

House Ethics Committee Chides the OCE and Qualifies the Authority of the *House Ethics Manual*

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On October 29, 2009, the House Committee on Standards of Official Conduct (the Ethics Committee) released a report finding that Rep. Sam Graves (R-MO) committed no ethics violations in connection with an invitation extended to Mr. Brooks Hurst, a co-investor in renewable fuel cooperatives with the Representative's wife, to testify at a Committee on Small Business hearing on the renewable fuels industry. The Graves matter had been referred to the Ethics Committee by the Office of Congressional Ethics (the OCE), the body-operative since the start of this year-established and intended by the House to conduct independent, nonpartisan reviews of allegations of ethics violations by House Members and staff and, when merited, to refer such allegations to the Ethics Committee for further inquiry and action.

More significant than the Ethics Committee's closure of the Graves matter itself, however, was the inclusion in its report of a lengthy, detailed and strongly worded critique of what the Committee called the "fundamentally flawed" review of the matter by the OCE. The Committee took the OCE to task for perceived lapses both in the OCE's procedures, and in its understanding and application of substantive ethics standards. Indeed, in faulting the OCE for its reliance on the *House Ethics Manual* as a source of relevant standards of conduct, the Ethics Committee, in a statement of potentially broad consequence, cast doubt on the authoritativeness of the *Manual*.

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In the October 29 Graves report, the Committee stated it was "deeply disappointed to identify several procedural and substantive deficiencies in OCE's review, some of which would appear to have been fatal to OCE's ability to continue its review." The Committee devoted 25 pages-of a total of 59 pages of report text -to detailing what it referred to as the "regrettable flaws" in the OCE's review. In its critique of the OCE's conduct of the Graves review, the Committee expanded on the following findings:

- "OCE failed to meet certain deadlines mandated by OCE's authorizing resolution and OCE's rules."
- "OCE's findings erroneously revealed the names and other identifying information of several cooperating witnesses in contravention of OCE's authorizing resolution."
- "OCE referred the matter to the [Committee] for further review without finding a 'substantial reason to believe' that there was a substantive violation of any standard of conduct. . . ."
- "OCE improperly [made] conclusions regarding the truth of statements by cooperating witnesses, including Representative Graves."
- "OCE ignored and failed to disclose [to the Committee] relevant information Representative Graves provided to it."
- "OCE failed to provide materials that were "potentially favorable or exculpatory to Representative Graves."

For their part, the Chair and Co-Chair of the OCE stated publicly on October 29 that "[t]here were no procedural problems with the OCE's handling of the matter involving Representative Graves." The Chair and Co-Chair continued: "In every matter . . . the OCE has followed its rules and the letter and spirit of the Resolution that created the OCE. We regret the Standards Committee's misunderstanding of our rules and process."

The Ethics Committee's finding that the OCE referred the Graves matter to it without discovering a substantial reason to believe that there was a substantive violation of a relevant standard of conduct is based on the Committee's disagreement with the OCE as to what constitutes "House 'precedent' on conflict of interest." In its report and findings, the OCE relied in part on guidance in the *House Ethics Manual* to articulate what it found to be the standards applicable to House Members when they are "participating in actions that may affect their personal financial interest. . . ." Beyond simply addressing the validity of the particular conflict standard described by the OCE, however, the Ethics Committee, in its report, responded: "The *House Ethics Manual* does not create independent duties outside of the rules and other standards discussed therein." This is a blanket statement of potentially broad consequence, both to House Members and employees and to any parties outside the House wishing to conform their dealings with House personnel to applicable standards of conduct. Insofar as the Manual does prescribe a host of interpretations, policies and procedures not otherwise evident in the rules, laws and other sources concerning such areas as, for example, gifts, conflicts and dealing with outside organizations, the Committee may find it necessary to explain further the extent to which it actually intended, in the Graves report, to qualify the authoritativeness of the *Manual*.

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