



New Hampshire
Department of Justice

Office of the Attorney General

Navigating New Hampshire's Ethics Laws

Updated March 25, 2009

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- Recusal

GIFTS, HONORARIUMS AND EXPENSE REIMBURSEMENTS

- RSA 15-B – Effective June 2, 2006

GIFTS, HONORARIUMS AND EXPENSE REIMBURSEMENTS

WHO SHOULD BE INTERESTED IN RULES ON GIFTS, HONORARIUMS AND EXPENSE REIMBURSEMENTS?

- Elected officials
- Public officials
- Public employees
- Constitutional officials
- Legislative employees



And their family members

GIFTS



- WHAT IS A GIFT?

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.

- Items with a value of less than \$25 are presumed to be of insignificant economic value.

POP QUIZ

- What is a Gift?
 - a. Money
 - b. Services
 - c. Free pizza
 - d. Everything (13 exceptions to follow)



GIFTS



- WHAT IS NOT A GIFT:
 - A political contribution as defined in RSA 664.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - A commercially reasonable loan, made in the ordinary course of business.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - Repayment to an elected official, public official, public employee, constitutional official, or legislative employee of a bona fide loan made by such a person.

GIFTS



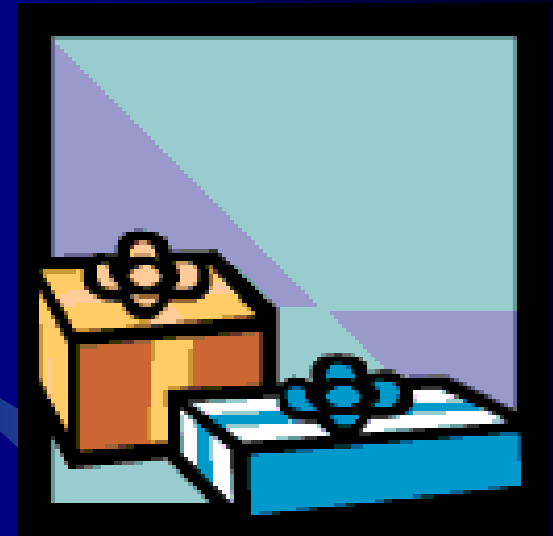
- WHAT IS NOT A GIFT (con't):
 - A ceremonial object, award, or other commemorative object, which is personally inscribed to the recipient and which has inconsequential economic value.
 - A ceremonial object or award with a value of \$150 or less is presumed to be of inconsequential economic value.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - Objects which primarily serve an informational purpose provided in the ordinary course of business, such as reports, books, maps, or charts.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - Money in any form, an object, or an intangible thing of economic value, where the donor's act of giving is purely private and personal in nature and the money, object, or intangible thing of economic value would have been given and received even if the person were not an elected official, public official, public employee, constitutional official, or legislative employee.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - Wages, salary, benefits, mileage or payment for expenses received by the person in his or her regular course of employment or business which is unrelated to the government position held.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - Wages, 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.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - 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.

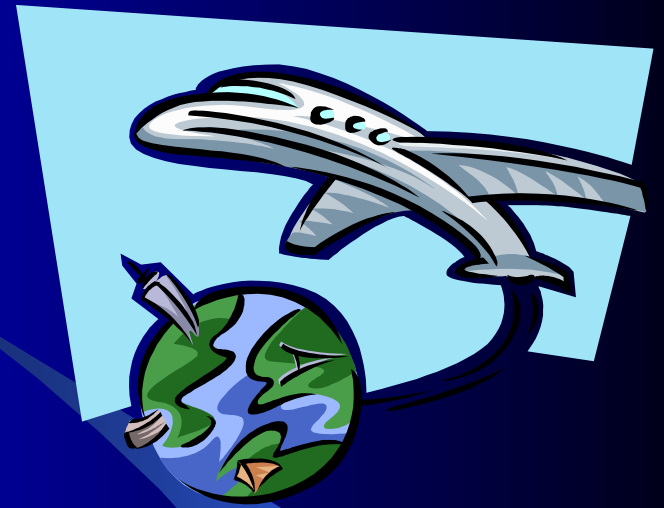
GIFTS



- WHAT IS NOT A GIFT (con't):
 - 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.

