

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



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MEMORANDUM

TO : COMMISSIONERS AND DEPARTMENT HEADS
FROM : EXECUTIVE BRANCH ETHICS COMMITTEE
DATE : DECEMBER 5, 2012
**RE : GUIDELINE TO STATE AGENCIES OFFERING FREE OR DISCOUNTED
ITEMS TO STATE LEGISLATORS**

In 2011, the Legislative Ethics Committee issued an advisory opinion, AO 2011-4, concerning a state agency's offer of free ski lift tickets to members of the General Court. The Committee advised that acceptance of the tickets would violate the gift prohibition in RSA 15-B, because the value of the tickets was in excess of \$25.00 and they did not fall within any statutory exemption.

Since the issuance of that opinion, two other states agencies have offered items of economic value—free tickets to an event and discount coupons for the purchase of merchandise—to members of the General Court. The Legislative Ethics Committee informally advised that where the value of such offers was in excess of \$25.00 and no statutory exemption applied, acceptance of either offer would constitute a violation of the gift prohibition. In an effort to avoid a recurrence, the Committee sought the assistance of the Executive Branch Ethics Committee to educate executive branch agencies about the legal issues created when an agency offers or gives New Hampshire legislators items of economic value. This memo is in response to that request.

RSA 15-B:3 prohibits the giving of a gift to, or the acceptance of a gift by, any elected official, public official, public employee, constitutional official, or legislative employee. "Gift" is defined in RSA 15-B:2, V(a) as:

- (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.

The statute lists thirteen exceptions to this broad definition of the term gift, including for example:

- “Objects or services which primarily serve an informational purpose, provided in the ordinary course of business, such as reports, books, maps, and charts,” RSA 15-B:2, V(b) (5);
- “Tickets or free admission to a charitable, ceremonial, or political event provided that:
 - (a) The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664; or
 - (b) The event is sponsored by a charitable organization that is registered with the division of charitable trusts, department of justice, or which is a charitable organization pursuant to section 501(c)(3) of the federal tax code; or
 - (c) The event is published as an event open for attendance by any member of the general court in the calendar of the senate or the house” RSA 15-B:2, V(b)(9); and
- “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,” RSA 15-B:2, V(b)(10).

If an item meets the definition of “gift” and does not fall within one of thirteen exceptions, then the gift prohibition applies. The Legislative Ethics Committee has advised legislators that they cannot accept any such gift. RSA 15-B:9.

More generally, if a state agency is considering offering anything free or at a discounted rate to *any* elected or public official, public employee, constitutional official, or legislative employee, the agency should consider:

1. Whether the thing being offered, other than money, has a value less than \$25.00, and, if not;
2. Whether it falls within one of the statutory exemptions listed in RSA 15-B:2, V(b).

If the answer to both questions is no, then it is recommended that the agency review RSA 15-B, and confer with agency counsel, or seek an advisory opinion from the Executive Branch Ethics Committee.

The Executive Branch Ethics Committee welcomes inquiries from commissioners and department heads. The committee has jurisdiction over matters arising from RSA 21-G:21 – 27 (the Executive Branch Code of Ethics), RSA 15-A (Financial Disclosure) and RSA 15-B (Gifts, Honorariums, and Expenses), as applied to executive branch officials who are not classified employees. It is charged with resolving issues, questions or complaints involving executive branch officials who are not classified employees. It is also charged with issuing guidelines, interpretive rulings and advisory opinions relative to standards for ethical conduct in the executive branch. Additional information and copies of previously issued advisory opinions can be accessed at <http://doj.nh.gov/ethics-committee/index.htm>.