell that this proposed event would be acceptable under the statutes and guidelines if the sponsor is the Heart Association or if ...it can be viewed as a ceremonial or celebratory event and labeled as such." He added that the proponents of the event should "deal very carefully with how the event is structured." He said he would like to repeat his concern that "money not flow through legislator's hands."

Representative Wall seconded the motion and the Committee voted 7-0 in favor.

ITEM #3

Reconsideration of *Interpretative Ruling 2007-#1* and discussion of possible amending legislation that would bring the statute into conformity with the content of *Interpretative Ruling 2007-#1*.

Chairman Hilliard asked Attorney Gross to summarize the two issues of concern regarding the ruling.

Attorney Gross said that one was the \$250 annual aggregate limit and the other was the "direct offer" issue. He recounted how the Committee had added in the draft ruling their view that acceptance of a ticket from a charitable organization would have to come directly from the charitable organization. He said the issue he and some others on the Committee had voiced some concern about was over that exception starting to be used to create a currency for lobbyists to give free tickets to people. The second issue, he said, was the \$250 max on meals accepted by members of the legislature in connection with discussion of official business.

Attorney Gross asked the Committee to take up the second issue first because, he said, among the materials provided to the Committee for its meeting was an extract he prepared {"Extract from Legislative Ethics Committee Special Report Regarding Complaint #2004-2, Gene Chandler, pages 5-7"} from the Committee's ruling in the Chandler complaint {*Special Report to the Speaker of the House of Representatives Regarding Complaint #2004-2*}. He said he had stumbled across the ruling while preparing recently for a presentation and was struck by the point that was made in the Committee's decision and believed it was somewhat on point in the present situation: the Committee's determination to apply the \$250 aggregate limitation that remains in the *Guidelines* to the official business exception in the statute and the contention that that goes beyond the statute and the Committee shouldn't be doing that. He said that what he saw in the Chandler report was that a very similar point was made by Chandler's defense: that Chandler's activities were otherwise lawful and therefore the *Guidelines'* provisions prohibiting gifts over \$250 is invalid because it is inconsistent with Chapter 15-B as interpreted by a 1998 opinion of the Attorney General. "That," he said, "is kind of the same question that is being stated right now and the Committee's response was 'these are not criminal code violations subject to restrictive interpretation and beyond a reasonable doubt prosecution. Accordingly, it is not appropriate to engage in complex analysis or technical argument to defend noncompliance with the *Ethics Guidelines*.'" Attorney Gross said that, even more to the point, was the Committee's determination that there was nothing inconsistent in applying the \$250 max in the *Guidelines* to Representative Chandler's case. He again quoted from the *Special Report*: "This initiative constituted an admirable response to public concern about the impact, real or perceived, of such gifts on the legislative process." He said that it seemed to him that the Committee has previously spoken on the term "inconsistent with RSA Chapter 15-B" and seems to have come out with the view that the *Guidelines* are guidelines and it is within the Committee's authority to insist on the enforceability of the *Guidelines* in addition to whatever statutory provisions may exist. He said he wanted to bring the decision to the Committee's attention so that "in considering this we would not later be embarrassed if someone waived this in our faces and said 'Hey, you stuck Gene Chandler with this and now you're saying you're not going to do it anymore.'"

Attorney Gross said that the general question was the continuing applicability of the \$250 aggregate limit in the *Guidelines* in the face of a subsequently enacted statute that did not explicitly repeal the *Guidelines*. He noted that the Committee had been "struggling for a year and a half to reconstitute the *Guidelines* and their continued validity with the statute that was passed in 2006 and amended in 2007."

Senator Burling said that the issue was "about who's in charge...this is a political decision and the fact that the Committee has been struggling over this...means nothing...compared with what the four legislators have been trying to do...because we're caught in a crossfire and the political truth is there doesn't seem to be much support for the \$250 limitation." He said it was his duty to convey the sense that "we have a guideline, we have a subsequent political fight over the statute, the statute doesn't contain the \$250 reference anymore, so on what watery grounds does the guideline now stand?"

Attorney Gross replied "previous legislative approval."

