



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

October 20, 2008

Speaker Sheldon Silver
Minority Leader James Tedisco
Legislative Office Building
Albany, New York 12248

Dear Speaker Silver and Minority Leader Tedisco:

On August 28, 2008, the Assembly Counsel to the Majority received a letter from a former employee of Assemblyman Greg Ball alleging conduct, which, if established, could constitute a violation of the Assembly Sexual Harassment/Retaliation Policy. On September 29, 2008, the Counsel to the Majority forwarded to the Members of the Committee on Ethics and Guidance a copy of his findings with respect to this matter.

The Assembly Sexual Harassment/Retaliation Policy ("the Policy") states that sexual harassment will not be tolerated within the Assembly workplace. It follows the Federal Equal Opportunity Commission guidelines with respect to the definition of sexual harassment. Such definition includes unwelcome verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The Policy provides that after a complaint of sexual harassment against a Member of the Assembly is investigated by the Office of Counsel to the Majority, the findings of such investigation are referred to the Assembly Standing Committee on Ethics and Guidance. Following the Committee's investigation of the matter, it reports its findings in writing to the Speaker (and, where appropriate, the Minority Leader) accompanied by a recommended remedy, or disposes of the matter in accordance with its policy regarding disciplinary matters.

Upon receipt of the correspondence from the complainant, the Counsel to the Majority initiated a thorough investigation of this matter, which included numerous interviews and a review of relevant documentary evidence. As a result of this investigation, the Committee finds that a violation of the Policy was not established. Further, the Policy provides that complaints "shall be made within one year after occurrence of the alleged prohibited conduct."¹ In this case, the complaint was made 16 months after the alleged conduct and 14 months after the Complainant left the Assembly payroll.

¹ As with statutes of limitations in legal proceedings, there are many reasons for such time restrictions, including the desire to encourage prompt resolution of complaints, the difficulties presented in investigating stale complaints (fading memories, lost or destroyed documents, difficulty locating witnesses) and the need to protect against fraudulent claims.

While we affirm that sexual harassment cannot and will not be tolerated in the Assembly workplace, the Committee has found that prohibited conduct under the Policy has not been established, and thus, no action is recommended. The Committee recommends that a letter advising Assemblyman Ball of its findings be publicly issued.

The Committee makes the foregoing findings after due deliberation, mindful of the importance of our responsibility to the Assembly, to its Members and employees, and to the People of the State of New York.

Sincerely,

William H. Wynne
Chairman

Joseph M. Ervin

Michael S. ...

Kevin A. Cahill

William C. ...
Ranking Minority Member

D. P. ...

Ronald C. ...

Diondre H. ...