

STATE OF NEW HAMPSHIRE
EXECUTIVE BRANCH ETHICS COMMITTEE



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Advisory Opinion

2010-002

Questions Presented

1. Does a person who files a statement of financial interests listing one or more of the positions held which requires filing need to make an exhaustive list of all positions held, including statutory duties, which also requires a duty to file?
2. Does a person who files an annual statement of financial interests in January of any given year have a duty to re-file each time he or she is appointed to a new position during that calendar year? For example, is an agency commissioner who files a statement of financial interests in January, and who is appointed to sit on boards in March and June of that same year, required to again file statements of financial interests after the March and June appointments or does the "unless the person has previously filed . . ." language in RSA 15-A:6 only require the January filing?
3. When the law assigns to an official a duty to serve on a board or commission and gives that official the authority to designate a subordinate to sit in his or her stead, who has to file an RSA 15-A statement of financial interests?

Question 1

Does a person who files a statement of financial interests listing one or more of the positions held which requires filing need to make an exhaustive list of all positions held, including statutory duties, which also requires a duty to file?

Summary Answer

Any individual required to fill out the RSA 15-A Statement of Financial Interests must include a list of all of the positions which they hold where filing pursuant to RSA 15-A:3 is required.

Legal Authority

RSA 15-A:3

Analysis

RSA 15-A:1 states that "The purpose of this chapter is to ensure that the performance of official duties does not give rise to a conflict of interest, by requiring the following persons to file a statement of financial interests with the secretary of state. This chapter shall be liberally construed to effect this purpose."

It is the opinion of the Committee that an individual must include an exhaustive list of all of the positions which they hold that requires the RSA 15-A:3 statement of financial interests filing. Recognizing that the purpose of the chapter is to ensure there are no conflicts of interests, it is necessary for each individual to list each and every position. This is necessary in order to ensure that any of the positions do not conflict with any of the individual's other roles. The Committee recognizes there may be a situation where there would not be a conflict of interest for an individual sitting under one of their titles or positions but at the same time there could be a conflict of interest under the same circumstances with the individual's other title or position.

Conclusion

Persons required to file a statement of financial interests pursuant to RSA 15-A:3 must include an exhaustive list of all of the positions they hold in which they are required to make the RSA 15-A:3 filing.

Question 2

Does a person who files an annual statement of financial interests in January of any given year have a duty to re-file each time he or she is appointed to a new position during that calendar year? For example, is an agency commissioner who files a statement of financial interests in January, and who is appointed to sit on boards in March and June of that same year, required to again file statements of financial interests after the March and June appointments or does the "unless the person has previously filed . . ." language in RSA 15-A:6 only require the January filing?

Summary Answer

Any individual required to file a statement of financial interests as stated at RSA 15-A:3 and who has complied with the annual January filing as required by RSA 15-A:6 does not need to re-file a statement of financial interests or an update if that individual gets appointed to a new or additional position in the same calendar year.

Legal Authority

RSA 15-A:6

Analysis

It is the opinion of the Committee that RSA 15-A:6 is very explicit in stating that any individual subject to filing a statement of financial interests does so annually no later than the third Friday in January. If an individual filed their statement of financial interests in that time period and then is appointed to a new board, RSA 15-A:6 explicitly excuses that person from filing another statement if they have done so during the calendar year. That portion of the statute states “ . . . **all persons subject to this chapter . . . shall file a statement of financial interests within 14 days of assuming the office, position or appointment that makes the person subject to this chapter, unless the person has previously filed a statement during the calendar year . . .**” (Emphasis added).

Conclusion

Any person subject to filing under RSA 15-A:3 who has complied with and filed a statement of financial interests annually and is then appointed to another office during that same calendar year does not have to file an additional statement of financial interests during that same calendar year.

Question 3

When the law assigns to an official a duty to serve on a board or commission and gives that official the authority to designate a subordinate to sit in his or her stead, who has to file an RSA 15-A statement of financial interests?

Summary Answer

When a person required to file under RSA 15-A:3 appoints a designee, as provided for in the statute for that particular commission or office, the designee must also comply with RSA 15-A:3 and file a statement of financial interests annually.

Legal Authority

RSA 15-A:3, I (b)

Analysis

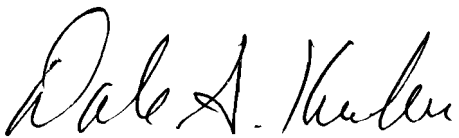
It is the understanding of the Committee that there are numerous statutes where the head of an agency is appointed to an advisory committee, commission or other committee where the statutory language specifically appoints the “agency head or designee.” Examples include RSA 494:1, II which appoints “the Attorney General or designee” to the NH Judicial Council and RSA 101-B:2 whereby the “Insurance Commissioner or designee” is a member of the Deferred Compensation Commission.

It is the Committee’s belief that to comport with the purpose of RSA 15-A:1, which is to ensure that the performance of official duties did not give rise to a conflict of interest, that individuals who appear as a designee on behalf of a public official have the same responsibility and obligation to ensure there is no conflict of interest and, therefore, must also file. Additionally, the Committee is relying on the language in RSA 15-A:3, I (e) by interpreting that to mean that if an agency head has designated a public official to appear on his/her behalf that the responsibility of that position does require the RSA 15-A:3 filing.

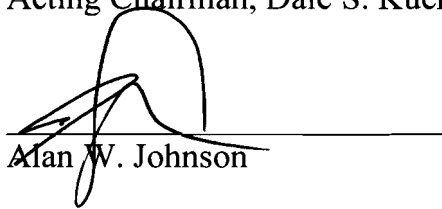
Conclusion

Any public official appearing as an agency head’s designee in which the agency head is required to file a statement of financial interests pursuant to RSA 15-A:3 also requires the designee to file the annual reporting statement.

This Advisory Opinion is issued by the Executive Branch Ethics Committee on June 2, 2010 pursuant to RSA 21-G:30, I (c).



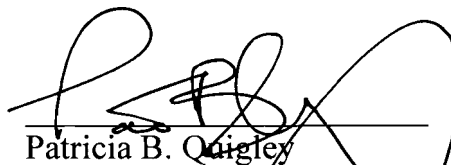
Acting Chairman, Dale S. Kuehne



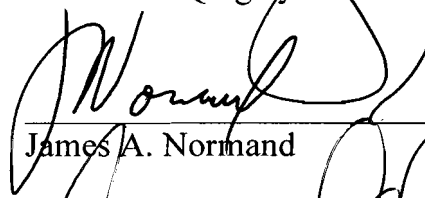
Alan W. Johnson



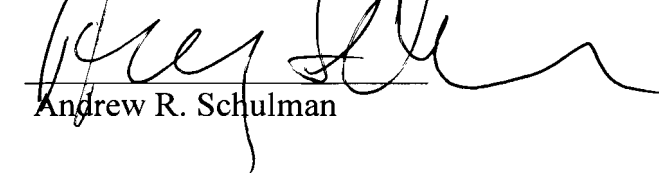
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