

MINUTES
LEGISLATIVE ETHICS COMMITTEE
SEPTEMBER 16, 2024, MEETING
{Approved: October 14, 2014}

The Legislative Ethics Committee (RSA 14-B:2) met on Monday, September 16, 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 Bob Lynn, and the Honorable David H. Hess. Representative Janet G. Wall 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 24, 2024.

Following review, Vice Chairman Sytek moved to adopt the June 24, 2024, *Minutes* as presented. Senator Rosenwald seconded the motion, and the Committee voted 6 to 0 in favor of the motion.

ITEM #2

Continuation of the Initial Review of *Complaint 2024-5*. (Nonpublic Session)

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to continue the Initial Review of *Complaint 2024-5*. Representative Lynn seconded the motion, and the Committee voted as follows:

Mr. Hess	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:

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

Chairman Gordon stated: “The Legislative Ethics Committee has just come out of nonpublic session, having conducted an initial review of *Complaint 2024-5*. Having completed that initial review, the Committee voted to dismiss the complaint as the Committee found that the conflict of interest as alleged in the complaint did not exist, and the parties will be so notified.”

ITEM #3

Initial Review of *Complaint 2024-6*. (Public Session)

Chairman Gordon stated: “I note that the Respondent in this matter has indicated that they would like to have the matter be discussed in public, although our deliberative sessions would still be in nonpublic. This is a complaint alleging conduct by Representative Kristine Perez. Is anybody here specifically for that complaint? (Several individuals indicated they were.) What are the Committee’s wishes? Do you wish to hear from witnesses today or would you like to deliberate on the face of the complaint itself?”

Representative Lynn: “My inclination is for us to have some initial discussion before we decide whether we want to hear from witnesses.”

Chairman Gordon: “Do that in nonpublic deliberation?”

Representative Lynn: “Right. Exactly. That would be my suggestion, but if others have a different view, I’m, that’s just a suggestion.”

Chairman Gordon: “Do others feel so inclined?” (The other Committee members indicated they were.)

Chairman Gordon: “What we’re going to do is we’re going to go into nonpublic session just so we get a sense of what’s happening in the complaint and then we’ll call you back in.”

Vice Chairman Sytek moved to enter nonpublic session, pursuant to RSA 14-B:3, I(d), to deliberate on *Complaint 2024-6*. Representative Lynn seconded the motion, and the Committee voted as follows:

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

{NONPUBLIC SESSION}

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

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

Chairman Gordon acknowledged that there were individuals present who might want to speak to the Committee about the complaint.

Sherry Farrell, who is the Londonderry Town Clerk and wife of the complainant, John Farrell, testified and took questions from the Committee members.

Representative Lynn moved to re-enter nonpublic session, pursuant to RSA 14-B:3, I(d), to continue the Committee’s deliberation on *Complaint 2024-6*. Vice Chairman Sytek seconded the motion, and the Committee voted as follows:

Mr. Hess	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 Ward seconded the motion, and the Committee voted as follows:

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

Chairman Gordon stated: “The Ethics Committee has just come out of nonpublic session, having conducted its initial review of the complaint. As a result of that, during the session, the Committee voted to dismiss the complaint. And it’s not because we didn’t find the respondent’s behavior aggravating and potentially offensive to parties and officials, but when we apply the statutes, we can’t find that her behavior is a violation of the ethics statutes which are established by the legislature. And to some extent, she has First Amendment rights, and she can exercise those rights, and to some extent, she is participating as a representative and participating individually. So, the bottom line is we have to dismiss the complaint because it does not constitute a violation under the ethics rules as set by the legislature.”

ITEM #4

Initial Review of *Complaint 2024-7*. (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 2024-7*. Representative Lynn seconded the motion, and the Committee voted as follows:

Mr. Hess	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:

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

{MOTION ADOPTED}

Chairman Gordon stated: “We just came out of nonpublic session on *Complaint 2024-7*, having conducted an initial review of the complaint. The Committee determined that the respondent is no longer a state legislator. The Committee no longer has jurisdiction. And the complaint has been dismissed.”

