

MINUTES
LEGISLATIVE ETHICS COMMITTEE
OCTOBER 31, 2023, MEETING
{Approved: December 5, 2023}

The Legislative Ethics Committee (RSA 14-B:2) met on Tuesday, October 31, 2023, at 1:00 P.M. in Room 212 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 June 20, 2023.

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

ITEM #2

Consideration of a request for an Advisory Opinion from Representative Alissandra Murray.

Chairman Gordon suggested postponing consideration of the request until after the Committee addressed the 3 complaints it had on the agenda. He said that the Committee could consider then whether it had adequate time to consider the request. The Committee members agreed with the suggestion to postpone its consideration.

ITEM #3

Initial Review of *Complaint 2023-8*. (Nonpublic Session)

Representative Lynn moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an initial review of *Complaint 2023-8*. Representative Wall seconded the motion and the Committee voted as follows:

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

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

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

{MOTION ADOPTED}

Chairman Gordon stated: “We just came out of nonpublic session. We held a nonpublic session on *Complaint 2023-8*, as that was an initial review of the complaint. Having conducted our initial review, we found that the complaint did not allege a violation of law, rule or guideline which would constitute a violation of the Ethics Guidelines. And, therefore, the Committee voted to dismiss the complaint.”

ITEM #4

Initial Review of *Complaint 2023-9, Notter v. Rung*. (Public Session)

Chairman Gordon explained: “This is a public complaint in that the respondent indicated that they wanted to waive the confidentiality.... However, our deliberations on the complaint, particularly with regard to our initial review, are done in nonpublic session generally.”

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to deliberate on *Complaint 2023-9*. Representative Lynn seconded the motion and the Committee voted as follows:

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

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

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

{MOTION ADOPTED}

Chairman Gordon stated: “We just held a nonpublic session on *Complaint 2023-9*. This is *Notter v. Rung*. And as a result of our nonpublic session, we voted to continue the initial review, but noted that both parties are present here today, and if they would like, we would be willing to

hear – and if they are in agreement – we would be willing to hear from both parties today, which might help us understand the circumstances and make a final decision on the initial review.”

Both parties said they would be willing to speak to the Committee.

Public Session

Representative Jeanine M. Notter (Hills./12): “Mr. Chairman, I’ve never been to one of these and I didn’t know what to expect, how it works. I asked the Honorable Bill O’Brien to be here with me today, but he is out of town. We asked if we could have it later, at a later date, after November 11, but I have someone else here to help me out. {Attorney Morgan Tanafon of Cleveland, Waters and Bass introduced himself and said he would be representing Rep. Notter.} So, I’ve been in office now 7 terms. That’s a long time and it adds up. It adds up over the years. I just ignore social media most of the time. There’s so much stuff out there. I hear from people, ‘Oh, so and so is saying this about you,’ and I’m like, ‘yah, whatever, whatever,’ but this last one that was brought to my attention, I was like, ‘okay, what she’s just running her mouth all over town saying about me is something illegal. Taking money? Accepting money?’ That’s illegal. I do not do anything illegal. And something should be done about it. So, I sought advice, and I was advised to go through the proper channels and go to the ethics committee first. And that’s the cut and dry of it.”

Chairman Gordon asked if there were any questions from the Committee.

Vice Chairman Sytek: “So, you did accept reimbursement for your expenses?”

Representative Notter: “As I’m allowed to do per the RSAs. A lot of reps I know do that. Over the years it adds up, of course, because I’ve been in office for 13 years. I almost never am fully reimbursed. In fact, the last trip I went to, I spent \$200 just on going to and from the airport in taxis that I’m not going to be reimbursed for.”

Representative Lynn: “Representative Notter, I’m looking at a quote from Representative Rung which says, and I’m quoting here, ‘Whoever manages this account should disclose the thousands of dollars Notter has accepted from these partisan groups. I’ll make sure her constituents know.’ And, I guess, the reality is you did accept all this money from this, and I’m not suggesting for a minute that it’s unlawful, but she didn’t say it was unlawful. She just said you accepted this money.”

Representative Notter: “So, the way it reads it implies that I did something that was wrong.”

Representative Lynn: “What is there that implies that you did something wrong?”

Representative Notter: “It implies that I’m on the take.”

Representative Lynn: “‘Whoever manages this account should disclose the thousands of dollars,’ I guess I don’t understand how that says you’re on the take.”

Representative Notter: “Well, if I were reading it, you know, just reading that ‘oh, they’re being paid, they’re being paid to be there. Who, who’s paying them?’”

Representative Lynn: “Candidly, I’m having a hard time understanding how this isn’t sort of literally true. You did take the money. And I, again, I have not the slightest question that it was entirely legitimate.”

