

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



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Advisory Opinion

2007-009

Question Presented

May an executive branch State employee attend a private small celebratory event sponsored by a private corporation, held to recognize private-public collaboration that lead to the adoption or defeat of proposed legislation?

Summary Answer

No, unless the employee is attending the event in an official capacity and there is no conflict of interest.

Facts

It is our understanding that the celebratory event includes a meal and/or beverages, will not be open to the public and that the number of individuals invited will likely be less than fifty.

Legal Authority

RSA 15-B; RSA 21-G

Analysis

Gift

The first issue to be determined is whether attending the “private small celebratory event” would be considered a gift as defined and prohibited by RSA 15-B. This statute states that “...no ...public employee...shall knowingly accept, directly or indirectly, any gift, as defined in this chapter...” RSA 15-B:3 III. A gift is defined as:

- (a) Money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money.
- (b) 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 \$10 is presumed to be of insignificant economic value.
- (c) Notwithstanding subparagraphs (a) and (b), “gift” shall not include:

- ...
- (10) Meals, beverages, lodging, or transportation associated with attendance at:
 - (A) Any event for which the primary significance is ceremonial or celebratory, provided the event is public or, if by invitation only, is planned to have an attendance greater than 50 people; or
 - (B) Any event where the person is attending in an official capacity representing the state and/or the senate, house, or the agency of which the person is a member.

- ...
- (12) Meals, beverages consumed in the course of official business.

Executive branch State employees are subject to RSA 15-B because they fall within the definition of a “public employee”, that is “...any person, including but not limited to a classified or non-classified employee or volunteer, who conducts state business on behalf of the governor, any executive official, agency or the general court.” RSA 15-B:2 IX. Public employees are prohibited from receiving gifts and a celebratory event that includes a meal and beverages falls within the broad definition of a gift unless it also falls within one of the enumerated exceptions.

We assume for the purpose of our analysis that the value of the meal and beverages is greater than \$10, therefore, it is not exempt as being of insignificant economic value. The celebratory event is not open to the public and there are fewer than 50 invitees; therefore, the dinner is not exempt pursuant to subsection 10 (A) above.

The exception under subsection 10(B) would apply, however, if the employees attend the event in their official capacity, rather than as private individuals. It is a matter for the Commissioner to determine whether each employee would be attending the event “in an official capacity” representing the Department and the State. If a particular individual employee’s attendance were “in an official capacity” representing the Department, then the “dinner” would not be a gift and attendance would not be prohibited by RSA 15-B.

Finally, meals consumed in the course of official business are excluded from the definition of a gift. The “course of official business” is also position and event dependent. As a general rule, we would suggest that something is in the “course of official business” for an employee who has to account for his or her work hours only if the event would qualify as work time in the Department’s timekeeping system. It ultimately will be a matter of discretion for the Commissioner to determine what is “...in the course of official business” particularly for salaried individuals, such as commissioned employees, who typically have less defined timekeeping obligations.

In conclusion, it is our opinion that attending the celebratory event including a meal and beverages is a prohibited receipt of a gift unless it is determined for each employee that attendance is either in the course of official business or that the employee is attending in an “official capacity” representing the Department.

Conflict of Interest

Even if attending the celebratory event is not a gift, the employee should be cautious that attending such an event would not create a conflict of interest. A conflict of interest means “...a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper exercise of a public duty.” RSA 21-G:21 II. Additionally, it is prohibited for any executive branch official to “... use his or her position with the state to secure privileges or advantages for himself or herself, which are not generally available to governmental employees, or to secure governmental privileges or advantages for others.” RSA 21-G:23.

The analysis of whether any particular state employee should attend the celebratory event should include a determination of whether, in light of that employee’s duties relative to the sponsor(s) of the event, attendance at the event would create a “private interest” that would “interfere with the proper exercise of a public duty” or encourage a prohibited *ex parte* communication between adjudicator and the subject of a pending application or matter.

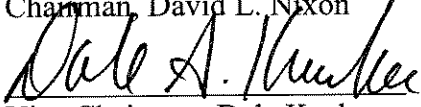
Conclusion

An executive branch State employee may not attend a private small celebratory event sponsored by a private corporation held to recognize private-public collaboration that lead to the adoption of a law unless it is determined that the employee is attending such event either in his or her “official capacity” representing the Department or the State or “in the course of official business.” The employee must also determine that attending this event will create no conflict of interest.

This Advisory Opinion is issued by the Executive Branch Ethics Committee on May 2, 2007, pursuant to RSA 21-G:30, I (c).



Chairman, David L. Nixon

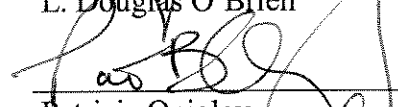


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