

Advisory Opinion 2020-1

Response to a Request for an Advisory Opinion from Representative Stephen J. Shurtleff, Speaker of the House of Representatives (September 16, 2020)

Pursuant to RSA 14-B:3, I(c), Stephen J. Shurtleff, Speaker of the House of Representatives, has requested an advisory opinion. He has inquired whether, under applicable statutes and the Ethics Guidelines, it is permissible for employees of the New Hampshire General Court to participate in a reduced tuition program offered by Granite State College.

Granite State College is one of four institutions that comprise The University System of New Hampshire. It offers programs designed to meet workforce needs within the state. In support of those needs, it offers significant tuition savings to New Hampshire government workers. It reduces undergraduate tuition to \$250 per credit and offers a 20% discount on graduate tuition. This tuition savings program is made available to all government employees, not just those who work in the legislative branch.

Section 8 of the Ethics Guidelines establishes a Code of Conduct to be followed by legislative employees. Paragraph II of that section lists prohibited activities. Part (c) provides that *"a legislative employee or officer shall not accept any gift from givers who wish to influence the work activities of the employee or officer."* In the Ethics Guidelines, "Gift" is defined as *"money in any amount"* and *"any other tangible thing, intangible thing, service or the use thereof having an individual value of greater than \$50."* The lower tuition offered by Granite State College is provided to all state employees for purposes of workforce development. A legislative employee is not using his or her position to obtain reduced tuition for his or her personal benefit. The reduced tuition is not being offered as compensation or a reward for any legislative activity; nor can it be reasonably inferred that the legislative employee's judgment was influenced or impaired as a result. To the extent that the lower tuition could be considered a gift, Part (c) of that provision of the Ethics Guidelines would not apply in this case.

Section 8 of the Legislative Employee Code of Conduct also includes Paragraph II(b) which states that: *"a legislative employee or officer shall not violate the provisions of RSA 14-C."* RSA Chapter 14-C specifically addresses requirements for legislators and legislative employees with regard to gifts. RSA 14-C:3, III provides that: *"it shall be unlawful for any legislator or legislative employee to solicit or to knowingly accept directly or indirectly any gift as defined in this chapter or to fail to meet the reporting requirements of this chapter."* RSA Chapter 14-C, in Section 2, Paragraph IV, also includes a definition of "Gift." The definition is consistent with, although more extensive than, the definition set forth in the Ethics Guidelines. Again, a gift includes *"any other tangible thing, intangible thing, service, or the use thereof having an individual value greater than \$50.00."* In this case, the definition does not speak to the motive of the giver, but it does include many exceptions to the definition of gift, although a reduction in tuition is not among those listed. On its face, it might appear that accepting reduced tuition would constitute a gift and, therefore, be statutorily prohibited.

But in considering this matter, one must look at the purpose of the statute which is spelled out in RSA 14-C:1: *"the purpose of this chapter is to ensure that persons charged with carrying out the duties and activities of the legislative branch of state government do so in an atmosphere that supports the independent judgment of such persons and minimizes the opportunity for inappropriate influence by persons or organizations subject to or likely to be subject to or interested in any matter or action pending in the legislative branch."*

In this case, the reduced tuition is provided to all state employees. The stated purpose is to assist in developing New Hampshire's workforce. It is not directed at legislative employees and cannot reasonably be construed as an effort to impair the independent judgment or assert inappropriate influence on legislative employees. Like a similar discount given by the College to members of the military, it is incorporated into the school's fee structure and not directed at any individual, committee, department or branch of government. In the current program, it is a benefit that the employee is entitled to receive and should not be construed as a gift.

Accordingly, we advise Speaker Shurtleff that participation in the reduced tuition program as currently offered by Granite State College would not constitute a violation of the Ethics Guidelines.

Representative Edward M. Gordon, Chairman
Honorable Donna Sytek, Vice Chairman
Senator Martha Fuller Clark
Senator Sharon M. Carson
Representative Janet G. Wall
Attorney David H. Bradley
Honorable David W. Hess

For the Committee,
Edward M. Gordon
Chairman

[Vote: 7-0]