GIFTS

- WHAT IS NOT A GIFT (con't):
 - Expense reimbursement or an honorarium.
(But...they must be reported)



GIFTS



- WHAT IS NOT A GIFT (con't):
 - Meals and beverages consumed in the course of official business.

GIFTS



- WHAT IS NOT A GIFT (con't):
 - Monetary or non-monetary awards or recognition issued under the suggestion and extraordinary service award program under RSA 99-E.

GIFTS

- WHAT DOES THE RULE SAY?

I. It shall be unlawful to knowingly give any gift ..., directly or indirectly, to any elected official, public official, public employee, constitutional official, or legislative employee.



GIFTS

- WHAT DOES THE RULE SAY (con't)?
- II. It shall be unlawful to knowingly give any gift ..., directly or indirectly, to any family member, ...of any elected official, public official, public employee, constitutional official, or legislative employee, with a purpose of influencing or affecting the official conduct of such official or employee.



GIFTS

- WHAT DOES THE RULE SAY (con't)?
- III. No elected official, public official, public employee, constitutional official, or legislative employee shall knowingly accept, directly or indirectly, any gift as defined in this chapter.



EXPENSE REIMBURSEMENTS AND HONORARIUMS

- Expense reimbursements and honorariums are not prohibited, but...
 - Must be reported to the Secretary of State

EXPENSE REIMBURSEMENT

- ANOTHER DEFINITION:
- "Expense reimbursement" shall mean 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.

EXPENSE REIMBURSEMENT

- ANOTHER DEFINITION:
- "Expense reimbursement" shall mean 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.

EXPENSE REIMBURSEMENT

- WHAT DOES RULE SAY?
 - An elected official, public official, public employee, constitutional official, or legislative employee may accept expense reimbursement for the reasonable expenses for food, travel, and lodging for a conference, meeting, seminar, or educational program which the person attends and that is related to the office, position, or employment held with the state or county.
 - Must be disclosed.
 - Disclosure must have attached a copy of the agenda or an equivalent document.
 - Does not require reporting of a prepayment, underwriting, or reimbursement made by an organization to which the state or county pays dues, when the prepayment, underwriting or reimbursement is provided because of the dues paid.

EXPENSE REIMBURSEMENT

- EXPENSE REIMBURSEMENT BY THE STATE, FEDERAL GOVERNMENT OR A COUNTY DOES NOT NEED TO BE REPORTED

HONORARIUMS



- ANOTHER DEFINITION:
- "Honorarium" means a payment in any form ... for an appearance, speech, written article or other document, service as a consultant or advisor, or participation in a discussion group or similar activities. Honorarium does not include a payment for such activities for which the person is being compensated by the state, a county, the United States of America, or by any other employer or client, where the activity giving rise to the honorarium is not related to or associated with any public office or government employment.

HONORARIUMS

- WHAT DOES THE RULE SAY?
 - Honorariums are exempt from definition of gift.
 - But - No public official or public employee shall accept an honorarium from a person who is subject to or likely to become subject to or interested in any matter or action pending before, or contemplated by, the public official, public employee, or the governmental body with which that person is affiliated.

REPORTING OF EXPENSE REIMBURSEMENT OR HONORARIUMS

- Honorariums and expense reimbursements shall be reported to the Secretary of State (form is on the Secretary of State's website).
- No later than the last day of the next month after it was received.

GIFTS TO THE STATE

- Nothing in the statute shall prohibit gifts or expense reimbursement made to the State of New Hampshire and accepted in accordance with the law.

Penalty



- Any person who knowingly or willfully violates RSA 15-B shall be guilty of a misdemeanor.

New Hampshire State Code of Ethics

RSA 21-G:21 – :27

Statute effective June 2, 2006

Includes the following:

- Conflict of Interest;
- Misuse of Position;
- Acceptance of Campaign Contributions;
- Post Employment Restrictions (lobbying);
- Supplemental Agency Ethics Codes;
- Executive Branch Ethics Committee.

