

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



33 Capitol Street
Concord, New Hampshire 03301-6397

Joseph DiBrigida, Jr., Chairman
Dale S. Kuehne, Vice Chairman
Patricia B. Quigley

Alan W. Johnson
James A. Normand
Andrew R. Schulman

Advisory Opinion

2011-01

Question Presented

Can the Lottery Commission award Red Sox game tickets to state liquor store employees, as part of the Commission's sales incentive program, without violating the prohibition on gifts under RSA 15-B?

Summary Answer

No, unless the relevant sections of 2011 NH Laws Chapter 224 are properly implemented, in accordance with RSA 541-A, to establish the authorized employee incentive programs for the Liquor Commission and the Lottery Commission. Assuming there is no other statute, contract or other authority that authorizes award incentive payments to state employees, the Red Sox game tickets given to state employees would constitute a gift as defined by RSA 15-B:2, V.

Legal Authority

RSA 15-B, 21-G:30, I(b).

Analysis

The Lottery Commission has begun a new instant lottery game featuring the Red Sox. The license purchased by the Lottery Commission for the use of the Red Sox name includes Red Sox game tickets for the Lottery Commission to use as giveaways to promote sales of the lottery tickets. The value of the tickets exceeds \$25.00. The Lottery Commission has proposed to award the game tickets to lottery ticket retailers based on the number of Red Sox lottery tickets sold. State liquor stores sell lottery tickets, including the new Red Sox instant game. If a state liquor store won the promotional Red Sox game tickets, a "Public Employee" would receive those tickets as that term is defined in RSA 15-B:2, IX.

RSA 15-B:3, III states that "[n]o elected official, public official, public employee, constitutional official, or legislative employee shall knowingly accept, directly or indirectly, any gift, as defined in this chapter." The term "Gift" under RSA 15-B:2, V(a) is defined 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.

RSA 15-B:2, V(b) lists thirteen exceptions to this broad definition of the term gift. If a transaction is not on the list of thirteen exceptions, then the prohibition on receiving gifts applies.

The Red Sox game tickets have a stated value in excess of \$25.00. Thus, the tickets fall within the definition of a gift under RSA 15-B:2, V(a)(2). The only exception to the definition of the term gift that may apply is the exception found at RSA 15-B:2, V(b)(8) ("[w]ages, salary, benefits, mileage, or payment for expenses paid to the person by the state, a county, or the United States of America related to performance of official duties."). Because public employees' salaries are established by collective bargaining agreements and/or statute, any payment outside of the fixed package of wages, salary and benefits would constitute a gift. *See e.g.* RSA 94, RSA 99:1-a. Absent specific statutory, contractual or other authority to include incentive payments to a public employee's salary and wages, the Committee concludes that the receipt of Red Sox tickets awarded as part of the Lottery Commission's promotion program are gifts, and therefore prohibited.

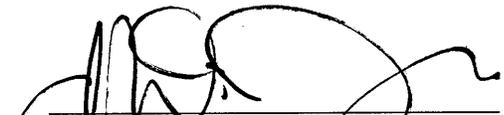
· With respect to the Lottery Commission and the Liquor Commission, 2011 NH Laws Chapter 224 (also known as HB 2) created new employee incentive

programs. 2011 NH Laws Chapter 224:89, 224:90, and 224:91. If these employee incentive programs are appropriately implemented, in accordance with RSA 541-A, including rules that allow for the acceptance of incentives having monetary value, then such incentives may not be considered gifts under RSA 15-B.

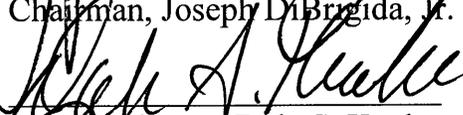
Conclusion

No elected official, public official, public employee, constitutional official, or legislative employee is allowed to receive gifts from a single source in any calendar year in excess of the \$25 threshold. *See* RSA 15-B:2, V(a)(2). Promotional programs not included in a public employee's salary or wages constitute gifts. The Lottery Commission's Red Sox game ticket giveaway promotion would constitute a gift, and public employees are prohibited from receiving the Red Sox game tickets unless subject to a specific law allowing employee incentive programs.

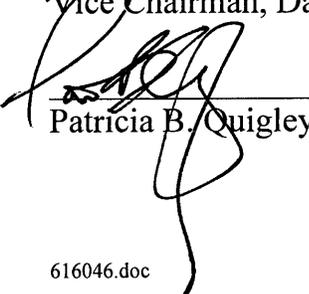
This Advisory Opinion is issued by the Executive Branch Ethics Committee on September 7, 2011, pursuant to RSA 21-G:30, I (c).



Chairman, Joseph DiBrigida, Jr.



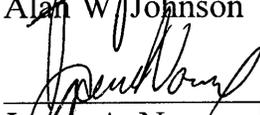
Vice Chairman, Dale S. Kuehne



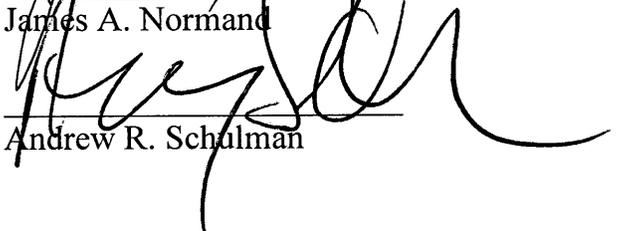
Patricia B. Quigley



Alan W. Johnson



James A. Normand



Andrew R. Schulman