

MINUTES
LEGISLATIVE ETHICS COMMITTEE
MAY 28, 2008 MEETING
{Approved: November 18, 2008}

The Legislative Ethics Committee (RSA 14-B:2) met on Wednesday, May 28, 2008, at 10:00 a.m. in Room 104 of the Legislative Office Building. The following members were present: 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 March 31, 2008. Following review, Attorney Zachos moved to adopt the *Minutes* as drafted. Attorney Gross seconded the motion and the Committee voted 6 to 0 in favor of the motion.

ITEM #2

A Public Hearing on proposed amendments to the *Ethics Guidelines*.
Vice Chairman Wall opened the public hearing.

Attorney Gross asked if he could explain his view on the background of the Committee's effort to amend the *Guidelines*, saying he believed the Committee previously held a public hearing on the *Guidelines* as it had gone forward. He said "we had an initial public hearing and then we had a series of wide-open, well-advertised public meetings." "The reason," he said, "that we are having yet another public hearing today on the final version of the *Guidelines* is at the specific request of the President of the Senate."

Vice Chairman Wall thanked Attorney Gross for his explanation and said "that was exactly the way it occurred." She asked if there were any members of the public who would like to speak regarding the Committee's proposed amendments to the *Ethics Guidelines*.

{No one responded.}

She announced "second call" and said "there appear to be no members of the public at this time who want to speak to the proposed *Ethics Guidelines* amendments." She then closed the public hearing.

Attorney Gross asked what the appropriate procedural course was, noting "Our *Minutes* that we just adopted of March 31 state at the bottom of page 8 that 'Chairman Hilliard called the question on adopting and transmitting the proposed *Ethics Guidelines* and the Committee voted as follows...' and the motion was adopted by a unanimous roll call vote. We have acceded to the request of the President of the Senate to hold a public hearing on this. I guess I want to make sure that people understand that these *Guidelines* were previously adopted." He said that he was "wondering about the procedural posture that the *Guidelines* have," adding that "we have approved them as of March 31 and sent them along to the President of the Senate and the Speaker of the House. In doing that, I believe, we discharged our duty. Since that time, we have received a letter from the President of the Senate suggesting that we hold yet another public hearing on the final version, which we have done. No one has yet moved reconsideration --which I suppose is open to any member of this Committee -- so my question is: What is the procedural posture right now? My own hope is we will make it perfectly and absolutely clear that these are the *Guidelines* that this Committee is recommending...but I wonder what the procedural motion is. Do I move that the Committee say: 'And we mean it!'"

Senator Burling requested that the letter from Senate President Sylvia Larsen, dated April 24, 2008, be read into the record. Vice Chairman Wall then read the following:

Dear Representative Wall:

In the course of considering actions by the Senate on the proposed amendments to the Ethics Guidelines that were transmitted to me and the Speaker of the House of Representatives on April 1st and subsequently published in the Senate and House Calendars, it has come to my attention that the proposed guidelines in their current form were not subject to a public hearing prior to being submitted for legislative consideration, as has been the case with past Guideline Amendments.

In order to obtain testimony from members and the public prior to final legislative consideration, I would ask that the proposed guidelines be withdrawn and scheduled for a public hearing prior to submission as a final proposal.

Thank you for your consideration.

Sincerely,

Sylvia B. Larsen

President of the Senate

Senator Burling said: "So I think the answer is pretty clear," and asked if it was the case that the Committee had previously held public hearings on the amendments and had now held another. He then suggested that the Committee's response to Senator Larsen should state that "pursuant to your correspondence we have had another hearing on the *Guidelines*. We have had previous hearings...by a vote of the panel, we return the *Guidelines* to you for appropriate action and adoption."

Attorney Zachos agreed and suggested adding "with our recommendations."

After further brief discussion, Attorney Gross moved that the Committee adopt the following position with respect to the *Ethics Guidelines* amendments: "that at the request of the President of the Senate the Committee has convened a public hearing on May 28, and that no one was present to present testimony about the *Guidelines*, that the Committee, therefore, reasserts the motion that it adopted on March 31, 2008, in which it adopted the amendments to the *Ethics Guidelines* and transmitted them to the President of the Senate and the Speaker of the House."

