

NH LOBBYING AND GIFT RULES

Considerations for the Non-Profit Community

NH Center for Nonprofits
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Prelude

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Overview

- Non-profits are generally subject to the same lobbying and gifts rules (“ethics rules”) as everyone else
- Major changes in 2006 (SB 206, 2006 N.H. Laws Ch. 21)

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Continuing Interest and Activity

- 2007 legislative changes (HB 828, 2007 N.H. Laws Ch. 354)
- NH Legislative Ethics Committee Interpretative Ruling 2007-#1 (October 29, 2007)
- NH General Court Ethics Booklet (November 2007 Edition)
- More changes on the way?

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Act I – NH Lobbying Rules

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What is Lobbying?

- Direct contact (in person, by letter, by phone, etc.) with a legislator or executive branch decision-maker (not just staff)
- “[E]mployed for a consideration by any other person, except the state of new Hampshire, in a representative capacity for the purposes” of lobbying

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What is Lobbying? (cont'd)

- Activities “[t]o promote or oppose, directly or indirectly” any pending or proposed legislation, state contract or administrative rule
- CAUTION – under current law, providing materials related to legislation or a rulemaking may constitute lobbying and may also constitute an illegal gift

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Who are Not Lobbyists?

- Volunteers (but no general exception or exclusion for non-profits)
- Persons representing clients before a state agency other than in connection with a rulemaking or the purchasing of good and services by the state (e.g., administrative hearings)
- Owners and employees of a business seeking to do business with the state

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What are the Reporting Requirements?

- Annual registration – \$50
- Monthly reports
 - “All fees received from any lobbying client that are related, directly or indirectly, to lobbying, such as public advocacy, government relations, or public relations services including research, monitoring legislation, and related legal work” (RSA 15:6, I(a))
 - All expenditures of lobbying fees

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What are the Reporting Requirements?

(monthly reports cont'd)

- Honoraria and expense reimbursements paid by a lobbyist or a family member of a lobbyist
- Political contributions by a lobbyist or a family member of a lobbyist

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Of Special Note for Non-Profits

RSA 15:5, I provides that “no recipient of a grant or appropriation of state funds may use the state funds to lobby or attempt to influence legislation, participate in political activity, or contribute funds to any entity engaged in these activities”

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Segregation of State Funds

If an organization receives both state and non-state funds and wishes to lobby using non-state funds, then the organization must keep the state and non-state funds “physically and financially separate from any non-state funds that may be used for any of these purposes. ... Mere bookkeeping separation of the state funds from other moneys shall not be sufficient.” (RSA 15:5, II)

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Ethics Alert for Non-Profits

- Under a special rule in current law (RSA 21-G:25), anyone who is a lobbyist or is an owner or employee of an entity that employs a lobbyist may not perform volunteer services for the government
- Some exceptions apply

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Entr'acte

A Brief Note on Federal Tax Rules Governing Lobbying by 501(c)(3) Organizations

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Rules for Lobbying by Charities

- Rules cover lobbying at federal, state and local levels
- Broad definition of lobbying to include all activities related to lobbying (similar to definition for fees required to be reported under RSA 15)
- Safe Harbor available for lobbying expenditures – use it!

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Act II – NH Gift Rules

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What is a Gift?

- Any amount of money in any form
- Any tangible thing, intangible thing, service or the use of any of these with a value of \$25 or more
- Includes items like tickets to sporting events or golf outings
- Also includes services such as volunteer services to prepare legislation or on a campaign

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Some Exceptions

- “[P]urely personal and private” gifts that would be given anyway
- Commercial arrangements on reasonable terms – e.g., loans and compensation
- Political contributions or tickets to a political fundraiser

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More Exceptions

- Tickets to an event open for attendance by any Member of the General Court (and published in the calendar of the House or Senate)
- Meals, beverages, lodging and transportation for (i) ceremonial or celebrational events open to the public or with a planned attendance greater than 50 or (ii) events attended in an official capacity (e.g., a plant or site visit by all members of a legislative committee)

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Expense Reimbursements and Honoraria are not Gifts

- Expense reimbursements must be for events that are related to the recipient's governmental position
- An official may not accept an honorarium from a person who is interested in any matter pending before or contemplated by the person
- Reporting requirements apply to recipients of expense reimbursements and honoraria (and lobbyists)

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Of Special Note for Non-Profits

- Gifts do not include tickets to an event sponsored by a charity
- “Sponsored” is not defined but likely requires the charity to handle all funds and enter into any contracts in connection with the event

The “Lobbying Exception”

Gifts do not include meals and beverages consumed at a meeting, the purpose of which is to discuss official business

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“Official Business”

“Official business” means, for elected members of the general court and legislative employees, the discussion or transaction of legislative business, namely, any official action or non-action with regard to any potential pending or existing bill, resolution, amendment, report, or study, any other matter pending or proposed in a committee or in either house of the general court ... (cont’d)

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“Official Business” (cont’d)

... or an issue of public policy which is or may be the subject of legislative attention, or any other matter which is within the official jurisdiction or cognizance of the general court. (RSA 15-B:2, VIII-a, added by 2007 N.H. Laws Ch. 354)

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Limits on the “Lobbying Exception”

- If value of a meal is greater than \$25, then the recipient must report it to the Secretary of State within 10 days
- For these meals and all other excepted gifts, there is a \$250 annual limit on the amount a legislator may receive from any single source (NH Legislative Ethics Guidelines, Part II, Section 4, VII(f))

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Epilogue

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Is There Any Relief in Sight?

- Changes to ethics laws proposed and debated in 2007 session of General Court, but no changes
- A retained bill (HB 91) provides a vehicle for potential changes in 2008, such as
 - Setting a minimum hour threshold to be a lobbyist
 - Replacing the “lobbyist interlock” with an “executive branch volunteer list”
 - Further refinement of gift rules

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Thank You!

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