

V. CODE OF ETHICS, GIFTS AND FINANCIAL STATEMENTS

There are two principle statutes that apply to the Governor and Council regarding ethics, the Code of Ethics in RSA 21-G and the provisions of RSA 15-B regarding gifts and financial disclosures.

The Executive Branch Ethics Committee is charged with issuing guidance concerning the application of the Code of Ethics and RSA 15-B, and resolving complaints of violations thereof by non-classified executive branch officials. RSA 21-G:29-33. The opinions issued by the committee since 2007 are available on the Department of Justice website at <http://doj.nh.gov/ethics-committee/opinions.htm>.

A. RELEVANT ETHICS LAW TERMS DEFINED

Conflict of interest: means 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.

Elected Official: The Governor and members of the Executive Council RSA 15-B:2, III. ¹

Expense Reimbursement: Payment in any form as prepayment, underwriting, or reimbursement of the reasonable expenses of attendance, registration, travel, meals, or lodging related to a bona fide informational or educational conference, seminar, or meeting, when the source of such reimbursement is other than the state, a county, or the United States of America. RSA 15-B:2, IV.

¹ RSA 15-B:2, IX defines “public employee” as “any person, including but not limited to a classified, or nonclassified employee or volunteer, who conducts state business on behalf of the governor, any executive branch official, agency, or the general court.”

Executive Branch Officials is defined to incorporate constitutional officials, elected officials who hold executive branch office, public employees and public officials. RSA 21-G:21, II-a.²

Family Members: Any person related to and living in the same domicile as the elected official, public official, public employee, constitutional official, or legislative employee, who shares a common economic interest in the expenses of daily living, including, but not limited to, a spouse, child, or parents. RSA 15-B:2, VII.

Honorarium: A payment in any form to an elected official, public official, public employee, or constitutional official 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 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. . RSA 15-B:2, VI.

B. GIFTS

Accepting gifts is prohibited. RSA 15-B:3. It is a misdemeanor to violate the gift prohibition. RSA 15-B:9

“Gift” is broadly defined to mean money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money or any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. RSA 15-B:2,V(a). The statute lists 13 exceptions to the definition of a gift,

² “Executive branch official” means every elected official as defined by RSA 15-B:2, III, who holds an executive branch office, every public official as defined by RSA 15-B:2, X, every constitutional official as defined by RSA 15-B:2, II, and every public employee as defined by RSA 15-B:2, IX.

which are described below. If it is not listed as an exception, then it is a gift, subject to the gift prohibition. *See* RSA 15-B:2, V(b).

The law distinguishes honorariums and expense reimbursements from gifts. RSA 15-B. Honorariums or expense reimbursements (as defined in statute) may be accepted, but must be reported to the Secretary of State. RSA 15-B:6. A public official shall not 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. RSA 15-B:4 There is no reporting requirement of an expense 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. RSA 15-B:5..

1. TO WHOM DOES THE LAW APPLY?

The prohibition against the acceptance of gifts applies to the Governor, the Executive Councilors, and their family members. RSA 15-B:3. ³

2. RULES IMPOSED BY THE LAW:

(a) It is illegal to knowingly give any gift, directly or indirectly, to any elected official RSA 15-B:3, I.

(b) It is illegal to knowingly give any gift, directly or indirectly, to any family member of any elected official, with a purpose of influencing or affecting the official conduct of such official. RSA 15-B:3, II.

(c) No elected official shall knowingly accept, directly or indirectly, any gift. RSA 15-B:3, III.

³ As well as public employees .