Senator Burling asked "so what would you like to do to get clear on this?"

Attorney Gross responded that he was willing to "do whatever the law requires, but...would really like to have somebody take responsibility for telling (him)."

Attorney Zachos asked Attorney Gross if he didn't "think that the legislature took that responsibility when they passed the new legislation and did not mention the \$250."

Attorney Gross said that his answer to that question was "no," because "they didn't say 'the *Guidelines* are superseded' and there's existing legislation that says this Committee is in charge of producing guidelines to be presented to the legislature and when approved they have the force of law." He said that the New Hampshire Supreme Court would call the question: "Is there an implied repeal of the *Guidelines* by the subsequent enactment of the specific legislation?" He added that he didn't know the answer to that.

Senator Burling suggested that there were two things that the Committee could do: 1) send the *Guidelines* amendment with the \$250 limit forward and say "vote on them and give us your feedback," or 2) take out the \$250, send it forward and say "vote on these." He said that one thing the Committee should not do is "spend a huge amount of time angsty over this" because the legislature needs to decide whether the \$250 is in or out.

Attorney Gross said he didn't wish to speak for Representative Anderson, but he thought he has a conscientious viewing on the subject of the meals exception and thinks that the *Guidelines* as they exist with the \$250 max ought to as a matter of ethics apply as a supervening limit. Attorney Gross said he thought that it is a "perfectly respectable policy position" to take and that, as long as the \$250 limit is in the *Guidelines*, Representative Anderson has some legal basis for taking it. He said he wished the legislature would have said either in 2006 or 2007 "what part, or all, or any of" the *Guidelines* are no longer in effect. That's the struggle, he said, the Committee has had in trying to figure that out and trying to infer whether it should take it out particularly in the face of Representative Anderson's concerns, which he said he sees a good deal of substance to. He said "as a practical matter, we could shrug and say the \$250 doesn't apply, but my problem with that is it's still in the *Guidelines*, *Guidelines* that have not been superseded by legislation or legislative action and on top of it we now have discovered this thing in the Chandler report that is precedent for this Committee having said the contents of the *Guidelines* aren't necessarily inconsistent with statute where they are in existence and were duly adopted."

Senator Burling said "we do have a subsequent legislative action which would appear to have deleted -- or reasonable people might conclude that the \$250 limit went out with that subsequent action."

Attorney Gross responded "Well, that's the implied repeal situation. I don't know what the answer to that is."

Representative Wall said that Senator Burling had offered two options and asked him which he preferred and which he thought was more workable.

Senator Burling said it had nothing to do with workability, but with what's right or wrong. He said he felt \$250 is a perfectly appropriate limitation but the Committee needed to figure how to set up the issue then make sure it got some kind of legislative action on it.

Attorney Gross asked Senator Burling about the reference in the *Minutes* from the February 5, 2008 meeting about setting up some legislation to get an answer.

Senator Burling said that House Bill 91 was before his committee and said it could be a vehicle that could be used to either insert statutorily the \$250 limit or to get some clarity as to whether the legislature would adopt it.

Attorney Gross observed that that was one way, but "it doesn't get us any closer on the relationship between the *Guidelines* and the legislation, and I don't know if something can be done about that." He said that "the foundational issue...is whether the *Guidelines* still have any independent dignity or whether this field has now been preempted by legislation."

Chairman Hilliard agreed that that's the question. He recalled that the Committee wrote the *Guidelines* in 1991-2 "on the surface of a statute that did not contain any substantive ethical guidelines or provisions." He said that "now we've got a comprehensive, substantive law in 2006." He said he thought that "that's where you get the preemption or implied repeal argument because of the difference of the statutory framework on which we were writing as between 1991 and today."

Attorney Zachos said that if there were legislative action that clearly contradicted something specific in the *Guidelines*, the specific item would strike out. He said it seemed to him that the Committee has to phase its *Guidelines* within the corners of the statute.

Attorney Meyers said it was his understanding that the last time the *Guidelines* were voted upon by either the House or the Senate was prior to the adoption of Senate Bill 206 and the adoption of the extensive changes to the statute. He said there had been no other endorsement of the *Guidelines* since that time.

