

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



33 Capitol Street
Concord, New Hampshire 03301-6397

Joseph DiBrigida, Jr., Chairman
Dale S. Kuehne
Alan W. Johnson

James A. Normand
Dorothy Graham

ADVISORY OPINION

2015-001

Question Presented

Whether an executive branch official who heads an agency can accept an all-expense paid 7-day trip to Israel, funded by the American-Israeli Friendship League (AIFL), arranged through and with the participation of a national association of similarly situated officials, without violating the prohibition against acceptance of gifts under RSA 15-B:3.

Summary Answer

Yes. The prepayment of meals, lodging, and transportation would fall within the gift exemption for expense reimbursement and attendance at an event in one's official capacity representing his or her agency. Acceptance of the prepayment as an expense reimbursement will require the inquirer to file a report with the secretary of state under RSA 15-B:6, I.

Legal Authority

RSA 15-B:2, IV, RSA 15-B:2, V, RSA 15-B:3, III, RSA 15-B:6, I.

Facts

An executive branch official (the inquiring official) has informed the Committee of the following facts. He has been invited by the AIFL to attend a 7-day trip to Israel along with six other similarly situated officials from other states, the Executive Director of a national association of similarly situated officials, and a person who formerly held such a position. The inquiring official has represented that he will be attending in an official capacity. Airfare from New Jersey, meals, accommodations and travel within Israel will be paid for by the AIFL. Similar trips for such officials have been conducted on a regular basis for the past 15 years.

The inquiring official provided the Committee a copy of the tentative trip agenda, which indicated that the first 1 ½ days would involve tours of the Old City of Jerusalem, Masada and the Dead Sea. Beginning on the evening of the second day, the participants would be meeting with a variety of government officials, including the U.S. Ambassador to Israel, the Former Israeli Ambassador to the U.S., the Deputy Foreign Minister, the Deputy Director General for North America, the State Attorney, a former Supreme Court Justice and candidate for President of the State of Israel, Jerusalem Mayor Nir Barkat, the Deputy Director General National Security Council, as well as a journalist, an expert in Constitutional law, and a former IDF International Law Commander.

Although the itinerary had not been finalized, proposed topics of discussion included security-related issues including how to protect and defend against terrorist attacks, how to protect citizens from potential terrorists attacks while still protecting individuals' civil liberties, comparison of the U.S. and Israeli judicial decisions, exchanges of information concerning investigations and prosecutions, common personnel issues such as sexual harassment, demonstrations of rights of assembly, and equality of opportunity.

Analysis

RSA 15-B:3, III prohibits executive branch officials from accepting gifts. The term "gift" is under RSA 15-B:2, V(a):

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) list thirteen exemptions from this definition. Two of those exemptions are relevant here: (1) expense reimbursement; and (2) meals, beverages, lodging, or transportation associated with attendance at an event where the person is attending in an official capacity representing the state.

A. Expense Reimbursement

RSA 15-B:2, IV defines an expense reimbursement as

any price, charge, fee, expense, or other cost which is waived, forgiven, reduced, prepaid, or reimbursed in any form for the reasonable expenses of attendance, registration, travel, meals, or lodging related to a bona fide conference, meeting, seminar or educational or informational program, when the source of such reimbursement is other than the state, a county, or the United States of America.

To qualify as an expense reimbursement, the expense being covered must relate to a *bona fide* conference, meeting, seminar, or educational or informational program. The term "*bona fide*" is not defined by statute. In common parlance, *bona fide* means something made in good faith, without fraud or deceit; sincere; or genuine. Viewed in the context of RSA 15-B:2, IV, we

interpret the use of the term to mean an event, the purpose of which is to convey information or engender discussion about issues that are of importance to executive branch officials, rather than an opportunity for tourism, entertainment, or recreation. *See NH Legislative Ethics Committee Interpretive Ruling 2013-1.* (“Reimbursement for “junkets” or “see the sites” trips as part of a legislation group does not qualify for the exemption—the event must offer, as a genuine and central element, organized learning about subjects that are or may become the focus of legislative activity in New Hampshire.”). The determination of whether an event meets that standard must necessarily involve a case-by-case analysis. Factors to be considered include: whether the event promotes the interests of the state or governmental body that the individual represents; whether other participants are of a similar position or hold similar responsibilities; the topic(s) to be covered; and the official responsibilities of the individual invitee, as defined by statute or job description.

