

Advisory Opinion 2024-2

Response to a Request for an Advisory Opinion from Senate Legal Counsel Richard J. Lehmann on Behalf of Senator Sharon M. Carson and Senator Daniel Innis (January 29, 2024)

Senate Legal Counsel Richard J. Lehmann has submitted a request for an Advisory Opinion on behalf of Senator Sharon M. Carson and Senator Daniel Innis about whether, consistent with applicable statutes and the Ethics Guidelines, the Senators are required to recuse themselves from participating on certain bills that are of interest to their employers. In completing its consideration, the Committee reviewed the facts set forth in the written request and received testimony from Attorney Lehmann.

Background

According to the information submitted by Attorney Lehmann in his letter to the Committee dated January 17, 2024, Senator Carson is an adjunct professor who teaches at the Nashua Community College and Senator Innis is a tenured professor at the University of New Hampshire. The Senators receive their wages from the Community College System of New Hampshire and the University System of New Hampshire, respectively, both of which are public entities.

Attorney Lehmann referenced several decisions and advisory opinions issued by the Committee over the past decade and stated that “a rule has emerged that Section 3, II(b) of the Ethics Guidelines requires legislators to recuse themselves from matters on which their employers lobby, testify, or otherwise attempt to influence the outcome (of) legislation.” He asserted that the Ethics Guidelines and relevant statutes treat employment by state entities differently than employment by private entities, citing Section 4, I(h) of the Ethics Guidelines as providing a “safe-harbor that removes any transactions that are permitted under RSA 14-C from the prohibitions contained in Section 3” of the Ethics Guidelines. He cited RSA 14-C:2, IV(b)(8) as expressly excluding from the gift prohibition, “[w]ages...paid to the person by the state, a county, or the United States of America related to performance of official duties.” He argues that “[m]oney received by Sen. Carson and Sen. Innis is paid to them by the state and is related to the performance of their official duties for their employers. Accordingly, because Sen. Carson and Sen. Innis are not prohibited from accepting their salaries under RSA 14-C, their participation in matters in which their employers lobby, testify, or seek to influence the outcome is not prohibited by Section 3 of the Guidelines.”

Committee Analysis

The Committee engaged in a long discussion of the facts and circumstances presented and the applicable statutory guidelines and standards set by prior precedent. While Senators Carson and Innis are employed by the University System and the Community College System, in their positions as instructors, they clearly are unable to exercise substantial influence over the affairs of those organizations. While that language is not spelled out in statute, the Committee viewed RSA 14-C:2, IV(b)(8), as argued by Attorney Lehmann, and RSA 14-C:2, IV(b)(7) as provisions directed at exempting certain employees from the financial limitations which may otherwise require recusal. The Committee spent a considerable amount of time attempting to understand the intent behind the two provisions and to eliminate the ambiguity in their terms. While the Committee members may have differences over which of the two provisions may apply, all members were in agreement that, by virtue of their employment, one of the provisions exempted Senators Carson and Innis from recusal from matters on which their employer takes legislative positions.

Conclusion

Given the nature of their employment, the Committee found that Senator Carson and Senator Innis may participate in matters in which their employers, the Community College System of NH or the University System of NH, lobby, testify, or seek to influence the outcome of the matter under consideration.

We appreciate the opportunity to be of assistance.

Honorable Edward M. Gordon, Chairman
Honorable Donna Sytek, Vice Chairman
Senator Cindy Rosenwald
Senator Ruth Ward
Representative Janet G. Wall
Representative Bob Lynn
Honorable David H. Hess

For the Committee,
Edward M. Gordon
Chairman