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LOCAL GOVERNMENT & ENERGY COMMITTEE
MEMBER

APPROPRIATIONS COMMITTEE
MEMBER

**REPORT OF COMMITTEE OF LEGISLATORS
ON COMPLAINT AGAINST A LOBBYIST**

TO: Executive Committee of the Colorado General Assembly

FROM: Senator Hodge and Representatives Scanlan and Massey, the
Committee of Legislators appointed or designated pursuant to Joint
Rule 36

DATE: April 16, 2010

Pursuant to Joint Rule 36 (d), the Committee of Legislators investigating the complaint filed by Representative Wes McKinley against Mr. Nathan Gorman submits the following report:

I. ACTIVITIES

The Committee has met three times, on April 13, 14, and 16, 2010. The Committee reviewed the Complaint filed by Representative Wes McKinley, as well as the letter of support submitted by Representative Jim Kerr. The Committee also reviewed a responsive letter from Mr. Gorman, dated April 13, 2010, which letter was provided to the Committee on behalf of Mr. Gorman by his attorney, Mr. Larry Carroll. The Committee interviewed Representative Wes McKinley, Representative Kent Lambert, Majority Leader Paul Weissmann, Representative Jim Kerr, Senator Ken Kester, and

Mr. Nathan Gorman. It also interviewed House Sergeant-at-arms Joel Malecka and Ms. Christine Staberg.

II. ELEMENTS OF VIOLATION

Representative McKinley's Complaint alleged that Mr. Gorman represented to certain county commissioners that he would support a particular amendment to the long appropriations bill regarding the Trinidad state nursing home,¹ but later lobbied against the amendment. The Complaint further alleged that Mr. Gorman approached Representative McKinley and accused Representative McKinley of being a liar and then threatened to cut out Representative McKinley's "lying tongue" and stuff it down his "lying throat". In his letter of response, Mr. Gorman denied the accusations made in the Complaint. The Committee treated Representative McKinley's letter as a complaint under Joint Rule 36 (b) (1) or (b) (2), which provide as follows:

36. Lobbying Practices

(b) **Prohibited practices.** No person engaging in lobbying shall:

(1) Attempt to influence any legislator or elected or appointed state official or state employee or legislative employee by means of deceit or by threat of violence or economic or political reprisal against any person or property, with intent thereby to alter or affect said legislator's, elected or appointed state official's, state employee's, or legislative employee's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or her or the agency or body of which he or she is a member;

(2) Knowingly provide false information to any legislator or elected or appointed state official or state employee or legislative employee as to any material fact pertaining to any legislation;

In order to determine that Mr. Gorman violated Joint Rule 36 (b) (1), the Committee would need to find that:

(1) A person engaged in lobbying;

¹The amendment disallowed the use of revenue from the state veterans nursing homes to pay for costs at the Trinidad state nursing home.

(2) attempted to influence a legislator or elected or appointed state official or state employee or legislative employee;

(3) by means of deceit or by threat of violence or economic or political reprisal against any person or property;

(4) with intent thereby to alter or affect said legislator's, elected or appointed state official's, state employee's, or legislative employee's decision, vote, opinion, or action concerning any matter which is to be considered or performed by him or her or the agency or body of which he or she is a member.

In order to determine that Mr. Gorman violated Joint Rule 36 (b) (2), the Committee would need to find that:

(1) A person engaged in lobbying;

(2) knowingly provided false information;

(3) to any legislator or elected or appointed state official or state employee or legislative employee;

(4) as to any material fact pertaining to any legislation.

III. STATEMENT OF UNDISPUTED FACTS

The Committee of Legislators believes that the following facts surrounding the Complaint are undisputed:

1. In a prepared statement, Mr. Nathan Gorman acknowledged that he is a professional lobbyist who has worked at the state capitol as such since 1998.
2. The United Veterans Committee of Colorado is an organization on behalf of which Mr. Gorman lobbies.
3. In February 2010, Representative McKinley introduced House Bill 10-1217, *Concerning the repeal of the authority of the executive director of the department of human services to sell the Trinidad state nursing home.*
4. The veterans organization that Mr. Gorman represents opposes House Bill 10-1217.
5. Majority Leader Weissmann recognized that it was clear Representative McKinley and Mr. Gorman were not getting along and he believed it would be best if they stayed away from each other.