Senator Burling asked if the Committee wished "to put them back to the March date, in which case, they are again in noncompliance the minute they get the letter, or do we say we re-transmit to you in accordance with our several votes and several hearings these *Guidelines* for adoption by you?"

Attorney Gross said that was a very interesting question and that the one thing missing from his motion on how to respond the Senator Larsen's letter was "an assertion on our part that we had previously held at least one, and possibly more, public sessions to consider these *Guidelines*."

Representative Anderson asked if sending back the *Guidelines* amendments would restart the clock regarding the 3 legislative days.

Attorney Gross responded "that's the question and I would just be candid in saying I hope not; we've done our job, but things being the way they are, if people want to give some other people some running room, then that's fine with me."

Richard Lambert, the Committee's Executive Administrator, asked "Didn't they already have 3 legislative days in the Senate, though?"

Attorney Gross asked if the Senate had had 3 legislative days since March 31.

Mr. Lambert replied: "I think so. I think they sent it back to the Committee on the third legislative day. So I think the clock would have to be restarted; under the statute to become effective the *Guidelines* must be adopted by both houses within 3 legislative days."

Attorney Gross pointed out that the statute talks about 3 legislative days after distribution of the *Guidelines* to members and he asked if the *Guidelines* had been distributed to the members of the House and Senate.

Senator Roberge and Vice Chairman Wall responded that the amendments had been published in the Senate and House Calendars for several weeks.

Attorney Gross said, "then they have been distributed and the statute is what it is: it's a mandatory 'shall'...so, I have to question what the appropriateness was of an action purporting to return the *Guidelines* to us. I'm not sure they had that authority to do that."

Attorney Zachos said: "We can sit here all day and speculate why. Who did this? Why? I don't have any desire to do that. The session is closing; we've worked diligently all year. I suggest we simply re-submit the *Guidelines*; that would start running the 3 legislative days. We put in what Marty indicated -- that we had a public hearing at the specific request of the Senate President. Re-submit them and see. That gives the bodies 3 legislative days to decide if they want to reject them, they want to approve them, or they want to send them back for a further action."

Vice Chairman Wall asked: "Where does that leave us Kimon, when we had them published for several weeks, but 3 legislative days came and went? The Senate President then gave them back to us. Where does that leave us legally?"

Attorney Zachos asked: "What do you mean where does that leave us?"

Vice Chairman Wall responded: "In terms of the fact that they failed to take any action when they were supposed to."

Attorney Zachos responded: "Do you want to get into a legal battle with the President of the Senate?"

Vice Chairman Wall replied: "No I don't. That's not what I'm asking. I'm asking, with us as a Committee where does that leave us because we did our job; we submitted it to both bodies and neither body took action on it on the third legislative day."

Attorney Zachos responded: "But she did because Rich has said that on the third legislative day they returned them to us."

Mr. Lambert asked if the Committee would consider making a few revisions to the amendments and said there were "a few matters that should be cleaned up." He suggested that the Committee "could amend it and then resubmit it and that would start the clock over again" and he offered to point out where the revisions could be made.

Attorney Gross said, "Well, wait a minute, what happens then? Do we then get another letter saying 'Oh, you've amended these *Guidelines* again so you've got to have another public hearing'? I would say that unless these amendments that you're about to tell us about are of substance, I wouldn't want to do that. I would just like to go ahead and, in terms of the discussion that Kimon was having, I don't feel the need to take a position one way or the other about whether they are in default or not. But I don't want to take a position that says this is a start of the period. I would allow that to be open. If someone wants to make something out of it, let him make something out of it. I have no desire to go to court and I'm not trying to create a matter of litigation. I'd just rather not take a position on whether this is a re-transmittal or the start of a new period. I know what I think personally, but I don't think the Committee should take a position."

After further discussion, Vice Chairman Wall said that Attorney Gross had made a motion and asked if there were a second.

Senator Burling seconded the motion.

Vice Chairman Wall asked if there was any further discussion.

Senator Burling said he had a suggestion as to how the Committee might respond and read a draft letter he had written during the Committee's discussion.

After further discussion, Vice Chairman Wall asked Attorney Gross to restate his motion.

