

Advisory Opinion 2025-3

Response to a Request for an Advisory Opinion from Representative Ross Berry (September 18, 2025)

The Legislative Ethics Committee, at its meeting on September 18, 2025, considered a request for an advisory opinion from Representative Ross Berry addressing whether he may participate in the process of co-sponsoring a bill that would restrict localities from implementing zoning ordinances that prohibit specific types of childcare centers.

In his email message to the Committee, dated August 29, 2025, Representative Berry stated that he owns and operates a licensed childcare center in NH under a “Group Child Care License,” which he has disclosed on his Financial Disclosure Form. He said that he would like to co-sponsor a childcare bill that would restrict localities from implementing zoning ordinances that prohibit in-home childcare for specific license types called “Family Child Care Homes” and “Family Group Child Care Homes.” He also stated that, “I do not hold these licenses, nor will I ever likely seek to hold one.” Additionally, he said the proposed bill would restrict localities from prohibiting new childcare centers in any commercial zoned area, and that provision would apply to his and all other license types. He further stated that, “I am not currently seeking to start a new childcare center under a new license, but that could be the case in the future.”

Relevant Statutory Provision

14-C:4-a Recusal for Conflicts of Interest. –

I. A legislator shall recuse themselves from participation in any official legislative activity pertaining to legislation when:

(a) The legislator has a conflict of interest with the subject of the legislation as defined in RSA 14-B:1, I; and

(b) The legislator or a member of the legislator's household could reasonably be expected to incur a direct and substantial financial benefit or detriment as a result of the outcome of the legislative activity.

Committee Analysis

In completing its consideration, the Committee reviewed a draft of the proposed bill provided by Representative Berry and reviewed relevant provisions of law.

Under the statutory language set forth in RSA 14-C, recusal is required when a legislator has a conflict of interest with the subject of legislation and the legislator “could reasonably be expected to incur a direct and substantial financial benefit or detriment”. Based on the facts presented, the proposed bill would not result in financial gain for Representative Berry through ownership of his current childcare business as it would not involve his childcare license type. However, as Representative Berry stated, one of the bill’s provisions would restrict municipalities from prohibiting new childcare centers which would allow him to start a new childcare center in the future should he choose to do so. He also pointed out that the bill he intends to sponsor could create competition, having a negative effect on his business. The Committee considered whether, given the facts presented, Representative Berry would be likely to receive a benefit or suffer a detriment which would be direct and substantial representing a conflict of interest that would require recusal.

It should be noted that Representative Berry asked only whether he should participate in co-sponsoring the bill. If he has a conflict requiring recusal, he would be required to refrain from participating in all legislative activities involving the bill.

A “direct” benefit must be more than hypothetical. To be direct, a benefit need not be immediate, but given the legislator’s current circumstances, there must be a reasonable expectation that the legislator will receive financial benefit from the legislative activity. In Representative Berry’s circumstance, based on the facts he presented, that threshold is not met.

Opening the childcare market to more competition could be considered a potential detriment to Representative Berry. Again, it is hypothetical, but it could be substantial. A conflict of interest exists when a legislator’s objectivity may be compromised because of a financial detriment which the legislator may desire to avoid. In this case, Representative Berry isn’t avoiding the possible detriment, he is advocating for it. The majority of the Committee finds that, given the facts as presented by Representative Berry, the negative financial effect of greater competition would not create a conflict warranting recusal.

The Committee also considered the issue of public perception. One of the General Court’s stated purposes for enacting the recusal law was to “maintain the confidence of the New Hampshire citizenry in official activities” by avoiding the perception of legislators acting in their own self-interest and requiring recusal in some circumstances. It is reasonable to assume that some members of the public would believe that a legislator who owns a childcare center should not be involved in sponsoring a bill that affects his industry. But Representative Berry has fulfilled his obligation to disclose his potential conflict at the beginning of the legislative session on the required Financial Disclosure Form.

Conclusion

The majority of the Committee determined that Representative Berry's cosponsoring of the proposed childcare bill would not violate RSA 14-C:4-a, I. He would not receive a direct and substantial benefit and potentially no direct and substantial detriment from his participation in official legislative activity pertaining to the proposed bill. He is not required to recuse. However, the Committee recognizes that there may still be an appearance of a conflict of interest. It is up to Representative Berry to decide whether cosponsoring the bill is in his interests.

We appreciate the opportunity to be of assistance.

Honorable Edward M. Gordon, Chairman
Honorable Donna Sytek, Vice Chairman
Senator Cindy Rosenwald
Senator Ruth Ward
Representative Bob Lynn (Not present and did not participate.)
Representative Catherine A. Rombeau
Honorable David W. Hess

For the Committee,
Edward M. Gordon
Chairman

[Vote: 5-1]