The Committee finds that the trip in question constitutes a *bona fide* informational program. The inquiring official provides statewide oversight and guidance on personnel and security related issues. The position requires a broad understanding of governmental functions and the complex legal issues that can arise. Protecting and defending against terrorist threats while preserving individual civil liberties is a critical issue that arises in many state contexts, such as emergency planning exercises and law enforcement responses to critical incidents. Comparing judicial precedent, discussing civil rights and related issues with minority populations, comparing approaches to common personnel issues such as sexual harassment and domestic violence, understanding challenges faced by city mayors and how those addressed are all, to varying degrees, relevant to the functions of the attorney general. While the trip in question does include some sightseeing excursions, it offers, as a central element, organized learning about topics of relevance to the responsibilities of the inquiring official.

Acceptance of the trip under the exemption for expense reimbursement would trigger the duty to report under RSA 15-B:6, II. A report must be filed with the secretary of state not later than the last day of the month following the month that the expense reimbursement was received. Because reimbursement in this case involves the prepayment of expenses rather than actual reimbursement, we interpret the duty to be triggered upon return from, and thus acceptance of, the “reimbursement.”

B. Attending in an Official Capacity Representing the State . . . or Agency of Which the Person is a Member.

RSA 15-B:2, V(b)(10)(b) provides that the following shall not constitute a gift:

Meals, beverages, lodging, or transportation associated with attendance at [a]ny 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.

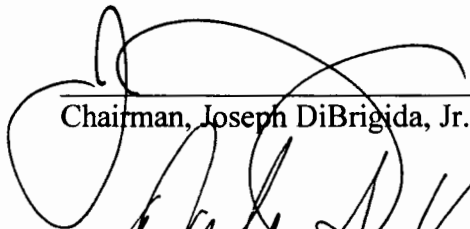
The inquiring official has stated, and the Committee agrees, that he would be attending in his official capacity. The event is arranged through a national association of similarly situated officials and the only participants are similarly situated officials from other states. But for his position, the inquiring official would not be an invitee.

As discussed above, the event participants will be meeting with government officials who carry similar or related responsibilities in the State of Israel. The topics of discussion are ones which relate to inquiring official's functions. In engaging in these meetings and discussions, the invitee would be receiving and offering information on behalf of his agency.

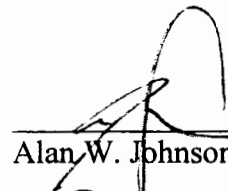
Conclusion

Based upon the facts provided, the Committee concludes that the inquiring official may accept the trip in question without violating the prohibition against the acceptance of gifts, as the trip would fall within the exemptions for expense reimbursement and attendance at an event in an official capacity, representing his agency. However, he must file a report with the Secretary of State, as required by RSA 15-B:6, II.

This Advisory Opinion is issued by the Executive Branch Ethics Committee on September 9, 2015 pursuant to RSA 21-G:30, I(c).



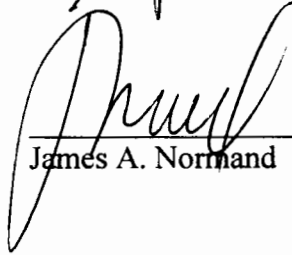
Chairman, Joseph DiBrigida, Jr.



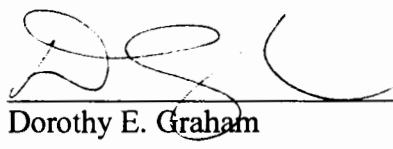
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