Attorney Gross restated his motion: "Having held another public hearing at the request of the President of the Senate, the Committee hereby reasserts the vote that it adopted unanimously on the 31st of March, 2008, in which it adopted amendments to the *Ethics Guidelines* and transmitted them to the President of the Senate and the Speaker of the House."

The Committee then voted as follows:

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

{MOTION ADOPTED}

ITEM #3

Discussion of a future meeting with the Executive Branch Ethics Committee (EBEC) and joint publication of educational brochures.

Vice Chairman Wall reminded the Committee that the 2 committees are statutorily required to meet twice annually and suggested that such a meeting would likely be held in the fall. She suggested that the Committee should meet prior to the joint meeting to discuss and approve printing of joint educational brochures concerning ethics.

Attorney Gross suggested meeting in October or mid-November.

Mr. Lambert reminded the Committee that at the previous joint meeting Chairman Hilliard and Attorney Gross had talked about the need to carefully review the brochures that the EBEC had already published to see if everything in them is consistent with the *Ethics Guidelines* and the Committee's decisions, opinions, and interpretative rulings.

After further discussion, it was decided that Attorney Gross, Attorney Zachos and Mr. Lambert would work as a subcommittee to review the EBEC's brochures to see if they conform to current law and the Committee's *Guidelines* and opinions. Attorney Gross said the subcommittee could circulate drafts to the full Committee prior to its meeting. The Committee then scheduled a meeting for that purpose for November 18, 2008, at 10:00 a.m.

ITEM #4

Discussion of the Resignation of Chairman Russell F. Hilliard.

Vice Chairman Wall said the following: "I'm terribly disappointed and sad that Russ Hilliard is not with us today. He's the one who got this Committee started. He has been outstanding in his leadership and it's most unfortunate the circumstances that occurred that, I believe, he removed himself from this Committee. He has communicated to me, and I'm sure to the rest of us, that he really hopes to be back in the coming year. And I hope with all my heart that the leadership will allow that to happen and I just want to say it's been wonderful working with all of you and with him, and I wish it could have been different."

Attorney Gross said "I join in your comments."

Senator Roberge said: "I certainly would agree with that and I'm very happy that he is willing to come back because I think the Committee benefits from his experience and his longstanding role with the Committee, and the Committee sorely needs for him to come back."

Vice Chairman Wall said: "Russ helped form this Committee 17 and a half years ago and there's nobody who knows more about it...and that kind of institutional knowledge and background is tremendously valuable in the work that we do."

Attorney Zachos said: "Our work on November 18 will be, under the present appointed statute, Russ will not be with us. He's resigned. I can only say, I'm the new kid on the block... in my membership on the Committee...I don't know if Russ will be asked to come on, and I don't know now whether any of the rest of us will be asked, but I can assure you that, if I am asked, I will ask the appointive authorities whether Russ is coming back, and whether he does or not would influence me greatly if I'm asked to come back on this Committee because I think one of the problems this Committee has had, in spite of all of our efforts, is that we haven't had good communication with the leaders of either representative body, in my opinion, and I think in order to get anything done next term, if those channels aren't open, then we're really wasting our time, and there's no need for me to come up from Manchester or Marty to come down from New London or any of you to come here. So I think that's something we can all keep in mind in our discussions."

Vice Chairman Wall said "it would be my wish that you would come back with your expertise also."

Attorney Zachos said: "I'm perfectly willing to come back. Marty and I are both in kind of semi-retirement. We've got time for activities like this and are perfectly willing to volunteer if we, in fact, feel that our time is recognized and appreciated and we can get something done. We've had a year and a half of frustration."

Vice Chairman Wall said: "We've had new leadership and our leadership has consistently said that there's a learning curve. I respect that. I will say that I believe that this Committee has made its efforts to communicate, we've invited both the Senate President and the Speaker to come before our meetings this year on different occasions and I would hope the communication would be better and more full and open in the coming term for whoever serves on the Committee and I have had some frustrations with the Committee. I agreed to come back on for the specific purpose of moving forward with the *Guidelines* and really expected that that would have happened early on."

The Committee's meeting adjourned at approximately 10:50 a.m. The Committee scheduled its next meeting for November 18, 2008, at 10:00 a.m.

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