New Hampshire State Code of Ethics

Applies to all “executive branch officials”

Defined to include elected officials who hold an executive branch office, public officials, constitutional officials and public employees.

Conflict of Interest

- Executive branch officials shall not participate in any matter in which they, or their spouse or dependents, have a private interest which may directly or indirectly affect or influence the performance of their duties.

Conflict of Interest

“It is a general rule of law, and the law in New Hampshire, that there is a conflict of interest when a public officer votes on a matter in which he has a direct personal and pecuniary interest.”

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

“The reasons for this rule are obvious. A man cannot serve two masters at the same time, and the public interest must not be jeopardized by the acts of a public official who has a personal financial interest which is, or may be, in conflict with the public interest.”

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

However, the rule is also well established that, to disqualify, the personal pecuniary interest of the official must be immediate, definite, and capable of demonstration; not remote, uncertain, contingent, and speculative, that is, such that men of ordinary capacity and intelligence would not be influenced by it.

Atherton v. Concord, 109 N.H. 164, 165 (1968) (internal quotations and citations omitted).

Conflict of Interest

The common law of New Hampshire identifies a conflict of interest where a potential exists for a public officer to influence the outcome of a matter in which he has a direct personal and pecuniary interest. Such conflict normally arises in a context where an official is acting in a judicial or legislative capacity.

Marsh v. Town of Hanover; Berlin, Hanover Town Manager; and Wood, Hanover Fire Chief, 113 N.H. 667, 672 (1973) (emphasis added) (internal citations and quotations omitted).

Conflict of Interest

“An act is **judicial** in nature if officials ‘are bound to notify, and hear the parties, and can only decide after weighing and considering such evidence and arguments, as the parties choose to lay before them.’” *Appeal of Keene*, 141 N.H. 797, 800 (1997) (quoting *Sanborn v. Fellows*, 22 N.H. 473, 489 (1851))

“**Legislative and administrative action**, by contrast, is marked by ‘its high visibility and widely felt impact,’ from which an aggrieved person can find an ‘appropriate remedy ... at the polls.’” *Appeal of Keene*, 141 N.H. 797, 800 (1997) (quoting *Winslow v. Holderness Planning Board*, 125 N.H. 262, 266, (1984)).

Conflict of Interest – Quasi Judicial

Part I, Article 35 provides that "[i]t is the right of every citizen to be tried by judges **as impartial as the lot of humanity will admit.**" We have held that this mandate applies to both trial judges and members of administrative boards acting in a quasi-judicial capacity.

Appeal of Town of Bethlehem, No. 2004-435 slip op. (N.H. November 2, 2006) (quoting *Appeal of Grimm*, 141 N.H. 719, 720 (1997)).

Conflict of Interest – Quasi Judicial

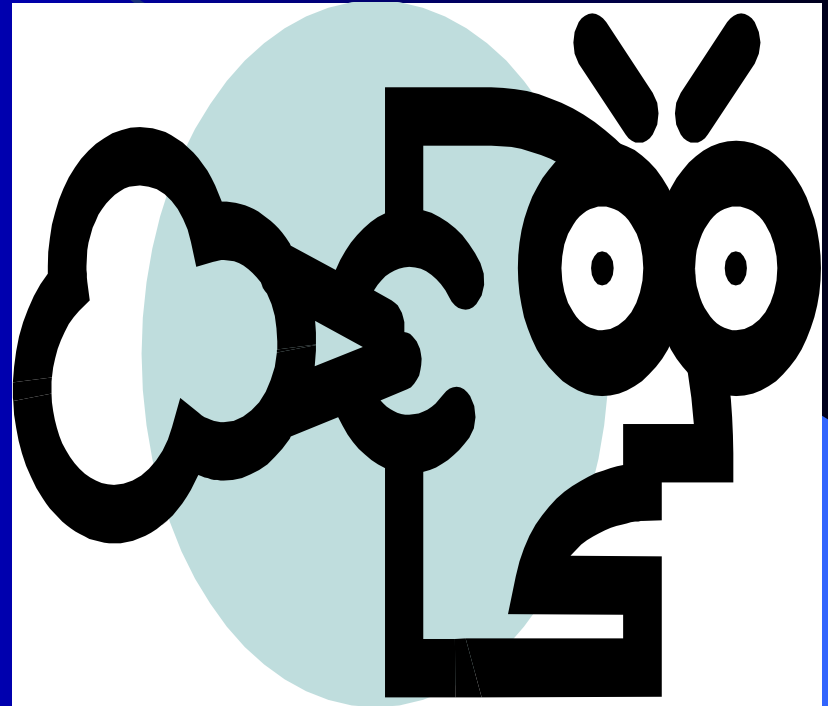
An official performing a quasi-judicial act is not impartial where the complaining party can demonstrate that the official has:

- a) A conflict of interest
- b) Entertained ill-will towards any party, or
- c) Prejudged the facts in the specific case prior to the quasi-judicial act.

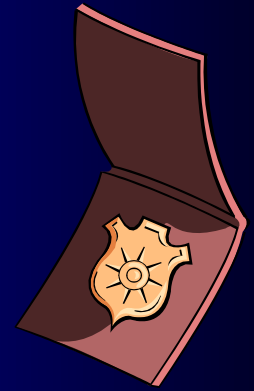
Antagonistic Parties

A party cannot force disqualification by publicly attacking a quasi judicial official and then claiming these attacks must have caused the official to be biased against him.

F.D.I.C. v. Sweeney, 136 F.3d 216, 220 (1st. Cir. 1998).



Misuse of Position



- Executive branch officials shall not:
 - Disclose or use confidential or privileged information acquired in the performance of his or her duties for the state for personal benefit or for financial gain.
 - 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.



Post Employment Restrictions

- For 6 months after leaving employment, no executive branch official shall appear as a lobbyist:
 - I. To promote or oppose directly any specific legislation pending or proposed before the general court; or
 - II. To directly promote or oppose action or inaction on any matter, contract, license, permit, or administrative rule pending before the executive branch or with regard to any matter over which that executive branch official had personal and direct responsibility while in state government.

Supplemental State Agency Ethical Codes

In addition to this code, each agency may promulgate a supplemental ethics code to address issues specific to that agency. In the event of a conflict with the provisions of this code, a stricter provision of an agency code shall govern.

Supplemental State Agency Ethical Codes

To the extent that this code or an ethics code adopted by an agency shall apply to classified employees, this code, or an agency code, shall be interpreted to be consistent with the provisions of the classified employees' collective bargaining agreement and the state personnel rules.

FINANCIAL DISCLOSURES

- RSA 15-A - created a uniform statement of financial interests.

FINANCIAL DISCLOSURES

- Applies to:
 - All candidates who file for state or county office.
 - All persons filing an acceptance of nomination form for state or county office.
 - All persons elected to state or county office.
 - All persons appointed to such elective office to fill a vacancy.

FINANCIAL DISCLOSURES

- Applies to (con't):
 - Every person appointed by the Governor, Governor and Council, President of the Senate, or the Speaker of the House to any:
 - Board, commission, committee, board of directors, authority, or equivalent state entity

FINANCIAL DISCLOSURES

- Applies to (con't):
 - All agency heads
 - Any public official designated, due to the responsibilities of the position, by the agency head

FINANCIAL DISCLOSURES

- Applies to (con't):
 - The Secretary of State and the Treasurer
 - Any subordinates designated, due to the responsibilities of the position, by the Secretary of State and the Treasurer.

FINANCIAL DISCLOSURES

- Applies to (con't):
 - 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.

FINANCIAL DISCLOSURES

- Deadline for filing financial disclosures:
 - Except those who are elected, within 14 days of assuming the office, position, or appointment that makes the person subject to this chapter, unless the person has previously filed a statement during the calendar year.
 - Annually, no later than the third Friday in January.

ORGANIZATION CHART

Rule:

Agency heads, the Governor, Secretary of State and Treasurer must submit to the Secretary of State an organizational chart identifying the names and titles of all persons in his or her department that are required to file a statement of financial interests.