ITEM #5

Initial Review of *Complaint 2024-8*. (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 2024-8*. Representative Lynn seconded the motion, and the Committee voted as follows:

Mr. Hess	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:

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

{MOTION ADOPTED}

Chairman Gordon stated: “Having come out of nonpublic session on *Complaint 2024-8*, and having conducted an initial review, the Committee voted to continue the initial review of *Complaint 2024-8*, taking no action at this time.”

ITEM #6

Consideration of a request for an Interpretive Ruling from Representative Rebecca McWilliams relating to 2024 HB 1388, “An Act relative to ethical standards for members of the general court.”

Chairman Gordon said that there were 5 questions asked in the request. He read them:

“Question 1: Does the family member’s lobbying have to take place during the current session in order to be a conflict requiring the legislator’s recusal?

Question 2: If the family member’s lobbying firm uses another employee or staff member to lobby regarding client interests, is recusal by the legislator still required?

Question 3: Under RSA 343:3 14-c:4-a II (a-c), how far back does ‘has lobbied’ go? If the firm lobbied for a client during previous legislative sessions, is the previous lobbying still ‘ripe’ for recusal?

Question 4: During a current two-year legislative session, from year 1 to year 2, where a bill can carry forward, is the prior year’s lobbying still ‘ripe’ for recusal?

Question 5: What are the consequences of a legislator failing to recuse when these criteria under RSA 343:3 14-C:4-a II (a-c) are met?”

Representative Lynn raised a question about standing. “As I understand it, the new law doesn’t become effective until January 1, 2025, and as I believe the legislator who filed the request will not be a member of the legislature as of that time. So, I just have to ask the question, does that have a bearing on our making an interpretive ruling?”

Vice Chairman Sytek: “I think anyone can ask for an interpretive ruling.”

Representative Lynn: “Where does it say that?”

Mr. Lambert: “It doesn’t say otherwise. It just says the Committee may issue interpretive rulings.”

Representative Lynn: “So, I guess, if the statute or a rule of the legislature specifically said it doesn’t have to impact you personally, then that’s fine, then I would be fine with it. But if that’s an open question, the general ideas of standing and that kind of thing, and us making unnecessary interpretive rulings, I think that there’s some weight to that. If somebody from California asked us to make an interpretive ruling on this, that never did any lobbying, has no intention of doing any lobbying, ever moving to New Hampshire and running for the legislature, would we just do that? Because if the answer to that is yes, then potentially we would be getting a lot more requests for interpretive rulings than if you have to have some stake in the issue in order to make a request.”

Mr. Lambert: “It’s on page 27 of the (Ethics) Booklet. And those requirements are stated for the advisory opinion, but there is no such qualifying language about an interpretive ruling... and we state on the Committee’s website, and have for many years, that anyone can ask for an interpretive ruling.” {The Committee reviewed RSA 14-B:3, I (b) and (c).}

Vice Chairman Sytek: “I wonder about this Ethics Committee interpreting a law that won’t become effective until January and there will be a new Ethics Committee, so any interpretation this Ethics Committee would put forth, is there a question as to whether it would be binding on the new Ethics Committee? But I sure think it would be helpful to get this stuff settled.”

Chairman Gordon: “Or making an interpretation on a law that isn’t a law yet.”

Vice Chairman Sytek: “But the legislature will be meeting before the new Ethics Committee is settled and they’re going to need some guidance, especially with this new law because there are so many questions. Because it’s a dramatic departure from what has been the practice.”

After further brief discussion, Chairman Gordon asked the Committee if they would like to take testimony. They indicated they did.