Representative Notter: “There is a difference between taking money and being reimbursed. This is money that I spent, and I put on my credit card, my husband’s credit card, and then I get reimbursed for most of it so that I can continue my education in the areas that I work with here in Concord: energy and communications and technology, mostly. And there are others because we vote on so many things. It’s good to have knowledge on all the topics.”

Attorney Tanafon: “If I could address for a minute if you allow me. Part of this is the implication, the context surrounding this, from the account that I understand identifies her office and makes this statement that strongly implies that something untoward is going on. There are thousands of dollars. Casting it as a partisan group. Tagging NHPolitics. Certainly, the factual underpinnings. This might be factually true. Money accepted from a group because of reimbursements. But the strong implication of context is that this is a smear being thrown. That is not founded because everything my client has done is lawful in accordance with the rules.”

Chairman Gordon: “Other questions? Seeing none. Thank you for coming today.”

Chairman Gordon called upon Representative Rosemarie Rung (Hills./12).

Attorney Paul Twomey, representing Representative Rung: “Thank you, Mr. Chairman. We don’t have much to say beyond what was in the initial response. I’d just like to say that this is information that is required to be disclosed to the public. And implied in that law saying it’s required to disclose to the public when you accept funds from any groups is that people have the right to comment on it and is something the public should know about. This is just free speech. It doesn’t go beyond that in any way. There’s nothing in here that says anything was illegal, and quite frankly, it doesn’t even imply it. It just simply says that this is something that your constituents should know about. And that is why we have these laws, so the constituents can know about it. We don’t have anything to say beyond that.”

Chairman Gordon: “You don’t think by the way or in the manner in which that was written it implies wrongdoing on the part of Representative Notter?”

Attorney Twomey: “It implies that this is a matter of public interest to her constituents and nothing more. I’m not even going to go there because I don’t even think it implies what you just said. But if it did imply it, you still have free speech. There’s still *Sullivan v. New York Times*. People have a right to say things. She didn’t say anything. Because someone’s feelings were hurt, it doesn’t mean that it’s an ethical violation. What rule, regulation or law was violated here? Let’s talk about the notice of due process of law. This complaint doesn’t tell us about any of those things. It doesn’t tell us what acts violated those laws. I don’t think there is a rule, law or regulation. We don’t think it’s a proper matter for this Committee to start patrolling the free

speech of representatives talking about something that the legislature has already stated as a matter of law, is a matter of public interest. It is proper to comment on. That's why we have this statute... Nobody said there was anything illegal here. I don't think Representative Rung – I can't speak for her – I don't think she thinks it was anything illegal. She just says this is something their constituents in their town should know. And that's all it is.

First of all, it has to be in writing. Notice of the rule or the law and what the conduct violated, and we don't have any of those things. We don't have any due process here. This isn't a valid complaint. But I'm sorry Representative Notter's feelings were hurt but, you know, you run for office and people are going to criticize you sometimes. You just go through the term. You've got to be able to deal with it. That's all I have to say."

Senator Ward: "I have a question. All expenses that you incur if you go to it, a workshop, a lecture that is being paid for, you're invited to learn something, all of that has to be reported to the Secretary of State. Any kind of a money transaction. Where are you suggesting that it should be posted in addition to that?"

Attorney Twomey: "I'm not suggesting anything. It goes to the Secretary of State. Somebody else posted it publicly and my client commented on it as it is her right as an American citizen to comment on something that is a public matter. The constituents in the town that they live in they can say this doesn't matter or they can say this is terrible. They can choose to react to it any manner they want. But they have the right to know about it and other people have the right to comment on it because this is a free country we live in, and especially something like this that the law requires it to be made public. And there's no other reason for that law other than to allow people to comment on it and to draw whatever conclusions they want to draw. And the people in the town can draw whatever conclusions, or no conclusions, if they want. But they have the right to know about this stuff under the law and my client has the right as an American citizen and a citizen of this state to comment on it I don't know what else to say. I'm not saying it should be published somewhere else. It can be. People can publish it if they want, but nobody is suggesting that they have to."

Senator Ward: "A follow up? But if all that information is available on the Secretary of State's website, that should be available for anybody who wants to check it out. So, what is the problem, I guess? If the information is available, anybody can get it, my question is what else would you like to see done?"

Attorney Twomey: "Nothing!" Nothing. We're not asking anything be done. We didn't bring this to ask you to change the laws or do anything like that. We just commented on something that was public information."

Chairman Gordon asked if there were any additional questions. There were none. He thanked the parties.