3. GIFT FULLY DEFINED.

“Gift” is broadly defined to mean money in any amount, whether in the form of cash, check or any other negotiable or non-negotiable instrumentality for the transfer of money or any other tangible thing, intangible thing, service, or the use thereof having more than insignificant economic value. RSA 15-B:2,V(a). However, thirteen exceptions limit the definition by excluding from the prohibition the following:

- (a) Items with a value of less than \$25, which are presumed to be of insignificant economic value. RSA 15-B:2,V(a)(2).
- (b) A political contribution as defined in RSA 664. RSA 15-B:2,V(b)(1).
- (c) A commercially reasonable loan, made in the ordinary course of business. RSA 15-B:2,V(b)(2).
- (d) Repayment to an elected official, public official, public employee, constitutional official, or legislative employee of a bona fide loan made by such a person. RSA 15-B:2,V(b)(3).
- (e) A ceremonial object or award, the value of which is primarily personal 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. RSA 15-B:2,V(b)(4).
- (f) Objects which primarily serve an informational purpose provided in the ordinary course of business, such as reports, books, maps, or charts. RSA 15-B:2,V(b)(5).
- (g) 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.

RSA 15-B:2,V(b)(6).

(h) 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. RSA 15-B:2,V(b)(7).

(i) 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. RSA 15-B:2,V(b)(8).

(j) Tickets or free admission to a charitable, ceremonial, or political event provided that:

- i. The proceeds of the event are subject to the political contributions and expenditure reporting law, RSA 664; or
- ii. The event is sponsored by a charitable organization that is registered with the Charitable Trusts Unit within the Department of Justice, or which is a charitable organization pursuant to section 501(c)(3) of the federal tax code. RSA 15-B:2,V(b)(9).

(k) Meals, beverages, lodging, or transportation associated with attendance at:

- i. 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

ii. 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).

(l) Expense reimbursement or an honorarium. RSA 15-B:2,V(b)(11). (These must be reported to the Secretary of State no later than the last day of the month following the month during which they were received. The report form is available on the Secretary of State’s website.)

(m) Meals and beverages consumed in the course of official business. RSA 15-B:2,V(b)(12).

(n) Monetary or non-monetary award or recognition issued under the suggestion and extraordinary service award program under RSA 99-E. RSA 15-B:2,V(b)(13).

C. CONFLICT OF INTEREST

The law requires that executive branch officials avoid conflicts 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.” RSA 21-G:22.

D. MISUSE OF POSITION

The law also prohibits misuse of the position held by a public official. RSA 21-G:23. Specifically the law prohibits an executive branch official from:

(a) disclosing or using confidential or privileged information acquired in the performance of his or her duties for the state for personal benefit or for financial gain; or

- (b) using 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.

The ethics code also prohibits executive branch officials from being lobbyists, or having an ownership interest or being employed by an entity that takes positions on legislation or lobbies for action on matters, including contracts, licenses, permits or rules pending before the executive branch. RSA 21-G:25, I and II. Executive branch officials are prohibited from appearing as lobbyists for 6 months after leaving office. RSA 21-G:26. A violation of any of these statutes is a misdemeanor. RSA 21-G:34.

E. NEPOTISM

No executive branch official shall directly hire, evaluate, set the compensation or salary for, supervise or terminate any employee or member of a State board or commission who is related to the official in one of the following ways:

- (1) spouse
- (2) parent
- (3) son or daughter
- (4) stepson or stepdaughter
- (5) brother or sister
- (6) mother or father-in-law, sister or brother-in-law, daughter or son-in-law.
- (7) grandparent or grandchild

RSA 21-G:26-a

F. SEXUAL HARASSMENT

The State Executive Branch Policy on Sexual Harassment also applies to the Executive Council. MOP 151, adopted 2/21/2018.

VI. FINANCIAL DISCLOSURE REQUIREMENTS

The Governor and Executive Councilors are required to file a Financial Disclosure Statement initially when they file for the primary election when seeking office or re-election. RSA 15-A:3, I. Thereafter a new report must be filed no later than the third Friday of each January. RSA 15-A:6. The financial disclosure forms are available on-line at the Secretary of State's web site and from the Secretary of State's Office (<http://sos.nh.gov/FinInterest.aspx>). The forms must be filed with the Secretary of State's Office. RSA 15-A:1. Knowingly failing to file or filling a false statement could be a misdemeanor. RSA 15-A:7.