Mr. Lambert pointed out the House and Senate rules.

Attorney Meyers said there are provisions in Rule 16 of the House and Rule 22 in the Senate saying that members shall act at all times in conformance with the duly adopted *Ethics Guidelines*.

Attorney Frydman said the rules were adopted subsequent to the passage of Senate Bill 206. He went on to say that "I know in conferring with the leadership of the House on this issue -- the motion of reconsideration -- there is clearly a view in the House that the \$250 limit should apply as a second layer if there is nothing that was intended to remove it. There was a request by leadership that if this Committee decided to overturn that it did so on a very limited basis because there was a concern of the precedent associated with that. But in looking at House Rules, specifically House Rule 16 clearly says that 'In all instances every member shall act in conformance with the duly adopted *Ethics Guidelines*...' and I believe there is a comparable rule in the Senate Rules, a rule that is adopted at the beginning of this legislative term." He added that "as a point of law, I think that without this adoption in the rules, I question whether the legislative *Ethics Guidelines* apply to each successive legislature because (New Hampshire Constitution) Part 2, Article 22 in the House, and Article 37 in the Senate, where each successive legislature is empowered to adopt their own rules of proceeding and judge the qualifications of their members and clearly that was done on the adoption of the rules in the House at least by the adoption of Rule 16, which included the then-existing *Ethics Guidelines*."

Chairman Hilliard noted that Rule 16 and Rule 42 have had that language since 1992.

Attorney Frydman said the rules are voted upon in every successive session.

Senator Burling asked Attorneys Meyers and Frydman if there was any reason that the two of them could see as to why the \$250 limitation could not be put into House Bill 91.

Attorney Meyers said that could be done but said that was just one issue that may come out of the *Guidelines*. He then asked: "To the extent that the legislature has not fully said whether or not it wishes to supersede that provision or others that are in the *Guidelines*, isn't there a mechanism to put the *Guidelines* in front of both bodies and determine in a more comprehensive fashion what the will of the bodies are with respect to the continued substantive provisions of the *Guidelines*?"

Senator Burling said there were a couple of mechanisms that could be used in terms of legislation. He asked how the Committee could give the legislature a crack at reaffirming its support for the *Guidelines*.

Mr. Lambert noted that the New Hampshire legislature is probably unique in having guidelines which are a code of conduct but are not in the statutes. In every other state that has such an extensive code, he said, the code of conduct is part of the statutes. The primary reason for our approach is that the legislature in 1991 didn't have a code ready, so it was put into the legislation that the first duty of that first Committee would be to write the *Ethics Guidelines* and then they came up with this unique system of approving or amending the *Guidelines*, and that's why when Senate Bill 206 was put into place a lot of people thought they were repealing certain things and they weren't -- such as the two financial disclosure forms and other issues -- because it is a unique situation where this Committee proposes the amendments and the House and Senate vote on them and, without that happening, the *Guidelines* don't change.

Attorney Meyers said "the only thing I was starting to react to is I don't believe that in the adoption of Rule 42 there was any understanding that they were reaffirming the substantive content of the *Guidelines* then in existence. Now, I understand the legal argument was there, that by adopting Rule 42 that that could be read as a reaffirmation of the *Guidelines*, but certainly there was no discussion that that was a consequence of adopting the rule."

Attorney Gross said "the shortest distance between two points here is having this Committee message the *Guidelines* as we have worked them out and as have been on the table before this Committee now for months, and the only reason we haven't sent them along is we have been getting this strange message that if we sent them along they would not be ratified, to which my response is: 'That's for the legislature to decide.' The only way we can solve our problems now is to send them the *Guidelines* and let them tell us. If we don't send them to them, we're gonna continue being in this guessing game, and you know it's a self-fulfilling prophesy: 'Don't send us the *Guidelines*,' they say, 'because we're afraid they won't pass,' so we don't send them the *Guidelines* and they come to us 'oh, by the way, what we did overcame the *Guidelines* notwithstanding that we....' My suggestion would be to send them the *Guidelines* with the \$250 in there and if they want to say to us as a legislative body: 'no, we don't think the \$250 should be in there anymore,' then they can tell us. I think that would be an appropriate way to resolve this because otherwise we just don't make any progress here, we're just gonna be at this over and over again and particularly because of this precedent we did in the Chandler case."

