

MINUTES
LEGISLATIVE ETHICS COMMITTEE
APRIL 22, 2024, MEETING
{Approved: June 24, 2024}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, April 22, 2024, 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 Cindy Rosenwald, Senator Ruth Ward, Representative Janet G. Wall, and Representative Bob Lynn. The Honorable David H. Hess 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 January 29, 2024.

Chairman Gordon noted that there was a typo in the draft *Minutes*, which he had pointed out to Mr. Lambert. Vice Chairman Sytek noted that there were a couple of typos. Following review, Vice Chairman Sytek moved to adopt the *Minutes* as amended. Senator Rosenwald seconded the motion and the Committee voted 6-0 to adopt the motion.

ITEM #2

Chairman Gordon noted that Representative Greg G. Hill, Chairman of the House Committee on Legislative Administration, was present and that he had offered to participate in the Committee's discussion of 2024 SB 605 and 2024 HB 1388, which was listed as *Item #5* on the agenda. Chairman Gordon suggested moving *Item #5* to *Item #2* so that Representative Hill would not have to wait through 3 scheduled nonpublic sessions. The Committee agreed to the agenda change.

Vice Chairman Sytek: "But first, I would like to congratulate our chairman on receiving the 'John E. Tobin, Jr. Justice Award for concrete action or inspired advocacy that has increased access to justice for vulnerable and disenfranchised people.' That's our chairman. Congratulations!" The Committee members joined in congratulating Chairman Gordon.

Chairman Gordon: "There was a hearing at Legislative Administration in the House this past week on SB 605 which (Representative) Bob (Lynn) and I both attended and advocated for passage of the bill, perhaps with some amendments, and this is the chair of that committee, who's come here today perhaps to get some input from the Committee as to how we feel about that."

Representative Hill: "I just had a couple questions and wanted to see what, in my estimation, the work that we're doing in Legislative Administration in this regard, we have to work hand in glove with this committee as far as I'm concerned. So, it wouldn't do me much good for us to just pass things that you find unworkable. So, that's why I'm kind of curious where you are and whether there needs to be any expansion of any of the definitions in here (pointing to the *Ethics Booklet*). And I'll give an example. It (SB 605) does talk about 'official legislative activity,' but I noticed, and I think it was in the summary of your last meeting, there was some discussion about 'official duty' versus 'official legislative activity,' and I didn't know if those kind of things we could clean up and/or provide better definition that would help you and also help people that are trying to work their way through this morass and determine (inaudible) ... That's been my goal... I want the fellow that's sitting in Division 3 in the middle of the row to be able to decide where he is. And I don't think we're getting

closer and closer to that situation. I think it's getting to the point where individuals are going to be getting their (General Court) ID, getting their (legislator) license plates, and then stopping here and asking what they have to do or what they can do."

Vice Chairman Sytek: "Or not even ask."

Representative Hill: "Yeah, or not even ask. So, I'm not pleased about that. Mr. Lambert and I have talked a couple of times about the idea of having a decision tree that someone could, perhaps, follow on one page that would say, 'Are you an employee? If yes, go here, if no...', and work your way through and find out if you have a concern or not with your individual circumstances. We aren't any further along with that idea, either. But I think that is what I would like, is the ability to (inaudible) so that is what I was looking for. Is there input from the Committee on items that perhaps need to be discussed? I'm still confused, I guess, why under the definition of 'organization' we cut it off at county. Why things are added or not or are missing. We have a different point of view on whether there should be 'political subdivisions' in there as well. I don't know. And then, I thought, on line 22 and 23 (on page 1 of SB 605) we talk about the treasurer and the financial officers here, and it says on the last line, 'is not limited to the following.' I think that should also be carried forward under other sections here, so that it's clear that it's not giving a definitive list... I think that would be a step forward, as well."

Chairman Gordon: "Yup."

Representative Hill: "But I'll leave it there. I'm interested more in your input than my input."

Representative Lynn: "What I would say is basically what I said at the hearing. I think that SB 605 is a good thing that should move forward. I'm still troubled by, particularly if there's at least a question, if state employees can serve as legislators, I think my understanding is federal employees cannot, some federal employees can't, but if state employees can serve as legislators then I'm not quite sure why they would be excluded, particularly given that definitions that somebody that has to have, that a state employee has substantial influence over the organization and they are taking a position on legislation. I think that's much different than the advisory opinion we issued regarding Senator Carson and Senator Innis {*Advisory Opinion 2024-2*}. They did not have substantial influence over, even though they were employees of the University System. They did not have a substantial influence over them, so I think that's a difference."

Representative Wall: "I have a question for Representative Lynn to answer. There are state employees and there are recently retired state employees who have considerable influence. Are you differentiating between the 2?"

Representative Lynn: "Yeah. I think that probably would make a difference if you were retired. There still could be things that you shouldn't be able to vote on like increasing your own retirement or something like that, but I would tend to say that if you're no longer subject to the control of your employer, then I think that is probably a basis for distinction. That's what I would say."