Representative Wall moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to deliberate on *Complaint 2023-9*. Senator Ward seconded the motion and the Committee voted as follows:

Representative Lynn Yea

Mr. Hess Yea
Senator Ward Yea
Chairman Gordon Yea
Representative Wall Yea
Vice Chairman Sytek Yea
{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Representative Lynn Yea
Mr. Hess Yea
Senator Ward Yea
Chairman Gordon Yea
Representative Wall Yea
Vice Chairman Sytek Yea
{MOTION ADOPTED}

Chairman Gordon stated: “The Ethics Committee just came out of nonpublic session on *Complaint 2023-9, Notter v. Rung*. Having held our initial review of the complaint, the Committee has voted to dismiss the complaint. It notes that the social media post written by Representative Rung, in the manner in which it was written, was provocative, but it was political speech and did not rise to a level that would constitute a violation according to our Ethics Guidelines and, therefore, the complaint was dismissed.”

ITEM #5

Initial Review of *Complaint 2023-10*. (Nonpublic Session)

Representative Lynn announced that he would recuse from all participation in *Complaint 2023-10* and left the room.

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an initial review on *Complaint 2023-10*. Representative Wall seconded the motion and the Committee voted as follows:

Representative Lynn (recused)
Mr. Hess Yea
Senator Ward Yea
Chairman Gordon Yea
Representative Wall Yea
Vice Chairman Sytek Yea
{MOTION ADOPTED}

{NONPUBLIC SESSION}

Senator Ward moved to exit nonpublic session. Mr. Hess seconded the motion and the Committee voted as follows:

Representative Lynn (recused)

The Committee reviewed the proposed amendment to HB 301 and Chairman Gordon asked the Committee for their thoughts.

Vice Sytek Chairman said that bill has “a ton of problems” and highlighted some of them: “It says you can’t vote if you’re ‘receiving remuneration from an employer which has a conflict of interest’. The employer doesn’t have a conflict of interest... I understand what they are trying to do, but the language doesn’t do it. And the other thing: (in the section listing the circumstances in which a legislator is required to recuse, there are paragraphs) I, II, III, IV, but do you have to be all 4? Is it ‘or’ or ‘and’? ... And by barring anybody who has an employer that is interested in legislation, you can’t vote. So even if you’re on the hospital board, you can’t vote. If you’re in the retirement system, you can’t vote. If you’re a landlord or a tenant, you can’t vote. If you pay taxes, you can’t vote. And it says a legislator shall not recuse themselves if the subject matter concerns broad based taxes or fees. What? This is awful. And it takes effect 30 days after passage.”

Representative Lynn said the proposed amendment from Legislative Administration was nearly identical to the one the Committee reviewed at a prior meeting. {See the Minutes for February 13, 2023, Item #2.}

Vice Chairman Sytek agreed and said all they took out was the language “someone you care about.”

Mr. Lambert reminded the members that he had included a copy of Chairman Gordon’s proposed amendment in the Committee’s meeting packet.

Representative Lynn said he agreed with Vice Chairman Sytek’s comments. He said, “I think there’s a lot of problems. But the draft you (Chairman Gordon) had proposed was much simpler and I thought it got right to the heart of the matter.”

After further discussion, Representative Wall said, “The chairman of Legislative Administration (Representative Greg Hill) is looking for guidance from this committee.”

Representative Lynn said: “I agree completely with (Vice Chairman) Sytek. Language like ‘the employer has a conflict of interest’ ... it doesn’t make any sense. That would suggest that if the legislature is considering a bill on, say, banking, the banks have a conflict of interest, therefore it can’t be heard. It doesn’t make any sense.”

Representative Wall said: “My concern is this excludes too many people.”

Representative Lynn agreed.

Vice Chairman Sytek asked: “Did he intend to do that?”

Mr. Hess said: “I think the issue is the amendment removes one of the complaints we had about the prior proposal, but it doesn’t address the multiple additional issues that we flagged. And it is equally defective, in my opinion.”

Representative Lynn said: “And it seems to me that your proposal (Chairman Gordon’s) was simple, it was straightforward, it addressed the constitutional question.”

The Committee reviewed Chairman Gordon’s proposed amendment.

After further discussion, Vice Chairman Sytek made the following motion:

“I move to inform the House Committee on Legislative Administration that the Legislative Ethics Committee does not support the proposed amendment to House Bill 301 on which the Committee has been asked to comment.”

Representative Lynn seconded the motion and the Committee voted 6 to 0 in favor of the motion.

Representative Wall then asked the Committee for guidance for what she could say to the Legislative Administration Committee were the reasons for the Committee’s position. After discussion, the Committee agreed that she should say that in the Committee’s opinion the proposed amendment is “too inclusive, too broad, and goes beyond what is reasonably enforceable.”

- b) Discussion of whether to hold a joint meeting with the Executive Branch Ethics Committee.

The Committee agreed that they would be pleased to hold a joint meeting with the Executive Branch Ethics Committee if there were some legitimate reasons to do so, but they did not see that there were at this time.

ITEM #7

Scheduling of the next meeting.

The Committee scheduled its next on November 14, 2023, at 1:30 P.M.

The Committee’s meeting adjourned at 2:25 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}