

LEGISLATIVE ETHICS COMMITTEE

Informal Resolution of Complaint 2021-03

ADMONISHMENT OF REPRESENTATIVE JAMES SPILLANE

In January, 2021, the Legislative Ethics Committee received a complaint filed by seven state representatives (“the Complainants”), alleging that Representative James Spillane violated ethics guidelines and rules of the New Hampshire General Court (“the Complaint”). They allege that his conduct was contrary to two Principles of Public Service adopted by the Legislature and set forth in the Ethics Guidelines: the Principle of Conduct and the Principle of Accountability. The Principle of Conduct states that “Legislators shall treat each other, legislative employees, and the public with dignity and respect.” The Principle of Accountability states that “Legislators shall ensure that government is conducted openly, equitably and honorably in a manner that permits the citizenry to make informed judgments, have confidence in the integrity of the legislature, and hold government officials accountable.” Furthermore, the Complainants allege that Representative Spillane violated the Policy Against Sexual and Unlawful Harassment and Discrimination, which was adopted by the Joint Legislative Facilities Committee. That Policy prohibits legislators and legislative employees from engaging in harassment, which it defines as “conduct or behavior which is personally offensive or threatening, impairs morale or interferes with the work effectiveness of employees or members.”

Consistent with its rules, upon receiving the Complaint, the Committee conducted an initial review. After receiving a response from Representative Spillane, the Committee learned that, after his posting was publicized and he learned that some people found it offensive, Representative Spillane immediately removed the posting and provided a letter of apology to the Speaker of the House. However, that letter was not released. There was no public apology to those persons who may have been offended. Based upon the allegations of the Complainants and Representative Spillane’s response, the Committee found that the Complaint had merit and voted to move forward to the preliminary investigation phase.

In conducting its investigation, the Committee communicated with the Department of Justice which had been asked to investigate the posting. The Attorney General found no basis for criminal liability and closed its case. The Committee also invited both the Complainants and Representative Spillane to address the Committee. Five of the Complainants and Representative Spillane met separately with the Committee, providing their perspectives and answering questions. Having heard from them, the Committee has found that the facts of this case are, for the greater part, undisputed.

The Complaint arises from the placement by Representative Spillane of a message, including an image he had received from a third party, on social media. The image was at least a partial copy of a mural painted as street art in London in 2012. The mural depicts several men around what looks similar to a Monopoly game board which is supported on the bare backs of other people who appear subservient.

After the mural appeared in London, it was the source of a major political controversy as it appeared that at least some of the men around the game board were Jewish and many people found the depiction offensive. The painter, Kalen Ockerman, also known as Mear One, acknowledged that he intended some of the men to be Jewish, although he said they were all bankers, and included Anglos. He denied the mural was antisemitic and said it was about class differences. The original mural was removed.

The image of the mural posted by Representative Spillane included the words "IF WE ALL STAND UP, THEIR LITTLE GAME IS OVER," which were superimposed on the top and bottom of the image. With the posting of the image, Representative Spillane wrote "Agree. Truth."

The Complainants did not directly view the image on social media which was posted on Parler. They were informed of the posting through a third party who forwarded it to them. The image that they received did not include the superimposed words, but did include Representative Spillane's words "Agree. Truth." Each of the Complainants found the image to be personally offensive as it appeared similar to antisemitic propaganda featuring what appeared to be Jewish bankers with large hooked-noses playing financial games on the backs of other humans. They provided moving testimony about how the social media posting reminded them of the prejudice and hardships their families may have suffered as a result of historic discrimination or persecution based upon their religious heritage.

As members of the House of Representatives, the Complainants have indicated to the Committee, both in writing and, for those who appeared before the Committee, in person, that Representative Spillane's posting caused them to feel pain, fear and revulsion. They believe that he knew or should have known that what he exposed for the world to view on social media would be offensive to his Jewish colleagues and to Jewish people in general.

Representative Spillane averred to the Committee, both in writing and in person, that he was unaware at the time that he published the image on social media that it was a representation of Jewish people or that it had previously been the source of controversy. He informed the Committee that it was never his intention to promote antisemitism in any way. He said he interpreted the meme as commentary on the ongoing shutdown of private businesses by Government bureaucrats. He said he now understands why people were offended and truly regrets having made the posting. He acknowledged that if he had done some due diligence, this matter could have been avoided.

The Legislative Ethics Committee notes that it only has jurisdiction over members of the General Court when they are acting in their legislative capacity. In this case, Representative Spillane posted the image on social media as "Rep. James Spillane." Having done so, using his legislative title, he has acted in his capacity as a legislator.

In their Complaint, the Complainants asked that Representative Spillane be subject to the strongest possible condemnation of his behavior along with specific recommended consequences that it deems appropriate and just. The majority of the Complainants indicated that they would prefer to see Representative Spillane removed from office. One Complainant, however, felt differently. Instead of being punitive, the Complainant suggested that the Committee use this as an opportunity to educate and hopefully prevent other members of the General Court from engaging in the type of behavior exhibited by Representative Spillane.

