

EXECUTIVE BRANCH ETHICS COMMITTEE



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Advisory Opinion

2007-002

Question Presented

May a Department solicit sponsorship from regulated companies/persons for training to be conducted by the State?

Summary Answer

No, unless prior approval from the Governor has been obtained. Such solicitation raises serious concerns about the potential to cause a conflict of interest. It seems all too likely that sponsorship gifts from those subject to Department regulation would be made with the hope of currying favor with officials or employees who have regulatory authority over those solicited. The Committee therefore strongly recommends against the practice of soliciting sponsorships from regulated persons/entities, unless such solicitation is approved in advance by the Governor as a gift by the sponsor to the State.

To the extent that there should arise circumstances where sponsorship gifts are appropriate, their acceptance must be approved by the Governor under RSA 4:8 as a gift to the state.

Legal Authority

RSA 4:8; RSA Chapter 15-B; RSA 21-G:22; RSA Chapter 640

Analysis

A threshold question is whether sponsorship of training for state employees would be deemed a gift to these employees. If so, it is clearly prohibited by NH law.

RSA 15-B:1 spells out detailed prohibitions on gifts to public employees and is intended "to ensure that the performance of official duties does not give rise to a conflict of interest . . ." RSA 15-B:3, III prohibits any public employee or public official from knowingly accepting, directly or indirectly, any gift. Gift is defined broadly to include any tangible or intangible thing or service "having more than insignificant economic value." RSA 15-B:2, V(b).

It is therefore clear that soliciting or accepting unsolicited sponsorship from a regulated entity or any other entity is prohibited if the sponsorship is deemed to be a gift that primarily benefits individual public employees.

It might be argued, however, that the primary beneficiary of such a sponsored training program would be the State, in that such training improves employee performance and Department operations. In 1998, the Attorney General's office issued a formal written opinion which discussed, among other things, whether a gift constitutes a gift to an individual or a gift to the State. *See* 1998 N.H. AG Lexis 1 (<http://doj.nh.gov/publications/opinions/21798AGO.html>). The opinion explained that if the pecuniary benefit flows to the State, rather than to the individual employee, the gift would be governed by RSA 4:8, which authorizes the Governor "to accept in the name of the state gifts of personal property made to the state or for the benefit of its inhabitants," Agreement to provide a Department training sponsorship, if otherwise appropriate, would be a gift to the State that can only be accepted with the Governor's approval. Such approvals are customarily made subject to Governor and Executive Council approval.

In assessing this issue, the referenced AG opinion cites to RSA 640:5 and its legislative history. The more recently adopted RSA 15-B did not repeal or amend this law, which provides in terms that are relevant here:

RSA 640:5, Gifts to Public Servants

A person is guilty of a misdemeanor if:

I. Being a public servant he solicits, accepts or agrees to accept any pecuniary benefit from a person who is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated

RSA 640:2, II(c) defines "[p]ecuniary benefit" expansively to mean "any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain;"

The quoted legislative history of RSA 640:5 includes this text from the Report of Commission to Recommend Codification of Criminal Laws established under Chapter 451, Laws of 1967, at 86:

It seems to be a warranted assumption that gifts from persons who have an interest in an official matter before the public servant would be so often made with the hope and intent of influencing him that it is appropriate to prohibit all such gifts generally.

Regulated companies or persons are by definition those whose affairs come under the jurisdiction and authority of a Department of the state. They are certainly among those who are "likely to become subject to or interested in" matters that come before the state agency.

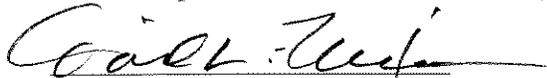
Whether or not sponsorship gifts may technically be treated as gifts to the State, it is the Committee's view that solicitation of sponsorships creates too great a likelihood either that solicited entities will feel pressure to donate sponsorships, out of a perceived need to foster a favorable relationship with state regulators, and/or that a history of such sponsorship gifts would predispose a Department employee toward a sense of obligation or even favoritism toward the sponsoring persons or companies. These are exactly the sort of dangers that the statute was intended to avoid.

RSA 21-G:22 provides: "Executive branch officials shall avoid conflicts of interest." Given the risk of conflict of interest inherent in soliciting training sponsorships from regulated persons or companies, the Committee recommends that this practice be avoided by NH Departments.

Conclusion

To avoid potential conflicts of interest a Department should not solicit sponsorship from regulated companies/persons for training to be conducted by the State, unless such solicitation is approved in advance by the Governor as a gift by the sponsor to the State.

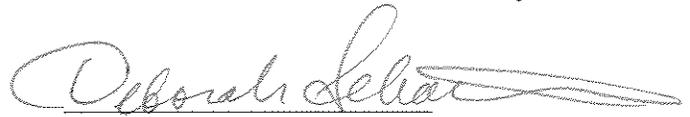
This Advisory Opinion is issued by the Executive Branch Ethics Committee on February 21, 2007, pursuant to RSA 21-G:30, I(c).


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