

**STATE OF NEW HAMPSHIRE  
EXECUTIVE BRANCH ETHICS COMMITTEE**



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**Advisory Opinion**

**2007-011**

**Question Presented**

Does the duty to file a statement of financial interests imposed by RSA 15-A apply to members of an informal advisory group who participate to provide expertise or to advocate for their own interests or those of their employers or organizations?

**Summary Answer**

No, provided the person is not otherwise enumerated in RSA 15-A and the advisory group he or she is a member of is not established by statute or administrative rule, and is not an Executive Branch Advisory Committee established pursuant to RSA 21-G:11.

**Facts**

It is common practice for state agencies to establish advisory groups to inform executive branch decision makers about the private interests of stakeholders in a public policy or practice. These groups are referred to by various names including "task force" "stakeholders committee" and "advisory committees." The typical advisory group is composed of individuals, such as industry representatives, members of public interest groups, citizens, municipal officials, academics, and experts. An

advisory group may simply provide information on the viewpoints or interests of the individual members or it may make recommendations, as a group, to the agency regarding public policy or practice.

These groups are informal. They are not established by statute or administrative rule. The Governor, Governor and Council, President of the Senate or the Speaker of the House do not appoint the members. The groups are not Executive Branch Advisory Committees established pursuant to RSA 21-G:11.

### **Legal Authority**

RSA 15-A; RSA 21-G:11

### **Analysis**

RSA 15-A:3 identifies those persons who are required to file a statement of financial interest. RSA 15-A:3, III requires a filing by:

Every person appointed by the governor, governor and council, president of the senate, or the speaker of the house of representatives to any boards, commission, committee, board of directors, authority, or equivalent state entity whether regulatory, advisory, or administrative in nature.

A Commissioner or subordinate members of his or her staff appoint advisory group members. Commissioners and their subordinate staff are not listed in paragraph III, therefore, it does not apply to advisory group members appointed by them.

In contrast, the Governor appoints the members of a formal advisory committee established pursuant to RSA 21-G:11:

I. A commissioner, with the approval of the governor, may create advisory committees.

. . .

III. The governor shall appoint the members of each advisory committee, with the advice of the commissioner, . . .

RSA 21-G:11, by providing that formal advisory committee members must be appointed by the Governor, read in light of RSA 15-A:3 that requires persons appointed to such committees by the Governor to file statements of financial interest, implicitly establishes that these appointees are agreeing to act on behalf of the governor or an agency. In other words, these appointees are agreeing to act in the public interest.

RSA 15-A:3, VIII requires a filing by:

Any person, not employed by or working under contract for the state, who is acting on behalf of the governor or an agency while engaged in state business.

A key requirement of RSA 15-A:3, VIII is that the person must be “acting on behalf of . . . an agency while engaged in state business” to be required to file a statement of financial interest. See Advisory Opinion No. 2007-007.

We, therefore, recognize a distinction between an informal advisory group where the members act in their own personal or business interests and an executive branch advisory committee that is created by statute, administrative rule, or pursuant to RSA 21-G:11.

When the Governor appoints members to a formal advisory committee they are agreeing to serve in the interests of the people of New Hampshire. These formal advisory committee members act on behalf of the agency while engaged in state business, are agreeing to act in the public interest, and therefore must file a statement of financial interests.

In contrast, individuals who provide information or opinions to an agency on an informal basis through an advisory group are not acting on behalf of the agency while engaged in state business. Instead, most are acting on behalf of their own interests in an effort to ensure their interests are understood and considered when the executive branch officials make a decision on public policy or practice. Others participate to provide expertise. Therefore, they are not required to file a statement of financial interests.

Requiring members of an informal advisory group to file a statement of financial interests would not further the underlying purpose of financial disclosure. The principal behind requiring the disclosure of financial interests is that when a person takes on responsibility to act in the public interest, the public has a legitimate interest in knowing what personal financial interests the person has which could affect his or her decisions. A person participating in an informal advisory group is not agreeing to take on a responsibility to act in the public interest. Therefore, the purpose for disclosure of financial interests would not be fulfilled by requiring disclosure by members of an informal advisory group.

Requiring financial disclosure by a person who is not taking on a duty to act in the public interest would have a significant chilling effect on the willingness of people to provide information and opinions to State officials through participation in advisory groups.

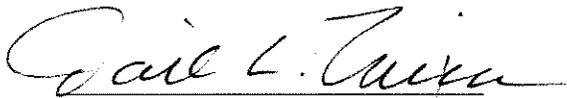
An individual can meet with a State employee or executive branch official, one-on-one, to provide information and express opinions without filing a statement of financial interests. Applying the financial disclosure requirement to any occasion where this type of exchange occurs with a group of people who are invited by an executive branch official would lead to a consequence we believe the law does not require and that the Legislature did not intend. It would discourage group meetings and promote one-on-one meetings with executive branch officials.

The exchange of information and opinions between the people and government officials is a core element of our democratic form of government. Executive branch officials who identify a need to gather a group of people for this purpose should carefully evaluate whether RSA 21-G:11's process for establishing a formal advisory committee of people working in the public interest or gathering an informal advisory group of people working in their private interests best assists the department in carrying out its duties.

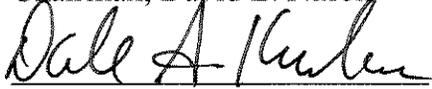
### Conclusion

Participants in an informal advisory group who participate to provide expertise or to advocate for their own interests and who are not agreeing to act in the public's interest are not required to file a statement of financial interest pursuant to RSA chapter 15-A.

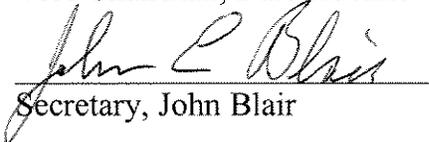
This Advisory Opinion is issued by the Executive Branch Ethics Committee on August 1, 2007, pursuant to RSA 21-G:30, I (c).



Chairman, David L. Nixon



Vice Chairman, Dale Kuehne



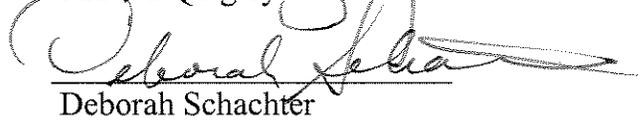
Secretary, John Blair



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