

**Request for Senate Ethics Committee Investigation
and Senate Resolution Censuring
Senate Minority Leader Robert J. Mellow**

Data Requests for the Committee on Ethics & Official Conduct

November 16, 2010

Senator Charles McIlhinny, Chairman
Committee on Ethics and Official Conduct
Room 187 Capitol Building
Senate Box 203009
Harrisburg, PA 17120-3009

Dear Senator McIlhinny:

I am responding to your dismissal of my request for an investigation of Senator Robert J. Mellow filed on February 1, 2010. I requested that the Senate Ethic's Committee ("Committee") investigate whether Mr. Mellow has a conflict of interest by serving on the boards of Blue Cross of Northeastern Pennsylvania, (1) its for-profit subsidiary, AllOne Health Group, and Penseco Financial Services Corp. (2) (See Appendix)

¹ "In 2007, the 16 board members for the Hospital Service Association of Northeastern Pennsylvania — the insurer's official corporate name — earned an average of \$48,380, according to state Insurance Department filings. Mr. Mellow's Blue Cross stipend comes on top of his \$110,350 annual salary as Senate minority leader and \$22,000 per year he said he receives as a longtime member of Old Forge Bank's board." (*Blue Cross confirms Mellow's duties*, "Times-Shamrock," August 12, 2008)

² Senator Mellow receives \$22,000 as a board member of Old Forge Bank, and sits on the Senate's Banking and Insurance Committee. Mr. Mellow was not up for reelection, but on October 29 accepted a \$8,250 campaign contribution from the Pa Bankers' Public Affairs Committee followed by \$1,000 the next day from Bank of New York MC PAC. (Pa Department of State)

My February 1, 2010 request was in response to a defect the Committee identified in a similar request for an investigation I filed on November 18, 2008. The Senate Committee on Ethics and Official Conduct sent me a letter on December 16, 2009, saying my complaint was dismissed because it didn't adhere to a chamber rule requiring it specify what section of the legislative ethics code was being violated. The letter was from panel chairman Sen. John Gordner, and was sent on the last day of session for the Senate. The letter was sent following a meeting of Committee members of which no minutes exist. (Enclosure 1)

My February 1, 2010, filing cured the defect, yet the Committee refused to investigate Mr. Mellow. On September 29, 2010, the Committee sent me a one paragraph letter that read:

Please be advised that your complaint dated February 1, 2010 against Senator Robert J. Mellow was reviewed by the Senate Committee on Ethics and Official Conduct. Following that review, the committee concluded on September 27, 2010, by a vote of 6-0 to stay further investigation pending the outcome of federal inquiries. (Enclosure 2)

The Committee's response is flawed on its face, and deficient and prejudiced by the participation of Senator Musto who is under federal investigation for similar alleged transgressions as Senator Mellow.

In the court of the common sense, Mr. Musto should have recused himself.

The Pennsylvania's Legislative Code of Ethics, 46 P.S. Section 143.3 (6), expressly states:

(6) "Member" shall include a Senator, Representative, officer or employe of the General Assembly or any committee thereof; but not a person employed on a contractual basis or without compensation for a particular project.

I respectfully submit that Mr. Mellow's behavior in the enclosed Complaint clearly violated 46 P.S. Section 143.5(a):

(a) No member shall knowingly solicit, accept, or receive any gift or compensation other than that which he is duly entitled from the Commonwealth which is intended to influence the performance of his official duties or which would influence the performance of his official duties nor shall any member solicit, accept, or receive any such gift or compensation for advocating the passage or defeat of any legislation or for doing any act intended to influence the passage or defeat of legislation including, in the case of a Senator or Representative, his vote thereon.

I am respectfully requesting that the Committee reconvene and examine this matter.

1) I am formally requesting that you convene a Senate Ethics Committee meeting to investigate the behavior and corporate affiliations of Senate Minority Leader Robert J. Mellow in regard to the timing, and his refusal to voluntary submit to an Ethics Commission investigation, relating to his appointment to the Board of the nonprofit Blue Cross of Northeastern Pennsylvania and his appointment to its for-profit subsidiary AllOne Health Group, and Mr. Mellow's Penseco Financial Services Corporation/Old Forge Bank board seat. (3)

3 On March 25, 2009, Old Forge Bank, announced that its shareholders approved an agreement and plan of merger with and into Penn Security Bank and Trust Company. Mr. Mellow was seated on the Senate's Banking and Insurance Committee during the merger process. As a director at Penseco Financial Services Corp., Mr. Mellow receives between \$33,000 and \$49,000 per year depending upon attendance.

2) After conducting due diligence, I am formally suggesting that the Committee introduce a Senate resolution admonishing Mr. Mellow modeled on Senate resolution No. 165 Session of 1994 where Mr. Mellow was “admonished” for an “ethical matter” relating to the misappropriation of \$417,692 in Democratic Caucus Funds.

