

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
Gregory L. Silverman

Advisory Opinion 2016-02

Question Presented

Whether the delivery of a thank you such as food basket, flowers, or chocolates to a state agency, or an employee within the agency, constitutes a prohibited gift under RSA 15-B.

Summary Answer

The purpose of prohibiting "gifts" to executive branch employees is to "ensure that the performance of official duties does not give rise to a conflict of interest..." Gifts such as food baskets provided in appreciation for past services do not appear to generate concerns about an employee's conflict of interest in the performance of public duties.

In the exercise of prudent judgment, employees should decline a gift of this nature if the employee believes it was provided to influence the agency or employee in some inappropriate way or to receive future preferential treatment. An employee should certainly decline a food gift if acceptance would affect his or her professional, independent judgment in any way.

Legal Authority

RSA 15-B:1; RSA 15-B:2, V; RSA 15-B:3; RSA 21-G:22

Analysis

RSA 15-B:3, III prohibits executive branch officials from accepting gifts. "Gift" is defined under RSA 15-B:2, V(a) to be:

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.

A. Gifts of this nature provided in appreciation for past services are not likely prohibited gifts because they would not improperly influence an employee's performance of their future duties.

Preliminarily, the Committee generally believes that gifts such as food baskets, provided with the intent to express appreciation for the agency or employee's past efforts, are not within the purpose of the restrictions imposed by RSA 15-B.

The purpose of the RSA 15-B's prohibition on certain gifts "is to ensure that the performance of official duties does not give rise to a conflict of interest." A conflict of interest, as it pertains to executive branch officials under RSA 21-G:22, is "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." The statutory provisions prohibiting gifts under RSA 15-B are to be "liberally construed to effect [their] purpose." In other words, the Committee strives to interpret RSA 15-B to prohibit an executive branch employee's acceptance of things that could appear to give rise to a conflict of interest. It hopes to avoid interpreting RSA 15-B in an overly technical way that rejects common sense and leads to unnecessary confusion.

RSA 15-B prohibits certain gifts to executive branch employees to "ensure that the performance of official duties does not give rise to a conflict of interest..." Gifts such as food baskets provided in appreciation for past services do not appear to generate a conflict of interest in the performance of the employee's public duties in the future. In other words, food baskets provided to express gratitude for an agency's or employee's effective completion of their regular duties are unlikely to be linked to a "private interest" that would improperly influence the future performance of an agency's or employee's duties.

For example, a food basket provided to the Attorney General's office by a crime victim intended to express thanks for a successful prosecution of a criminal trial does not fall within the purpose of RSA 15-B's prohibitions. Food baskets provided by the same individual or organization more than once to the same employee or agency, however, increase the likelihood that the food basket triggers conflict of interest concerns. Such frequency of providing food baskets is discussed below.

B. Assuming certain gifts of this nature could fall within the restrictions of RSA 15-B, not all such gifts may be considered prohibited "gifts."

i. Value less than \$25

Assuming the statutory restrictions of RSA 15-B apply to the circumstances presented, the items described would fall into the category of "tangible things." Gifts of this nature are prohibited

only if they have “more than insignificant economic value.” RSA 15-B:2,V (a)(2). The statute continues: “Any such item with a value of less than \$25 is presumed to be of insignificant economic value,” and so would not be a prohibited “gift.”

ii. Value greater than \$25

The statute does not further define “insignificant economic value” that may be greater than \$25. It is not for the Committee to say what value greater than \$25 would be considered “more than insignificant” in all circumstances. The Committee recognizes that the legislature enacted this \$25 presumption a decade ago in 2006.

For example, a gift to an individual staff person of a fruit basket costing around \$100.00 could be considered to have more than “insignificant value,” whereas the same fruit basket that is divided among agency staff generally, would unlikely to be so considered.

iii. Frequency of the provision of gifts of this nature

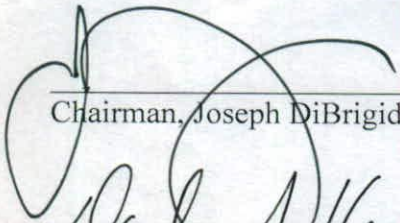
RSA 15-B:3’s prohibition on gifts seems to suggest that a gift is a one-time transaction: “It shall be unlawful to knowingly give any gift as defined in this chapter, directly or indirectly...” The Committee believes that RSA 15-B:3’s use of “indirectly,” along with the directive to construe the statute liberally in accordance with its purpose, could mean that individual gifts of insignificant economic value provided more than once to an agency or employee could constitute a gift.

If an individual or organization, for example, is likely to maintain a continuing relationship with an executive branch agency or employee, the frequency with which a food basket is provided increases the likelihood of a conflict of interest arising. Put another way, recurrent food baskets potentially create a “private interest” in an agency or employee that could improperly affect the agency’s or employee’s regular performance of work duties. Periodic food baskets reasonably perceived as given to curry favor or influence could constitute prohibited gifts under RSA 15-B.


Conclusion and recommendations

The purpose of the RSA 15-B is to avoid allowing an employee to accept things that could lead to a conflict of interest in carrying out his or her duties. The Committee believes it is unlikely items intended to express appreciation for past efforts for an employee’s or agency’s work would run afoul of RSA 15-B’s objective. Gifts of this nature may very likely be given and accepted, especially when the food basket is divided amongst the office generally.

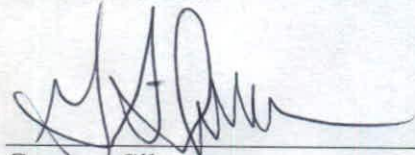
In the exercise of prudent judgment, employees should decline a thank you gift if the employee believes it was provided to influence the agency or employee in some inappropriate way or to receive future preferential treatment. Such gifts could appear to a reasonable person to be extravagant or extremely luxurious, or given with a certain frequency where it would appear the gift is provided with the intent of currying favor in future interactions. An employee should certainly decline such a gift if acceptance would affect his or her professional, independent judgment in any way.



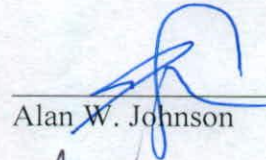
Chairman, Joseph DiBrigida, Jr.



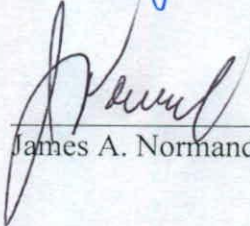
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