Attorney Zachos asked Attorney Meyers: "Are you in a position to tell our Committee how Senator Larsen (the Senate President) feels about the *Guidelines*?"

Attorney Meyers said "the direct answer is 'no', I did have many conversations with Senator Larsen, but they go back several months and, before articulating her position, I would want to speak with her again."

Attorney Zachos asked: "Previously, what was it, to the best of your knowledge?"

Attorney Meyers responded: "She expressed to me a concern about the \$250 cap for meals with official business."

Attorney Zachos asked Attorney Frydman: "What about Speaker Norelli?"

Attorney Frydman said: "I spoke with Speaker Norelli just on Friday about this issue and she is comfortable with the \$250 limit that is currently in the *Guidelines*. We didn't go over every provision in the *Guidelines*, but as it relates to that provision in the *Guidelines* applied to the amount of meals that legislators can accept, she is accepting of that and comfortable."

Attorney Zachos then moved that the Committee adopt Attorney Gross' proposal.

Chairman Hilliard asked Attorney Zachos if he was making a motion to send the *Guidelines* amendment to both bodies with the \$250 limitation still in there.

Attorney Zachos said "yes."

Chairman Hilliard asked if there was a second.

Attorney Gross seconded the motion. He also observed that "the *Guidelines* contain a whole lot more stuff than the statute." "I don't think," he said, "anybody ought to think that Senate Bill 206 and its amending legislation in '07 cover the field in the *Guidelines* because the *Guidelines* contain general standards for conduct by legislators that are nowhere in the statutes. What we have tried to do was to integrate the *Guidelines* with the subsequently-passed legislation and....the current version, which Kimon moved and I seconded to formally transmit for action, comprehends the 2007 amendments."

Chairman Hilliard indicated that was correct.

Representative Anderson asked what would happen if the amendments are referred to both legislative bodies and the House overwhelmingly supports them and the Senate does not support them.

Attorney Gross replied: "We're with the *Guidelines* that presently exist, I think."

Chairman Hilliard said: "I think the statute requires approval by both houses, so approval by one house is insufficient, and so we would be back where we are."

Attorney Frydman said: "Yes, I agree with that. I think that's correct, Mr. Chair, if you look at RSA 14-B:3, II."

Mr. Lambert asked: "If you are going to adopt something right now, would it be better to have the specific document in front of you so you can see what you're adopting, because the amendment did undergo some evolution over a one-year period?" {The Committee asked to have copies of the revised draft distributed to them.}

Attorney Frydman said he wanted "to revisit the question if one body approves amending the *Guidelines* and one didn't." He said, "I actually think while it wouldn't be consistent with statute, that constitutionally the two different bodies would then have two different *Guidelines*, and if you read the jurisdiction of this Committee, it applies to any rule, guideline, regulation that governs the behavior of members of the legislature, so you would still be authorized to interpret and apply those two different *Guidelines*. As a policy matter, I would hope that the two bodies don't end up with two different sets of *Guidelines*, however, if that did happen, because of the unique power in the Constitution of every subsequent legislature to adopt their own rules of proceedings and qualifications of their members, I do think that that would be a legitimate result constitutionally and would supersede the provision in the statute where you want both bodies to adopt them."

Attorney Gross responded: "I think that is a needless complication. First of all, I think that the statute that has the force of law at the moment -- that has been signed into law by the governor -- says before guidelines can take effect they need the approval of both houses -- that's the law. Now, if somebody wanted to challenge the effectiveness of that law then, bless them, they would be welcomed to go to the New Hampshire Supreme Court and do it. But the law right now is amendments to the *Guidelines* don't take effect unless approved by both houses, so I don't think we need to go into the complexities of whether they're binding on one house or the other. My bet is they wouldn't be binding on one house and not the other unless somebody spun a web here."

