

Advisory Opinion 2013-2
Response to a Request for an Advisory Opinion
from Representative Frank V. Sapareto
(August 2, 2013)

Please Note: For clarity, references to and excerpts from provisions of statutes or the Ethics Guidelines have been updated to conform to subsequent changes in numbering and language, where the changes have not affected the substance of the Opinion.

Representative Frank Sapareto has requested a “ruling on the \$30 plus E-Z Pass that is given as a gift to legislators.” The Committee takes this as a request for an Advisory Opinion whether, consistent with applicable statutes and the Ethics Guidelines, it is permissible for New Hampshire Department of Transportation to offer without charge, and for legislators to accept, an E-ZPass transponder that enables legislators’ free passage through electronic tollgates.

Research on behalf of the Committee confirms that the price to the public for a regular E-ZPass transponder is either \$8.90 for a windshield tag or \$15.19 for a plate tag. The public is also required to make a minimum pre-paid toll deposit of \$30.00 to establish an E-ZPass account. The combined value of the transponder and prepayment exceeds \$24.99, and so would classify it as a gift that RSA 15-B:2 would prohibit legislators from receiving, unless exempted from that classification by applicable provision of law.

However, according to further research on behalf of the Committee, the complimentary transponders offered to legislators are not the same as regular E-ZPass transponders. They are classified by NHDOT as “non-revenue transponders” which are not valid for use outside NH, and are valid in NH only when used in a vehicle eligible for toll-free use of New Hampshire Turnpikes, as authorized by statute. See NHDOT *Work Instructions*, “Exemptions from Tolls” dated May 7, 2008.

Citing NH RSA 237:12, Paragraph 4.0 of that document recites:

“4.0 PROCEDURE: The following categories comprise the list of approved toll-free vehicles. Note: vehicles are granted toll exemption, drivers and occupants are not.

“4.1 Motor Vehicles that shall receive toll-free use of NH Turnpikes

A) Motor vehicles bearing plates with the State Seal (legislative ID cards may also be displayed) as authorized under RSA 261:90 to include:

1. NH Legislators (Senate and House of Representatives)

“4.4 All of the above agencies can obtain a Non-Revenue E-ZPass account through the Bureau of Turnpikes per the Toll Collection Business Rules.”

In addition to legislators, the Work Instructions (citing RSA 261:90) authorize issuance of non-revenue E-ZPass transponders to New Hampshire’s U.S. Senators and Representatives, the Governor, Members of the Governor's Council, the Attorney General, the Secretary of State, and the State Treasurer. Citing other RSA sections, the

Work Instructions also authorize such issuance to all vehicles with permanent plates as authorized under RSA 261:92; military vehicles, U.S. Government vehicles, and General Services Administration vehicles; emergency vehicles going to and returning from an emergency; unmarked law enforcement vehicles; and certain employees of the Department of Transportation and Liquor Commission going to and from work.

Those provisions plainly and directly follow the legislative mandate in RSA 237:12, I, which prescribes the motor vehicles “that *shall be* granted toll-free use of any section of the New Hampshire turnpike system,” as well as RSA 261:90, which authorizes production and distribution of “cover plates” bearing the State seal to legislators, among others.

Thus, the transponders merely expedite the free toll gate passage for legislators mandated by statute, rather than providing anything else of value. This is especially true because the non-revenue transponders may be used only in eligible vehicles, and do not work except in New Hampshire. Unlike the free ski pass program we addressed in AO 2011-4, non-revenue transponders add nothing of value that is not directly authorized by statute. To treat them as “gifts” prohibited by RSA 15-B:3, would disregard that authority.

Accordingly we advise that the non-revenue transponders issued to legislators, when used in vehicles bearing legislative plates, are not prohibited gifts.

Martin L. Gross, Chairman
Representative Janet G. Wall, Vice Chairman
Representative Jordan G. Ulery
Senator Jim Rausch
Senator Martha Fuller Clark
Attorney Wilfred L. Sanders, Jr.
Mr. David A. Welch

For the Committee,
Martin L. Gross
Chairman

[Vote: 7-0]