Having considered the facts of this case as revealed by its investigation, the Committee believes that there is a sufficient basis to initiate formal proceedings against Representative Spillane. The Committee has no doubt that the Complainants found the image and the accompanying words posted by Representative Spillane to be disturbing and offensive. It would appear to most that some or all of the men represented in the image are Jewish and a reasonable amount of due diligence would have informed Representative Spillane that the image was controversial and could be found offensive by others. The Committee found that Representative Spillane posted that material as a Representative and that it is contrary to the Principles of Public Service which have been adopted by the Legislature. The Committee also finds that he violated the Legislature's Policy Against Sexual and Other Unlawful Harassment and Discrimination. Under that policy harassment includes conduct or behavior which is "personally offensive or threatening . . . to members." Having made this determination, the Committee could move forward to file formal charges, have a hearing and, if found true, recommend an appropriate outcome. That recommended outcome would then become subject to the political process, as its imposition would be at the discretion of the legislative body as a whole.

At the same time, from the time this Complaint was filed, Representative Spillane has been fully cooperative and has expressed remorse to the Committee. He has been willing to acknowledge, though unintentional, that his posting was unnecessary, that it offended many, including respected colleagues and that it reflected negatively on both him and the Legislature. He has acknowledged that before sending out his posting, he had a duty to know what the posting meant and how it might impact others. He has also indicated his willingness to make and publish a formal written public apology.

In such cases, the Committee is provided with another option. Instead of instituting formal charges, it can enter into an informal resolution with the subject of the Complaint which may include a written admonishment. The Committee finds that such an outcome could provide the opportunity to educate members of the

General Court and prevent similar incidents in the future. The Committee believes that if such a formal written admonishment accompanied by a sincere and meaningful letter of apology were published in the House and Senate Calendars, it would be more beneficial than instituting formal charges. It would serve as a public rebuke for Representative Spillane and would serve as a warning to other legislators that the use of social media has consequences and it must be used responsibly.

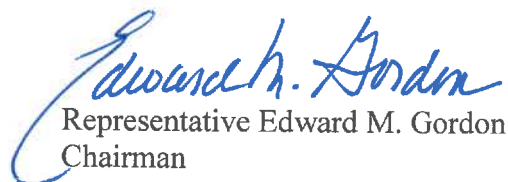
Representative Spillane has provided the Committee with a suitable letter of apology signed by him which reads as follows:

“I sincerely apologize for the echoing of a meme with an image that turned out to be deeply offensive, and I acknowledge that taking that action in my name as a State Representative without having conducted thorough research to determine the source of that image was an unfortunate lapse in my normal due diligence. I am embarrassed that my failure to ascertain the hateful source of that image that resulted in offending and hurting so many others, especially those of the Jewish Faith. I have always held members of the Jewish Faith in the highest regard and with the utmost respect. I hope that my apology is accepted, and that others can learn, as I have learned, to conduct thorough and complete due diligence before making any postings, writings, or actions with an attribution to one's status as a State Representative.”

Representative Spillane has also agreed to this informal resolution to the Complaint made against him. Therefore, the Ethics Committee formally admonishes Representative James Spillane for his offensive social media posting. It also directs that this report be published in the House and Senate Calendars.

Let this Formal Admonishment serve as notice to all Legislators. When you use your title or include your legislative position at the top or bottom of your social media postings, your postings should reflect the best principles of public service. When you put something on social media as a member of the General Court, you have a duty to know how it will affect others. And finally, having addressed this matter and made clear that they are responsible for the content they put on social media, the Committee will not hesitate to hold legislators accountable for similar violations in the future.

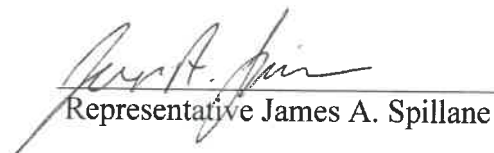
For the Committee,


Representative Edward M. Gordon
Chairman

I hereby agree to the Committee's proposal for informal resolution.

9/28/2021

Date


Representative James A. Spillane

Letter of Apology

I sincerely apologize for the echoing of a meme with an image that turned out to be deeply offensive, and I acknowledge that taking that action in my name as a State Representative without having conducted thorough research to determine the source of that image was an unfortunate lapse in my normal due diligence. I am embarrassed that my failure to ascertain the hateful source of that image that resulted in offending and hurting so many others, especially those of the Jewish Faith. I have always held members of the Jewish Faith in the highest regard and with the utmost respect. I hope that my apology is accepted, and that others can learn, as I have learned, to conduct thorough and complete due diligence before making any postings, writings, or actions with an attribution to one's status as a State Representative.

9/22/2021
Date


Representative James A. Spillane