ORGANIZATION CHART

When Must The Organization Chart Be Submitted?

The initial organization chart was due the third Friday in January, 2007. The organization chart must be updated upon any change to the chart.

SUMMARY OF DUE DATES

- **Statement of Financial Interest:**
 - **Within 14 days of assuming the office (unless elected), thereafter the 3rd Friday in January.**
- **Organization Chart With Secretary of State**
 - **Initial org. chart - third Friday in January, 2007**
Thereafter, upon any change to the chart.
- **Honorarium or Expense Reimbursement Report:**
 - **Last day of the month following the month during which the honorarium or expense reimbursement was received.**
- **Post Employment Restriction:**
 - **6 months after leaving office.**

21-G:24 Acceptance of Campaign Contributions

An executive branch official who is a candidate for an elective office that is not subject to the reporting requirements of RSA 664 and who accepts a political contribution from any person or entity which is or is likely to become subject to that executive branch official's duties shall make a disclosure of such contributions to the secretary of state within 5 days of receipt of such contributions. The disclosure shall be in writing and on such form as the secretary of state shall prescribe.

21-G:24 Acceptance of Campaign Contributions

"Executive branch official" for this purpose means a commissioned, unclassified, nonclassified, or classified executive branch employee or volunteer, who conducts state business on behalf of the governor, any executive branch official, agency.

RSA 21-G:21; RSA 15-B:2

Executive Branch Ethics Committee

- Issue guidelines
- Issue interpretive rulings
- Render advisory opinions
- Receive sworn complaints
- Investigate allegations of violations
- Make findings of fact and conclusions with respect to allegations of violations
- Limited Jurisdiction over classified employees

Executive Branch Ethics Committee

- Questions, complaints, and requests for advisory opinions can be submitted in writing in care of the Attorney General's Office.
 - Generally, consult with your assigned Attorney from the AG's Office to ensure that the question has not already been answered.

Executive Branch Ethics Committee



STATE OF NEW HAMPSHIRE EXECUTIVE BRANCH ETHICS COMMITTEE COMPLAINT FORM

Use this form to report a violation of RSA 21-G:21, 27, RSA 15-A, RSA 15-B, or a State Agency Ethics Code

COMPLAINANT INFORMATION

Name _____ Title/Position/Agency (If applicable) _____
Address _____ Phone _____
City _____ State _____ Zip Code _____
Email Address _____

PERSON AGAINST WHOM COMPLAINT IS BROUGHT

Name _____ Agency/Title/Position Held (if known) _____
Contact Information (if known) _____
City _____ State _____ Zip Code _____

STATEMENT OF FACTS

Date and Time of Violation _____

Location of Violation _____

Please explain the basis for your complaint. If necessary, attach additional sheets.

Names and phone numbers of witnesses or other victims: _____

State Statute or Ethics Code you believe was violated (if known): _____

SIGNATURE

By signing and filing this complaint, you are stating under penalty of law that the information you are providing is true and correct to the best of your knowledge.

Signature _____ Date _____

THE STATE OF NEW HAMPSHIRE

On the _____ day of _____, 20__ before me, _____ (Print name of Notary Public/Justice of the Peace), the undersigned officer, appeared _____ (Print name of person filing the complaint, whose signature is being notarised) (known to me) (or satisfactorily proven) (circle one) to be the person whose name appears above, and s/he subscribed his/her name to the foregoing complaint and swore that the facts contained in this Affidavit are true to the best of his/her knowledge and belief.

Notary Public/Justice of the Peace

My Commission expires: _____ (seal)
If additional pages are used, both the complainant and the Notary Public/Justice of the Peace must sign and date each page

Submit to:
Executive Branch Ethics Committee, 33 Capitol Street, Concord, New Hampshire 03301

Executive Branch Ethics Committee

Jurisdiction for investigating complaints is limited to complaints regarding executive branch officials who are not classified employees



Executive Branch Ethics Committee



Requests for advisory opinions can be received from any executive branch official or employee

End

