

# EXECUTIVE BRANCH ETHICS COMMITTEE



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## Advisory Opinion

2007-005

### Question Presented

May a state employee accept free transportation to an event that the employee is attending in his or her official capacity from a person who is employed by an entity regulated by his or her agency?

### Summary Answer

Yes. The state employee and the leadership of the Department are, however, cautioned to reject the gift of free transportation if a conflict of interest would result.

### Legal Authority

RSA Chapter 15- B, RSA 21-G:22

### Analysis

The Ethics Committee considered whether the acceptance of free transportation would be an impermissible gift to the state employee. RSA 15-B:3, effective June 2, 2006, states that "no elected official, public official, employee, constitutional official, or legislative employee shall knowingly accept, directly or indirectly, any gift as defined in this chapter." RSA 15-B:2 V (c)(10) states that a gift shall not include "meals, beverages, lodging, or transportation associated with attendance at . . . 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."

Thus a simple reading of current law suggests that it is permissible for a state employee to accept free transportation associated with an event that the employee is attending in her or his official capacity.

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*"The people's government, made for the people, made by the people, and answerable to the people."*

*Daniel Webster, Jan. 16, 1830*

However, the newly enacted Code of Ethics states that: "Executive branch officials shall avoid conflicts of interests. 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." RSA 21-G:22. The definition for executive branch officials includes every public employee as defined by RSA 15-B:2, IX. RSA 21-G:21 II-a. A conflict of interest is defined as 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.

The Ethics Committee is concerned that the acceptance of free transportation may directly or indirectly affect or influence the performance of the state employee's duties towards the regulated entity that provided the transportation. If so, that would be a conflict of interest and the offer of free transportation would have to be declined.

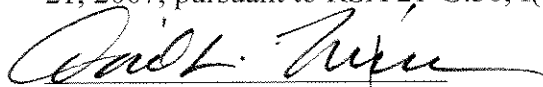
In evaluating whether there is a conflict of interest, the state employee and the leadership of the Department should consider such factors as the monetary value of the free transportation (is the regulated entity offering a car ride across the state or a cross-country trip in a corporate jet?), whether the regulated entity has pending matters before the agency and whether there is any likelihood that the acceptance of the proffered transportation will influence the employee/s decision-making.

In most circumstances the state would have a duty to provide its employee transportation to an event the employee is attending in his or her official capacity; therefore, the beneficiary of the free transportation would be the State. The decision whether to accept the free transportation would be properly made by the leadership of the Department. The Ethics Committee encourages state employees and the leadership of Departments to err on the side of caution in avoiding any potential conflict of interest.

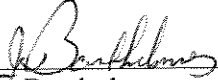
### **Conclusion**

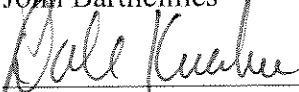
Free transportation to an event a state employee is attending in his or her official capacity is explicitly excluded from the definition of a gift, therefore, receipt of such transportation is not a prohibited gift. However, a state department and its employee must not accept free transportation if receipt of the free transportation would directly or indirectly affect or influence the performance of the state employee's duties in regulating the donor.

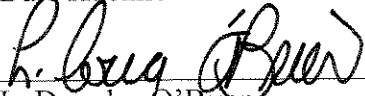
This Advisory Opinion is issued by the Executive Branch Ethics Committee on February 21, 2007, pursuant to RSA 21-G:30, I(c).

  
Chairman David L. Nixon

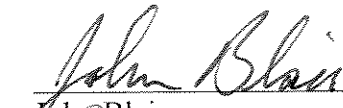
  
Deborah Schachter

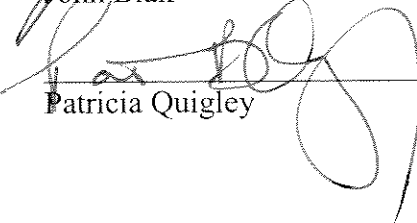
  
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