

ADVISORY OPINION

2023-001

Question Presented

Under RSA 21-G:26, can a former executive branch official or classified employee engage in communications that are excluded from the lobbyist registration requirement under RSA 15:1, V(a) or (c) within six months after leaving his or her office or employment with the State?

Summary Answer

No. The employment restriction under RSA 21-G:26 clearly prohibits former executive branch officials and classified employees from engaging in lobbying activities before the general court or executive branch within six months after leaving office or employment with the State. The language set forth in RSA 15:1, V does not provide for an exception to this employment restriction. Instead, RSA 15:1, V merely operates as an exception to the lobbyist registration requirement under RSA 15, I. Given the plain meaning of this statutory language, RSA 15:1, V cannot be construed as an exception to RSA 21-G:26

Legal Authority

RSA 15:1; RSA 21-G:26

Analysis

Executive Branch Code of Ethics

The Executive Branch Code of Ethics codified under RSA 21-G:21 through :27 (the “Code of Ethics”) applies to all executive branch officials and classified employees in the State. Among other things, the Code of Ethics includes an employment restriction that applies to former executive branch officials and classified employees, which provides as follows:

For 6 months after leaving office or employment with the state, no executive branch official or classified employee shall appear as a lobbyist:

- I. To promote or oppose directly any specific legislation pending or proposed before the general court; or
- II. To directly promote or oppose action or inaction on any matter, contract, license, permit, or administrative rule pending before the executive branch or with regard to any matter over which that executive branch official or classified employee had personal and direct responsibility while in state government.

RSA 21:G-26. The Code of Ethics does not include any exception to this employment restriction. Thus, given the plain meaning of this statutory language, it is a violation of the Code of Ethics for any individual subject to this employment restriction to appear as a lobbyist before the legislative or executive branch to “promote or oppose” any governmental action or inaction.

RSA Chapter 15

RSA chapter 15 concerns an entirely different subject, namely, the regulation of lobbyists. For example, RSA 15:1, I generally requires that any person who is employed as a lobbyist within the State shall register with the Secretary of State. Paragraph II of RSA 15:1 goes on to specify the types of activities that would require such registration, while paragraph III provides an exception to the lobbyist registration requirement.

RSA 15:1, V provides further guidance on the question of whether registration as a lobbyist is required by specifying six categories of communications that “are excluded from the regulation imposed by this chapter and shall not be considered in a determination of whether a person is required to register and report as a lobbyist.” These “excluded” communications include, among other things, “[p]ublic testimony before a legislative committee or subcommittee” and “[a] written document filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding.” RSA 15:1, V(a), (c).

Notably, RSA chapter 15 does not contain any references to the Code of Ethics. Likewise, the Code of Ethics does not refer to any provision within RSA chapter 15. Thus, given the plain and ordinary meaning of this statutory language, RSA 15:1, V does not provide any exceptions to the employment restriction under RSA 21-G:26.

Conclusion

The language set forth in RSA 21-G:26 is clear. Any former executive branch official or classified employee shall not engage in any lobbying activities within six months after leaving his or her office or employment with the State without any exception. RSA chapter 15 is a separate and distinct statutory scheme that cannot be construed as an exception to the employment restriction under RSA 21-G:26. Consequently, an individual subject to the employment restriction under RSA 21-G:26 cannot engage in any lobbying activities, even if those activities fit within one of communications that are specifically excluded from the lobbyist registration requirement under RSA 15:1, V(a) or (c).

This advisory opinion is issued by the Executive Branch Ethics Committee on May 11, 2023 pursuant to RSA 21-G:30-a.

Samuel H. Martin

Samuel H. Martin (May 9, 2023 16:09 EDT)

Samuel H. Martin, Chair

James Laffan

James Laffan

Dale S. Kuehne

Dale S. Kuehne (May 9, 2023 18:49 EDT)

Dale S. Kuehne

Byron Champlin

Byron Champlin (May 9, 2023 16:18 EDT)

Byron Champlin