3) Refer the investigation to appropriate civil, regulatory agencies and law enforcement agencies if deemed and appropriate;

4) Take whatever actions deemed necessary by the Committee to curtail Mr. Mellow’s unethical behavior; and,

5) I am also submitting a request for the Senate Ethics Committee to identify the “inquires” in question, and respond to the enclosed data requests within 20 calendar days of receipt

The information submitted is true and correct to the best of my information and belief

Respectfully submitted,

Eric J. Epstein
4100 Hillsdale Road
Harrisburg, Pennsylvania 17112
Phone: (717)-541-1101
lechambon@comcast.net

cc:

Senator Joseph B. Scarnati III,
President *Pro Tempore*
Senator Robert J. Mellow, Minority Leader

Senator Dominic Pileggi, Majority Leader
Senator Richard Allaway
Senator Jay Costa,
Senator John Gordner (Chairman Emeritus)
Senator Raphael Musto,
Senator Michael O'Pake
Senator Don White

Attorney General Tom Corbett

Executive Director, John J. Contino, Pennsylvania State Ethics
Commission

Data requests

- 1) Please define and clarify which federal inquiries the Committee is referring to, i.e., “Following that review, the committee concluded on September 27, 2010, by a vote of 6-0 to stay further investigation pending the outcome of federal inquiries.”
- 2) Please provide documentation, i.e., statute, legislation or precedent, that precludes the Senate of Pennsylvania from enforcing its own rules while an unrelated and external investigation is pending.
- 3) Please provide the Committee's legal opinion that allows the Senate of Pennsylvania to refrain from enforcing its own rules while an unrelated and external investigation is pending.
- 4) Please provide the Committee's justification for allowing Sen. Raphael Musto, who is the subject of similar “federal inquiry”, to vote on a matter that is potentially a conflict of interest.
- 5) Please define and clarify the term “stay,” and quantify the time clock applied this term.
- 6) Please define and clarify the term “outcome”.
- 7) Please provide minutes from the Committee's meeting convened on September 27, 2010.

INSTRUCTIONS

- a)** These data requests shall be deemed to be continuing. The Respondent is obliged to change, supplement, and correct all answers to Interrogatories to conform to available information, including such information as first becomes available to the Respondent after the answers hereto are filed;
- b)** The answers provided should first restate the question asked and identify person(s) supplying the information;
- c)** All information is to be divulged that is within the knowledge, possession, control or custody of the Respondent or may be reasonably ascertained thereby. The term “Committee”, “the Ethic’s Committee”, or “the Senate Ethic’s Committee” ; as used herein, includes: the Senate Ethic’s Committee, its attorneys, agents, employees, or other representatives and predecessor or successor attorneys, agents, employees, or other representatives;
- d)** As used herein the terms “document(s)” or “work paper(s)” include, but are not limited to, the original and all copies (regardless of origin and whether or not including additional writing therein or attached thereto) of memoranda, reports, books, manuals, instructions, directives, records, forms, notes, letters, notices, confirmations, telegrams, pamphlets, notations of any sort concerning conversations, telephone calls, meetings or other communications, bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys, worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing, in whatever form, stored or contained in or on whatever medium including computerized memory or magnetic media.

PROOF OF SERVICE

I, Eric Joseph Epstein, hereby certify that a copy of the attached and Appendices were, on February 1, 2010 served upon the following persons via First Class Mail:

Service by First Class Mail:

Senator Joseph B. Scarnati III,
President *Pro Tempore*
292 Capitol Building
Senate Box 203025
Harrisburg, PA 17120-3025

Senator Dominic Pileggi,
Majority Leader
350 Capitol Building
Senate Box 203009
Harrisburg, PA 17120-3009

Senator Richard Allaway,
Committee on Ethics and Official Conduct
187 Capitol Building
Senate Box 203009
Harrisburg, PA 17120-3009

Senator Jay Costa,
Committee on Ethics and Official Conduct
545 Capitol Building
Senate Box 203009
Harrisburg, PA 17120-3009

Senator Raphael Musto,
Committee on Ethics and Official Conduct
17 East Wing
Senate Box 203009
Harrisburg, PA 17120-3009

Senator Michael O'Pake,
Committee on Ethics and Official Conduct
11 East Wing
Senate Box 203009
Harrisburg, PA 17120-3009

Senator Don White, Committee on Ethics and Official Conduct
Room 286, Main Capitol Building
Senate Box 203009
Harrisburg, PA 17120-3009

Senator John Gordner, Chairman Emeritus
Senate Ethics Committee
Main Capitol Building, Room 351
PO Box 203027,
Harrisburg, PA 17120-3027

Senator Robert J. Mellow, Minority Leader
Former Member of the
Committee on Ethics and Official Conduct
535 Capitol Building Senate
Senate Box 203022
Harrisburg, PA 17120-3022

Attorney General Tom Corbett
Pennsylvania Office of Attorney General
Strawberry Square,
16th Floor
Harrisburg, PA 17120

Executive Director, John J. Contino
Pennsylvania State Ethic's Commission
Finance Building, Room 309
Harrisburg, PA 17108-1470