Representative McWilliams submitted additional materials, testified and answered questions from the Committee. She said that it is important for the Committee to provide guidance for the next legislature starting in December about how the new law is going to be applied. She said the request is about more than 1 individual, it’s about providing guidance for everyone. Regarding the question of standing, she said the interpretive ruling is not about whether the person requesting it is an elected official and is not about whether the person requesting it is actually acting for their own personal interest. An interpretive ruling as a member of the public, she said, is still acceptable as a request. In terms of timing, she said the bill is going to be promulgated as of January 1, 2025, and there are a lot of elected, newly-elected and reelected members who will need guidance, so it makes sense to take up the request soon.

Representative McWilliams read from her submission, which included a power point presentation. She observed that lobbyists are not included in the bill where there is a list of professions that includes lawyers, accountants, advisors, etc. (in the prospective section RSA 14-C:4-e, Facts and Circumstances Tending to Show No Substantial Influence) and that if the bill’s drafters wanted to include lobbyists in that list they would have done so. She said, “We have an exception for advisors, for someone who is sort of an outside counsel providing advise but ... doesn’t have anything to win or lose here. In the present case, we’re not talking about an advisor, we’re talking about an advocate, so the goal of the lobby firm is to truly provide advocacy, not advisement, and therefore, while someone who is an accountant may fit into the exception, a full-fledged lobbyist was not intended to be exempt as an advisor because clearly, they are an advocate.”

Mr. Hess: “Did your analysis include any review and consideration of the legislative history?”

Representative McWilliams: “It did. I printed out both the House and Senate files and one of the documents that I included but did not reference, but I’m glad to draw your attention to, was the ‘Ethics Recusal Decision Tree.’ This is from the Senate file, and it was part of Representative Hill’s analysis when this bill was heard by the Senate.”

Senator Rosenwald: “I am interested in your statement that lobbying is not advising, it’s advocacy. How do you arrive at that?”

Representative McWilliams: “That’s a great question. I would say, having been a state representative for 3 terms now and working with lobbying organizations across the board, lobbyists often testify on bills and provide information and their own personal take on the direction the bill should go. And so, the process of wearing an orange pin and saying, ‘I’m here on behalf of x organization’ puts them out there as more than an advisor, but as an advocate who

speaks on behalf of or against a bill. And so, personal experience on that one. I think it may be worth researching to see how other ethics committees have analyzed the role of lobbyists. Certainly, I think, that there is an argument to be made on advising but, at the end of the day, the reason that a client hires a lobbying firm is because they want to achieve a specific outcome on a bill.”

Attorney William Christie introduced himself as an attorney from the law firm Shaheen & Gordon and said he was appearing on behalf of Tara Reardon, a candidate for the state Senate. He began by taking up the question of jurisdiction and standing. He argued that the Committee should not take up the issue at this time for several reasons. He said HB 1388 does not take effect until January 1, 2025, and Representative McWilliams will not be a member of the legislature during that time frame. Also, Ms. Reardon is the Democratic nominee for the state Senate, but not currently a member of the NH legislature. There will be a new legislature beginning in December on Organization Day, with new leadership, and a newly appointed Ethics Committee. He argued that under the principles of standing and because it would be more prudent, the new Ethics Committee in the new legislature should interpret the new law. He said HB 1388 specifically contemplates a conflict that may arise between a member and specific legislation, or a specific legislative issue and the Committee had neither before it. The statute, he said, talks about specific situations. The state budget and revenue bills are exempted from the law. He said it is very difficult as a hypothetical for the Committee, without a bill before it, or any facts before it, to make a determination about the circumstances in which the law would apply. He said that Mr. Hess had asked about the legislative history of the bill and “the legislative history is very specific on this, and there are multiple examples, but ... when Senator Soucy gave a response... she said the analysis will need to be very fact specific, that’s her quote, and be fact driven. And that you will have to have legislation before you. And I submit that this Committee will have to have legislation before it and facts before it to make a determination, and not a determination based on hypotheticals.”