6. Representative McKinley testified that during the 2010 legislative session he sponsored an amendment to the long appropriations bill that added a footnote to that bill which would disallow the use of revenue from the state veterans nursing homes to pay for costs at the Trinidad state nursing home for the elderly.
7. Mr. Jim Montoya and Mr. Jim Vigil are Las Animas county commissioners who represented to Representative McKinley that they understood Mr. Gorman to say his client, the veterans organization, would not oppose the long appropriations bill footnote regarding the Trinidad state nursing home.
8. Representative McKinley learned that the footnote that had been added to the long appropriations bill in the House of Representatives was "in trouble" in the Senate and was being lobbied "pretty hard".
9. Late in the day on April 6, 2010, Representative McKinley was in Senator Ken Kester's office discussing the Trinidad state nursing home long bill footnote issue and House Bill 10-1217.
10. During the course of their conversation, Representative McKinley made a statement to Senator Kester regarding Mr. Gorman's truthfulness.
11. Mr. Gorman testified that, around that same time of day on April 6, 2010, he was attempting to make contact with various Senators in the Senate "bullpen" office area on the second floor, as well as in the Senate majority office area, in an effort to count votes on the long appropriations bill footnote regarding the Trinidad state nursing home.
12. Mr. Gorman testified that he also wanted to speak with Senator Kester to explain certain misinformation, about which Senator Kester had earlier expressed concern during the Senate Republican caucus, regarding the fiscal note on House Bill 10-1217.
13. Mr. Gorman testified that, while he was in the Senate "bullpen" office area, as he was walking by Senator Kester's cubicle, he heard and saw that Senator Kester was in his office with Representative McKinley.

14. Mr. Gorman testified that he overheard a conversation between Senator Kester and Representative McKinley in which Representative McKinley called Mr. Gorman a liar.
15. Mr. Gorman entered Senator Kester's office while Representative McKinley was also in the office with Senator Kester.
16. Mr. Gorman stated that he intended to present information to Senator Kester about the fiscal note on House Bill 10-1217, and that he did not intend to engage Representative McKinley.
17. There was no heated conversation between Representative McKinley and Mr. Gorman while they were in Senator Kester's office.
18. Mr. Gorman did not linger in Senator Kester's office and left to continue walking around looking for Senators, including going up to the third floor and back down again.
19. When Representative McKinley left Senator Kester's office, he went to the second floor elevator lobby.
20. While Representative McKinley and Mr. Gorman in the second-floor elevator lobby, Representative Lambert walked by.
21. Representative McKinley asked Representative Lambert to stop and listen to what Mr. Gorman was saying, and directed Mr. Gorman to repeat what he had said.
22. Mr. Gorman did not say anything while Representative Lambert listened.
23. When asked whether there had been anything in his presentation of the issue that would give an impression that he would alter or change his decision, vote, opinion, or actions regarding his legislation concerning the Trinidad state nursing home, Representative McKinley answered "no".
24. Mr. Gorman testified that, because of their history, he knew he could not have possibly affected Representative McKinley's opinion on anything.

IV. DISPUTED FACTS

The testimony concerning the following matters surrounding the Complaint are in dispute.

1. Whether an exchange between Representative Wes McKinley and Mr. Nathan Gorman occurred in the elevator lobby on the second floor of the state capitol building on April 6, 2010, during which Mr. Gorman threatened to cut out Representative McKinley's "lying tongue" and stuff it down his "lying throat".
 - a. Mr. Gorman denies, unequivocally, that any such exchange occurred and that he did not say what Representative McKinley alleged in the Complaint. Mr. Gorman testified that when he was returning to Senator Kester's office from the third floor, he walked into the second-floor elevator lobby at the same time that Representative McKinley was present by the elevator. Mr. Gorman stated that, within only seconds of his arrival at the elevator lobby, Representative Lambert walked by. Mr. Gorman's account is that Representative McKinley told him [Mr. Gorman] to repeat to Representative Lambert what he had said, but, in fact, he had not said anything. Mr. Gorman was surprised by this and stated that there had been no heated confrontation between him and Representative McKinley on or near the elevator.
 - b. Representative McKinley testified that there was an angry verbal exchange in the elevator lobby during which Mr. Gorman threatened to cut out Representative McKinley's "lying tongue" and stuff it down his "lying throat".
 - c. Representative Lambert testified that he did not hear any conversation between Representative McKinley and Mr. Gorman, but that when he was coming out of Room 271, Representative McKinley asked him [Representative Lambert] to stop and listen to what Mr. Gorman was saying, and that Mr. Gorman did not say anything at that point. Representative Lambert further testified that Representative McKinley and Mr. Gorman were visibly mad and appeared angry.
 - d. Ms. Christine Staberg testified that on the afternoon of April 6, 2010, she was traveling on the elevator from the basement to the third floor, when the elevator stopped on the second floor. She stated that, when the elevator doors opened, she saw Representative McKinley, Mr. Gorman, and Representative Lambert. She further testified that she did

not hear any conversation between Representative McKinley and Mr. Gorman other than Representative McKinley saying to Mr. Gorman, "Say that again". Ms. Staberg testified that she observed that both Representative McKinley and Mr. Gorman were visibly upset and angry with each other and that it looked as if there had been an exchange between them.