Senator Rosenwald: "Isn't currently our *Ethics Guideline* that you would have to declare, that you would have to make a Declaration of Intent, if you had more of a benefit than other people who are in your same circumstance?"

Vice Chairman Sytek: "Yes."

Senator Rosenwald: “Let’s say you’re a retiree but you’re getting a pension, but you’re not getting maybe the highest pension in the state. Currently we would not require someone to be recused from voting on a retirement bill because they benefit to the same extent as other people in their same position. So, are you suggesting that we change that?”

Representative Lynn: “Well no. I think the Senate bill, SB 605, what I was suggesting, is if you are a state employee and you’re also a legislator, but your position in whatever agency you work with is high enough that you actually have a role in deciding what the agency’s position is going to be, then ... suppose let’s take Senator Innis as an example. Suppose instead of being a line professor at the University of New Hampshire, suppose that he held a position of chancellor, or something like that, or legislative liaison, and he was also a legislator, a state Senator, I would then say if the University System is lobbying for this bill, he probably shouldn’t be voting on it if he had that kind of a position.”

Representative Hill: “And that somewhat gets to your title or your duties within that. Which makes it even more difficult. Where is that line for the person sitting in section 3? Where are they going to decide, ‘Well, my position is to the left of where I have a problem, or more to the right where I have a problem.’ I don’t know. And I do notice that in the prior bill, the House bill, that’s in the Senate now, we had created exceptions for state budget or broad-based taxes. That’s not in here. So, I’m not sure whether that doesn’t eliminate a lot of those headaches that we’re talking about, and maybe that should be included in this bill, as well, as an exception...”

Chairman Gordon: “From my perspective, it’s like pornography, you can’t really define it, but you know it when you see it. And that’s like the cases that we’ve had here. I think we all sat here when we were talking about Senator Innis and Senator Carson and I don’t think anybody thought, ‘Well geez, they have to recuse themselves if they’re just serving as professors at the schools.’ And so, it became obvious, and I think that’s been the case, whether it’s been the Murray advisory opinion {*Advisory Opinion 2023-3*} or going back to Doug Ley {*Complaint 2019-2*}, it becomes an obvious situation. But that legislation, (SB) 605, at least provides us with a standard to apply. A reasonable standard to apply. But I still think ultimately it comes down to what you see more than anything else.”

Representative Hill: “Well certainly. All we need to do is change 1 or 2 little lines with the circumstances of Senator Innis or Senator Carson and all of a sudden, we start sitting back and thinking, ‘Well, what if they work full time? Or what if they are in this position?’ So, it does make it difficult. It sounds like an easy task, but it’s been 3 or 4 years that we’ve been trying to nail down something here. I don’t know also what the feeling is of the Committee in regards to the bill that’s in the House versus over in the Senate. Do you think they both work in conjunction? Are you thinking they do different things? Where are you there?”

Vice Chairman Sytek: “I think they do different things.”

Representative Hill: “I think they can still both pass, personally. But I’m not sure if that’s how you recon.”

Chairman Gordon: “The Senate bill does one thing. It deals with your relationship to an organization, basically.”

Representative Hill: ‘Employer, employee.’”

Chairman Gordon: “Employee. But it really doesn’t deal with a situation where you have a personal conflict, i.e. the example of you getting some direct, personal benefit from legislation that you’re acting on ...or the situation, we have these retired state employees voting on retirement benefits, increases in their benefits, and I know when I was there in the legislature, there were people who recused themselves, because I did. There were other people who just noted that they had a conflict and participated, and other people didn’t file anything.”

{After further discussion}

Representative Hill asked the Committee again his question of whether they thought there should be an exception for voting on the budget and broad-based taxes. He noted that the exception is in HB 1388 but not in SB 605.

Chairman Gordon: “It just exempts anyone from being recused from participating in those votes?”

Representative Hill: “Well, it seems that the budget touches on everybody’s life and you wouldn’t want someone to have to recuse from voting on the budget when 99.9% of the rest of it has nothing to do with their life. It’s just that 1 item that may be in there... I’m not sure that we could get a quorum if you went through the budget, and especially in a volunteer legislature, I think exceptions for the budget and for broad-based taxes that would affect everyone here, I think, is a logical place to be. But it’s not included in (Senate Legal Counsel) Rick Lehmann’s version of (SB) 605.”

Chairman Gordon: “Sounds reasonable to me.”

Representative Lynn: “Yea. Sounds reasonable to me, too.”

Senator Rosenwald: “Would we want to include the capital budget as well as the operating budget?” {Several members indicated they would.}

After further discussion, Vice Chairman Sytek: “Have we talked about whether the application to ‘political subdivision’ like school committees?”

Representative Hill: “I think we have a difference of opinion. I don’t know why they weren’t included.”

