

STATE OF NEW HAMPSHIRE
EXECUTIVE BRANCH ETHICS COMMITTEE



33 Capitol Street
Concord, New Hampshire 03301-6397

David L. Nixon, Chairman
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John E. Blair, Secretary

L. Douglas O'Brien
Patricia B. Quigley
Deborah J. Schachter

Advisory Opinion

2007-010

Question Presented

Is receipt of a discount offered to all state employees by a business entity a prohibited gift?

Summary Answer

No, unless there is a conflict of interest.

Facts

Many business entities offer a discount on goods or services to all State employees. State employees acting in their personal capacity make purchases at the discounted prices by showing evidence of their employment by the State.

Legal Authority

RSA 15-B; RSA 21-G

Analysis

“Gift” is defined as (a) money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money; or (b) any other tangible thing, intangible thing, service or the use thereof having more than

insignificant economic value. Any such item with a value of less than \$10¹ is presumed to be an insignificant economic value. RSA 15-B:2, V(a)-(b). There are twelve exceptions to this broad definition of gift. *See* RSA 15-B:2, V (c)(1)-(12).

RSA 15-B:3, the prohibition on accepting gifts, includes three prohibitions. The first prohibition states that “it shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly, to any elected official, public official, public employee, constitutional official, or legislative employee.” Prohibition number two applies the same rule to family members if the gift is given with the intent to influence the state employee. The third prohibition states that “no elected official, public official, public employee, constitutional official, or legislative employee shall knowingly accept, directly or indirectly, any gift, as defined in this chapter.”

A commercial discount provided equally to a broad based group is not intended and could not reasonably be perceived as being intended to influence a specific employee in the performance of his or her public duties. It is a common business practice for vendors to offer discounts to large groups to increase market share, to gain more in volume than is lost in price. Where a discount plan is broadly available to all government employees, no one could fairly conclude that an individual employee had improperly exploited his government position by accepting the discount or was engaged in conduct that could raise a reasonable suspicion that he was violating the public trust. The reality is that the employee is being offered the discount because he is a member of a large group and not because of the performance of his public duties.

The prohibitions on gifts relate to gifts given to specific individual elected officials, public officials, public employees, constitutional officials, legislative employees or their family members. Thus, the prohibition on gifts is a restriction on gifts to specific individuals or to a discreet group of individuals. When the discount is provided to all state employees, without regard to the identity of any particular individual or sub-class of employee, the prohibition on gifts is not triggered.

This interpretation is consistent with RSA 21-G:23, Misuse of Position, which states, in relevant part, that

[n]o executive branch official shall: ... II. Use his or her position with the state to secure privileges or advantages for himself or herself, **which are not generally available to governmental employees...** (emphasis added).

Thus, the legislature explicitly distinguished privileges like discounts offered to all State employees from a discount offered only to a specific individual or the employees of a particular discrete sub-unit of government. This provision tacitly authorizes privileges, such as discounts, offered because of someone’s status as a state employee, provided the privilege is generally available to governmental employees.

¹ House Bill 828 (2007), adopted by both houses but not yet signed by the Governor would increase this amount to \$25.

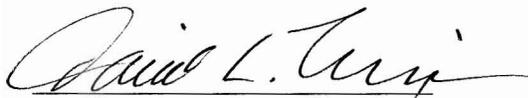
Conflict of Interest

Any individual state employee who chooses to take advantage of the discount must, however, perform a conflict of interest analysis. A conflict of interest means "...a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty." RSA 21-G:21 II. The analysis of whether it is appropriate for a particular state employee to take advantage of the discount should include a determination of whether, in light of that employee's duties relative to the business offering the discount, receipt of the discount would create a "private interest" that would "directly or indirectly affect or influence the performance of their duties." RSA 21-G:22. For example, generally a State employee who is directly responsible for an enforcement action or permit approval for a business entity should not accept a discount on any personal purchases made from that business.

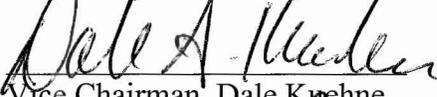
Conclusion

The Committee concludes that a State employee may accept a broad-based commercial discount that is not intended and which could not reasonably be perceived as being intended to influence the employee in the performance of his or her public duties. Individual State employees whose duties include direct regulation of the business offering the discount must decline a discount if accepting the discount would create a conflict of interest.

This Advisory Opinion is issued by the Executive Branch Ethics Committee on July 11, 2007, pursuant to RSA 21-G:30, I (c).



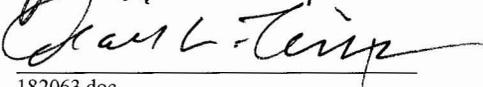
Chairman, David L. Nixon



Vice Chairman, Dale Kuehne



Secretary, John Blair



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L. Douglas O'Brien



Patricia Quigley



Deborah Schachter