Senator Burling said House Bill 91 was going to be coming into the possession of his committee the following week and asked everyone to take a look at it and advise him about anything they would like to see added to it as an amendment.

Chairman Hilliard noted that the "direct offer" issue is not a *Guidelines* issue; it is in the interpretative ruling.

Attorney Meyers said, "the direct offer issue, unlike the \$250 cap, is an issue that has not been spoken to at all in the *Guidelines* and so looking at it in a procedural posture, if you will, the Committee has now included a restriction in an interpretative ruling that is neither in the statute nor in the *Ethics Guidelines*, as I see it, so I think it stands on a much looser footing, if you will, than the rationale that was offered on the \$250 cap where it's clear that is addressed in the *Guidelines* and addressed by precedent, where I don't see the same footing for the decision."

Attorney Zachos noted that you can't put every interpretative situation in the statute.

Attorney Meyers said, "the argument on the cap, for example, that has been made today and made previously is that the legislature chooses to be more restrictive in the *Guidelines* than it had been in statute and there has been precedent cited for that in the Chandler case...but here...nowhere else is there a prohibition on a third-party offering a ticket to an event that would otherwise be sanctioned."

Attorney Zachos said it was his "understanding that there is no such prohibition, but we're putting forth that prohibition."

Attorney Frydman said, "The House, in this case, actually concurs with the Senate regarding this."

Attorney Gross said, "I voted for that additional restriction because I thought it was fully consistent with the statute and the statute selects a class of property to be exempt and that is 'charitable events.' I interpreted the statutory intent, which I think all of us are entitled to do on this Committee, as opening up a small loophole for the benefit of charitable organizations and not to create a new currency for third parties, lobbyists, or whoever else, to take advantage of the loophole to create a thing of value to give to legislators in turn for favors. The benefit of that exemption, I think, should flow to the charitable organization and not to the benefit of any third party, and I think that's a legitimate interpretative ruling of what the statutory intent is and I think that that's a matter more of legislation than it is for the *Guidelines* and would respectfully suggest that that's not the kind of fine line that runs in our *Guidelines*. If we are wrong in that interpretative ruling, then that is exactly what the legislature should be saying."

Chairman Hilliard said, "The exception we're talking about is an event sponsored by a charitable organization and I agree with Marty on this procedural point: there, I think, we were simply interpreting the words of the statute, as opposed to adopting a guideline, that under the statute there's a requirement of it coming directly to the legislator through a sponsoring organization, and we are charged with the responsibility of interpreting legislative requirements, that's one of our Committee's charges."

Attorney Gross said he thought "the question for us in reconsideration is not whether it was consistent with statute, I think the question is 'Do we think our interpretation was appropriate?' and if a majority of members of this Committee do not think that interpretation was appropriate in interpreting the statute as requiring a charitable ticket to be received directly from a charitable organization, then we should on reconsideration retract it. But I don't think we should retract it because somebody says it's inconsistent with statute. I think if its inconsistent with statute it's up to the legislature to tell us in the way that they tell us: two houses concurring and the governor signing that our interpretation is inconsistent. If we believe that it was an appropriate interpretation because of the spirit of the laws and the spirit of the *Guidelines*, then we should upon reconsideration, if somebody moves to change it, we should vote against it. If we don't think it's appropriate, then we should vote to change it."

Chairman Hilliard suggested the Committee should return to its discussion of the \$250 cap issue.

After further discussion, Senator Burling requested a point of order stating, "My understanding is that if this motion passes in the affirmative, it will be delivered to leadership of both houses with a request that statutory requirements relative to the approval of the *Guidelines* be undertaken immediately within three legislative days."

Chairman Hilliard said that was correct. He then noted that copies of the proposed amendment had been distributed to the Committee.

Mr. Lambert asked if the Committee would consider a draft revision of the Financial Disclosure Form. He reminded the Committee that there are currently two forms -- the 15-A form and the *Guidelines* form -- and that House Bill 91 amends RSA 15-A, so the legislative branch could be removed from the requirements of 15-A.