On the substance, Attorney Christie said, “we disagree with Representative McWilliams’s interpretation of the statute.” He said RSA 14-C:4-a, I applies to the situation where the legislator or household member would personally benefit from the legislation itself, such as when a legislator is in a certain industry and the bill would create funding or subsidies for the industry or take funding or subsidies for that industry away. That does not apply, he said, in the circumstance described in the request. He said “saying that someone will be able to continue their job, or their spouse will be able to continue a job because there is a piece of legislation in front of them, is not specific enough to fall within the ‘direct and substantial financial benefit’ as contemplated by the statute. And the statute itself actually redefines what a special interest is under the new law which has much more specific information in there and a more broader type of interpretation than we just heard, that just because someone maybe is able to keep their job, keep a client, that is not contemplated under that provision of the law.”

Attorney Christie said, “more on point for the questions before you, the hypotheticals before you, is that subsection II which says, ‘A legislator shall recuse himself or herself from participation in any official legislative activity’ when all of the following apply the following: ‘I. Receives financial remuneration from an organization; II. Holds a position to exercise substantial influence over the affairs of the organization; and III. The organization has lobbied, testified, or otherwise attempted to influence the outcome of the official legislative activity.’ He said there are significant exceptions that follow, including anything that relates to the state budget or revenue bills. He said, “But more importantly ... is the whole definition of the ‘organization’ ... is intended to refer to is an entity on whose behalf of any lobbying is done, and not the lobbyist themselves, that the person identified as having a substantial influence is the voting member of the governing

body: presidents, CEOs, COOs, CFOs. It's clear that that language is talking about companies or entities, or nonprofits, whose interests are being lobbied for, and exempted from people who that statute applies to is specifically a person who is a contractor for such an organization. The statute does use the examples of the attorney, accountant, or investment manager or advisor, but those are the same types of duties and responsibilities that a lobbyist would have for an organization and a lobbyist in the rest of the language of the statute, 'whose sole relationship to the organization is providing professional advice ... with respect to transactions from which the contractor will not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered).' That language, I think, clearly in our view ... that the client is the organization and, to use the hypothetical you have in front of you, the lobbyist is the contractor and there is no distinction in the law here regarding advocacy... So, for those reasons, we believe that even if the Committee interprets the statute at this time, we believe that the interpretive ruling should not find that this law applies to situations where a legislator has a family member who is a lobbyist...

“And finally, this is a very complicated issue here where a house bill and a senate bill were merged... there's a very robust legislative history and if the Committee is inclined at all to take up interpretation of the actual substance of the law, we would like the opportunity to ... brief the issue in a filing...”

Attorney Arthur B. Cunningham, who described himself as a citizen of Hopkinton and someone who has practiced law for 60 years, spoke to the Committee and said that the obvious intent of the House Bill 1388 is not complicated at all, he said it's to inform the public so the public has confidence that there will be no suspect votes by a member of the Senate. He said that “a candidate being married to a powerful lobbyist, who has high-paying clients in the landfill business, in the gambling business and multiple businesses, any bill that comes forward that impacts those areas – and he may or may not lobby on that specific bill – that that influence remains.” He urged the Committee to issue an opinion soon.

Allan Hershlag spoke to the Committee and said that having lived in Concord he would like to be assured that those who represent him are not able to vote on issues where that legislator has a special, not substantial, interest greater than the public at large. He said it's imperative that guidance be provided to legislators as to when they are required to recuse themselves. He said “if a family member is a lobbyist for an organization and they have a financial interest because if they're not good at what they are doing, they're not going to be hired again, how is the spouse of the legislator not have a conflict?” He said that he “can't imagine anyone who's walking on the street today that would be approached and asked if they thought that it was a conflict of interest that wouldn't agree that a lobbyist who is working for an organization that if they have a member of their family in the legislature that that member of their family wouldn't have a conflict.”