Chairman Gordon: “I think the issue here is if you’re going to put in a provision where you’re going to exempt anybody who works for a governmental entity, then they probably should be included. The question we have is whether or not you should be exempting people who work for a governmental entity.”

Representative Lynn: “Right, right.”

{After further discussion}

Chairman Gordon: “I think the only issue is that there ought to be some recognition that at times it’s appropriate that people recuse themselves and we all recognize that, and the public, I think, not only recognizes it, but would expect it. And it seems to me that at least somewhere there should be some placement in our *Guidelines* that says at times it’s appropriate because we’ve certainly found that it’s the case. And I think that everybody agrees that it’s pretty much the case that recusal is

appropriate in certain circumstances. And so, even if you put in sort of an amorphous standard, at least it gives us some basis for saying, ‘Yes, recusal is an appropriate option.’ And the other part of it isn’t that the legislature should live in fear of the Ethics Committee because over thirty years there’s been less than a handful of times we’ve ever recommended discipline for a representative because we’re more of an educational organization than we are a punitive one ...and that’s why I like (SB) 605 because at least it puts in a standard and even if it’s amorphous it recognizes the fact that recusal is appropriate in certain circumstances.”

Vice Chairman Sytek: “But does recusal mean absolutely hands-off?”

Chairman Gordon: “Yes.”

Vice Chairman Sytek: “Usually it does ...So, we miss the benefit of the expertise of the fire chief by making him recuse.”

Representative Hill: “There are other fire chiefs... I kind of wish the preamble that you had in your original bill that came to us, the House version, I would almost take that and put that in here because that was almost, from which you just you cited from memory, there are times when we should be recusing, and it stated the constitutional part of it ...that should also be included in this, I think.”

{After further discussion}

Chairman Gordon: “Justice Lynn can testify: the laws are not always narrow. The law with regard to children in this state is that you need to do what is in their best interest. What does that mean? Well, it takes somebody to have to exercise discretion or, if there’s property division, you try to make it as fair as possible unless there are circumstances which warrant unequal division. Well, you have to exercise discretion. Isn’t ultimately that’s what this Committee does is exercise that discretion? So, you can’t make the law perfect. You make it so you give direction, but with the ability to exercise discretion ... and that’s why we have a balanced committee, too.”

{After further discussion}

Vice Chairman Sytek: “Can we talk about something that’s easy? The effective date. The effective date on (HB) 1388 is thirty days and (on SB 605) it’s sixty days.”

After further discussion, there was agreement that the Committee would recommend that the effective date should be changed to January 1, 2025.

ITEM #3

Consideration of a request to reconsider the decision in *Complaint 2024-2*. (Nonpublic Session)

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to deliberate on the request to reconsider the decision in *Complaint 2024-2*. Representative Wall seconded the motion and the Committee voted as follows:

Representative Wall	Yea
Representative Lynn	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Vice Chairman Sytek	Yea
{MOTION ADOPTED}	

{NONPUBLIC SESSION}

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

Representative Wall	Yea
Representative Lynn	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “We just voted to come out of nonpublic session, at which time we reconsidered the decision made by the Committee on *Complaint 2024-2*. Having conducted that reconsideration, the Committee voted to inform the complainant that the decision is being upheld and that a letter would be sent to the complainant so noting.”

ITEM #4

Initial Review of *Complaint 2024-3*. (Nonpublic Session)

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an initial review of *Complaint 2024-3*. Representative Lynn seconded the motion and the Committee voted as follows:

Representative Wall	Yea
Representative Lynn	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Representative Wall	Yea
Representative Lynn	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “The Committee has just come out of nonpublic session, having conducted an initial review of *Complaint 2024-3*. Having completed that review, the Committee has voted to dismiss *Complaint 2024-3* based on a failure to state a violation of law or the *Ethics Guidelines*.”

ITEM #5

Initial Review of *Complaint 2024-4*. (Nonpublic Session)

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to conduct an initial review of *Complaint 2024-4*. Representative Lynn seconded the motion and the Committee voted as follows:

Representative Wall	Yea
Representative Lynn	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

{NONPUBLIC SESSION}

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

Representative Wall	Yea
Representative Lynn	Yea
Senator Ward	Yea
Chairman Gordon	Yea
Senator Rosenwald	Yea
Vice Chairman Sytek	Yea

{MOTION ADOPTED}

Chairman Gordon stated: “We have just come out of nonpublic session on *Complaint 2024-4*. Having conducted an initial review of the complaint, the Committee has voted to dismiss the complaint as we lack jurisdiction, as the actions alleged are not conducted in the legislative capacity.”

ITEM #6

New/Other Business.
There was no new or other business.

ITEM #7

Scheduling of the next meeting.
The Committee’s next meeting will be at the call of the chair.

The Committee’s meeting adjourned at approximately 2:20 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}