Attorney Meyers said, "If an amendment to House Bill 91 eliminated the duplicative filing requirement under 15-A, that would not affect the language of the *Guidelines* because the *Guidelines* just references the reporting requirement under 14-B."

Attorney Frydman said he would "respectfully suggest not eliminating legislators from the statutory requirement to file financial disclosure forms and I just think that that is a bad message to send. If there was a concern over double filing, I think it would be better to amend the *Guidelines* to state that the filing required by 15-A satisfies this filing requirement. That seems to be much more in line with a unified position than it would be to affirmatively exclude legislators from the statutory requirement to file."

Mr. Lambert responded: "But if you see what we've just gone through to get everybody to file a form, and how difficult it was. Regarding the 15-A form, the Secretary of State's Office doesn't track who has filed them, there is no administration of those forms."

Attorney Gross said: "And that suggests to me that one of the things that we ought to ask Peter to do in [House Bill] 91 is to put language like David just said that the filing of the Financial Disclosure Form under the *Guidelines* satisfies the statutory requirement."

Following review of the draft revision of the Financial Disclosure Form by the Committee, Chairman Hilliard asked Mr. Lambert if he was suggesting that the draft could just be substituted into Section 3 of the *Guidelines* amendment.

Mr. Lambert answered "yes." He then talked about how his experience in helping members fill out their forms showed him how many members are confused by them. Many members, he said, don't understand how Section 1 of the form is really a disclosure of sources of income and they don't understand that the other disclosure in Section 2 is a disclosure of financial interests.

Representative Wall said that simple changes like highlighting things, adding headings, etc. make the revised form more readable. She said she has heard more complaints from members about filing out the 15-A form and how confusing that form is for them as compared to the *Ethics Guidelines* form.

Mr. Lambert said there was a policy question for the Committee: should the disclosure requirement in Section 1 be for just the member, or the member and spouse, or the member and the member's immediate family?

Senator Burling said it should be member and member's spouse. {The other Committee members indicated agreement.}

Mr. Lambert said other changes included making completion of that Section 2 mandatory instead of optional, and there were stylistic changes.

After further brief discussion, Attorney Gross moved to substitute the revised form for the form that appeared in the draft *Guidelines* amendment.

Attorney Zachos seconded the motion and the Committee voted as follows:

Attorney Zachos	Yea
Attorney Gross	Yea
Senator Burling	Yea
Chairman Hilliard	Yea
Representative Wall	Yea
Senator Roberge	Yea
Representative Anderson	Yea

{MOTION ADOPTED}

Chairman Hilliard called the question on adopting and transmitting the proposed *Ethics Guidelines* amendment and the Committee voted as follows:

Attorney Zachos	Yea
Attorney Gross	Yea
Senator Burling	Yea
Chairman Hilliard	Yea
Representative Wall	Yea
Senator Roberge	Yea
Representative Anderson	Yea

{MOTION ADOPTED}

Chairman Hilliard then called the question regarding reconsideration of *Interpretative Ruling 2007-#1*.

Attorney Gross said, "I continue to think that that was a sound interpretation of the statute and so my present disposition -- before I hear what my colleagues have to say -- is to, on reconsideration, not to do anything about changing the interpretative ruling."

Senator Burling asked for a point of order: "If I understood what Marty just said and we're satisfied as a Committee that, upon reconsideration, we believe the prior Committee interpretations are an entirely appropriate statement of the rule, then we will, by taking no action, affirm our previous decisions."

Chairman Hilliard responded: "That would be correct." He then asked: "Does anyone feel differently? Does anyone want to propose any modification?"

{There was no action taken.}

Senator Burling moved to enter nonpublic session to discuss a personnel matter. Representative Wall seconded the motion and the Committee voted as follows:

Attorney Zachos	Yea
Attorney Gross	Yea
Senator Burling	Yea
Chairman Hilliard	Yea
Representative Wall	Yea
Senator Roberge	Yea
Representative Anderson	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

The Committee's meeting adjourned at approximately 3:10 p.m. The next meeting will be at the call of the Chair.

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