Karen Irwin spoke to the Committee. She said she lives in Hopkinton and made the following points: the section of the bill establishing RSA 14-C:4-e, II does not specifically exempt lobbyists from the discussion and if you look at the professions that are listed, what an attorney, accountant or investment manager would be doing, they are not doing the same as a lobbyist. Their influence is just giving legal opinions and having investments. She said there is a definition in NH statutes and partially quoted RSA 15:1. She said the bill was approved and signed into law on August 22, 2024, and some guidance is in order as there are some conflicts to resolve.

The Committee discussed the request.

Representative Lynn: “I would like to make a motion that we not issue an interpretive ruling, and it’s largely for the reasons that were stated by Attorney Christie, and I actually think they were stated by many of the witnesses. This is complicated and what we have now in a request for an interpretive ruling is a very general request, and as I think Mr. Christie pointed out ... I think that what we need to make an intelligent decision is we need much more of a factual background: ‘I’m a legislator, my spouse works for this company, does this kind of thing, can I participate in deliberations regarding this bill?’ That would give us much more of a basis to issue a decision. And the other thing I would say, it says the Committee is authorized to issue interpretative rulings. It doesn’t say we must. What I’m afraid of is if we issue a very general sort of interpretive ruling, we’re very likely to be wrong. We’re likely not to have considered unintended consequences that will come up in the next case, and so I think its not a good idea to do that. And I think the other point that Attorney Christie made, which I agree with, is ... there will be a new legislature in effect ...hopefully we will be back here, but maybe not. I just think there’s a whole host of reasons that make it inadvisable to issue an interpretive ruling at this time...”

Vice Chairman Sytek: “I disagree. To have the whole legislature come in without knowing anything about how this new law is going to be interpreted. And the new Ethics Committee? We didn’t get appointed until well into February. They’re going to be there for quite a while, so we’re going to need some advice. We could issue an interpretive ruling with the caveat that this is what this Ethics Committee thinks, and it may be superseded by a future one. And I think the question is general enough: ‘Can somebody who is married to a lobbyist vote on issues that affect his client?’ I think it’s only fair to the parties to know in advance, to provide some guidance on his.”

Chairman Gordon: “I think that’s one of the concerns I had with the request itself. It did ask 5 questions, but all 5 presumed that the legislation does apply to a person who is married to a lobbyist, and they ask under these circumstances would these things happen. And I think ultimately that’s the question that really needs to be decided. If you’re married to a lobbyist, do you have to recuse yourself? ... And I think that ultimately what it comes down to is: Under what circumstances? Just in effect if they represent a client or if they actually represent them in the legislature, or if they advocate. I think those are ultimately the questions that need to be addressed. But I think there is some urgency in that on January 1 we’re likely to have that circumstance.”

Mr. Hess: “A couple of comments, Mr. Chairman. First of all, I read Attorney McWilliams supplemental request, dated September 16, 2024, in which she requests, in addition to the 5 questions, is that we take specific action and make a specific interpretive ruling regarding Tara Reardon and her husband, which I would say on its face is outside the scope of our jurisdiction because, first of all, Ms. Reardon is not a member of the legislature and she may never be a member of the legislature ... and number 2, it’s not ripe for a decision because that hasn’t occurred and no situation has arisen in which the subject presents itself and so I would support Representative Lynn’s motion with respect to those supplemental requests without any further discussion. With respect to those 5 questions that are raised, I agree with you (Chairman Gordon) the questions assume that a lobbyist is covered in the legislation. One of the things that we have to look to, and as both you and Representative Lynn know as former judges, is we go to the legislative history, not just one part of the legislative history, but the entire legislative history to try to divine the intent of the legislature...”

ITEM #7

New/Other Business.

There was no new or other business.

ITEM #8

Scheduling of the next meeting.

The Committee scheduled its next meeting on October 14, 2024, at 1:00 P.M.

The Committee's meeting adjourned at approximately 3:40 P.M.

{Prepared by Richard M. Lambert, Executive Administrator}