- e. Senator Kester testified that he overheard a loud conversation in the hallway after Representative McKinley had left his office. He stepped a few steps out of his office and heard the voices of Mr. Gorman and Representative McKinley. Senator Kester testified that Mr. Gorman was more vocal and that the conversation was one-sided with Mr. Gorman doing the talking. Although he did not hear the entire conversation, Senator Kester testified that he heard a couple of words, including "cut" and "throat".
 - f. Mr. Gorman believes that, due to the sequestered placement of Senator Kester's office in the "bullpen" area, he would be surprised that Senator Kester would have been able to hear any conversation in the elevator lobby.
2. Whether Mr. Gorman was in Senator Kester's office before Representative McKinley was and the content of Mr. Gorman and Senator Kester's conversation at that time.
- a. Senator Kester recalled that Mr. Gorman came into his office prior to Representative McKinley's arrival in order to convey, rather vigorously, that his clients were opposing the [Trinidad state nursing home] legislation, but that he [Senator Kester] indicated to Mr. Gorman that he was sorry to hear that but that he was going to continue with it. Senator Kester testified that after that conversation with Mr. Gorman, Representative McKinley then came into his office.
 - b. Mr. Gorman testified that Senator Kester had the events out of sequence and that Mr. Gorman actually visited Senator Kester about the Trinidad nursing home bill *after* Representative McKinley had been in Senator Kester's office and after Mr. Gorman had seen Representative McKinley and Representative Lambert by the elevator, not before. Mr. Gorman also testified that he had approached Senator Kester only to explain the misinformation on the fiscal note, not to lobby him.


V. FINDINGS AND RECOMMENDATIONS

1. Based on the foregoing information, this Committee makes the following findings of fact:
 - a. That Mr. Nathan Gorman was a professional lobbyist on April 6, 2010.
 - b. That Mr. Jim Montoya and Mr. Jim Vigil are Las Animas county commissioners and not legislators, elected or appointed state officials, state employees, or legislative employees.
 - c. That on April 6, 2010, Mr. Gorman overheard a conversation between Representative McKinley and Senator Kester emanating from Senator Kester's office in which Representative McKinley stated that Mr. Gorman was capable of not telling the truth.
 - d. That following that conversation, a heated confrontation ensued at the second-floor elevator between Representative McKinley and Mr. Gorman, the exact content of which is unclear and the evidence insufficient to substantiate that there was an actual threat of violence.
 - e. Based on the testimony of Representative Lambert, Senator Kester, and Ms. Staberg, the Committee finds that the statement made by Mr. Gorman that there was no heated confrontation between he and Representative McKinley at the elevator was not credible.
 - f. That, despite the apparent angry nature of the exchange between Mr. Gorman and Representative McKinley, the Committee finds that even if a threatening statement had been made by Mr. Gorman, it was not made in an attempt to alter or affect Representative McKinley's decision, vote, opinion, or action concerning any matter which was to be considered or performed by him or the legislative body, but rather was the result of a history of bad blood between the parties.
2. Based on the foregoing information and findings of fact, and after careful consideration of the provisions of Joint Rule 36 (b) (1) and (b) (2), the Committee further finds:

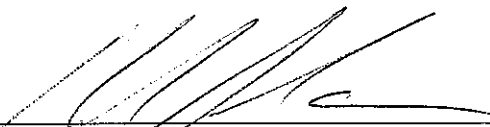
- a. That there is neither an allegation in the Complaint nor evidence from the testimony to substantiate that Mr. Gorman knowingly provided false information to any legislator or elected or appointed state official or state employee or legislative employee as to any material fact pertaining to any legislation, as contemplated in Rule 36 (b) (2) of the Joint Rules of the Senate and House of Representatives.
 - b. That the evidence received by the Committee does not support a finding that Mr. Gorman threatened Representative McKinley with violence in an attempt to alter or affect his decision, vote, opinion, or action concerning any matter which was to be considered or performed by him or the body, as contemplated in Rule 36 (b) (1) of the Joint Rules of the Senate and House of Representatives.
 - c. Therefore, the Committee finds that Mr. Gorman did not violate either Joint Rule 36 (b) (1) or (b) (2).
 - d. However, the Committee further finds that the testimony given by Mr. Gorman that essentially called into question the truthfulness and integrity of two respected legislators is a serious concern to the members of this Committee.
3. Accordingly, the Committee makes the following recommendations to the Executive Committee:²
- a. That the Executive Committee find that Mr. Gorman did not violate Rule 36 (b) (1) or (b) (2) of the Joint Rules of the Senate and House of Representatives and that the Executive Committee dismiss the Complaint filed pursuant thereto.
 - b. That the Executive Committee nevertheless consider including in the letter advising Mr. Gorman of the dismissal of the Complaint that a higher standard of behavior and respect is expected of Mr. Gorman when he is engaging in lobbying activities with members of the Colorado General Assembly in order to protect and preserve the dignity of the Colorado General Assembly as well as the integrity and civility of the legislative process.

² The recommendations made herein by the Joint Ethics Committee to the Executive Committee are advisory only and are not binding upon the Executive Committee.

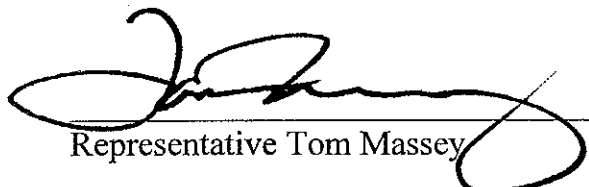
Respectfully submitted:



Senator Mary Hodge, Chairman



Representative Christine Scanlan



Representative Tom Massey