

STATE OF NEW HAMPSHIRE
EXECUTIVE BRANCH ETHICS COMMITTEE



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Advisory Opinion

2013-001

Question Presented

If an executive branch employee has established a specialized program for the State of New Hampshire, and has been asked by another state to assist it to establish a similar program, can the executive branch employee receive payment to assist the other state develop its program, when the assistance is being provided while the employee is on vacation from his or her state employment?

Summary Answer

Yes. The payment would be either wages or an honorarium, depending on the specific facts.

Legal Authority

RSA 15-B.

Analysis

The executive branch employee has been the person primarily responsible for establishing a specialized program in New Hampshire. Another state intends to establish a similar program, and has asked the employee to assist. The other state would pay for the employee's travel, hotel and food expenses, and also pay the employee \$1,200 for the two days the employee is expected to be in the other state.

RSA 15-B:3 makes it unlawful for an elected official, public official, public employee, constitutional official, or legislative employee to knowingly accept, directly or indirectly, any gift, as defined in this chapter. "Gift" is defined by RSA 15-B:2, V to mean

- (1) Money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money.
- (2) 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 \$25 is presumed to be of insignificant economic value.

When analyzing whether a particular thing is a gift, the analysis must also include a review of the list of exclusions to the definition of “gift” in RSA 15-B:2, V (b). The relevant exclusions for this Opinion are RSA 15-B:2, V(b)(7) (“Wages, salary, benefits, mileage, or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the government position held”) and V(b)(11) (“Expense reimbursement or an honorarium”). The term “honorarium” is further defined in RSA 15-B:2, VI as

a payment in any form to an elected official, public official, public employee, constitutional official, or legislative employee for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or by any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any public office or government employment.

Depending on the particular facts, the payment of \$1,200 could be either wages or an honorarium. Both have similar characteristics, with the key distinction being whether or not the payment is related to or associated with any public office or government employment. If the payment is compensation for work performed, and the work is unrelated to the employee’s work for the State, the payment would constitute wages. Given the facts presented in the issue presented, however, it appears that the work to be performed is related to the employee’s work for the State. As a result, it would be considered an honorarium, and subject to the honorarium exception to the definition of a gift.

In addition to the receipt of cash compensation, the employee is also receiving reimbursement for travel, hotel and food expenses. Payment of these expenses fall within the expenses reimbursement exclusion to the definition of gift contained in RSA 15-B:2, V(b)(11).¹

Unlike other exceptions to the definition of a gift, honorariums and expense reimbursements come with a requirement that they be reported to the Secretary of State. See RSA 15-B:6 (“An elected official, public official, public employee, or legislative


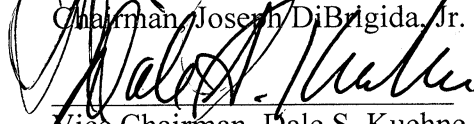
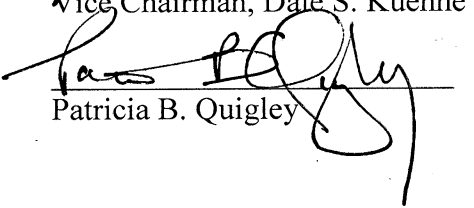
¹ If the payment of cash compensation fell within the category of wages and not honorarium, then the payment for travel, hotel and other expenses would be additional compensation.

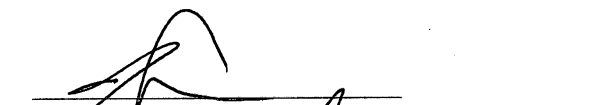
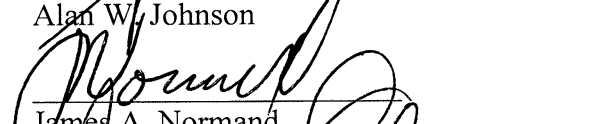
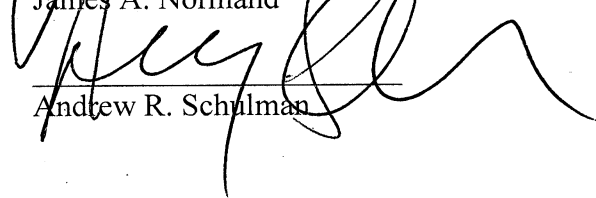
employee who receives an, honorarium or expense reimbursement shall file a report with the secretary of state no later than the last day of the month following the month during which the, honorarium or expense reimbursement was received.”). The reporting forms are available on the Secretary of State’s website at <http://sos.nh.gov/HonExp.aspx>.

Conclusion

Compensation to an executive branch employee to train employees in another state is either wages or an honorarium, depending on the particular facts, and is exempt from the definition of gift under either RSA 15-B:2,V(b)(7) or RSA 15-B:2,V(b)(11).

This Advisory Opinion is issued by the Executive Branch Ethics Committee on July 3, 2013 pursuant to RSA 21-G:30, I (c).


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