

Advisory Opinion 2018-1
Response to a Request for an Advisory Opinion
from Representative Gregory Hill
(August 15, 2018)

Representative Gregory Hill has submitted a request for an Advisory Opinion about whether, consistent with applicable statutes and the Ethics Guidelines, it would be permissible for him to accept employment with the Children’s Scholarship Fund (CSF), a scholarship organization, “to fundraise in the business community and create an income by doing so.” He described his role with CSF as one involving “travel throughout NH explaining the benefits to individuals and businesses of donating to the NH Education Tax Credit Scholarship Program.” He stated that his compensation would come from the CSF “as a percentage of their administrative fee as outlined in the legislation.”

Representative Hill, as he stated in his request, was one of the sponsors of the legislation that created the New Hampshire Education Tax Credit Scholarship Program (which allowed the subsequent formation of scholarship organizations such as the Children’s Scholarship Fund) and subsequent legislation that affected the program.¹

The Committee responds as follows:

Representative Hill may accept employment with the CSF under the gift exception for wages in RSA 14-C, IV (b) (7) but he would violate the Ethics Guidelines if he engages in any of the activities listed in Guidelines Section 3, II (c), (d), and (f) on behalf of his employer. He should list his employment on the financial disclosure form or checklist and he should file a conflict of interest declaration of intent and not participate in any way in any official activities affecting his employer.

Relevant Provisions of Ethics Guidelines and Law

Ethics Guidelines

Ethics Guidelines Section 3 -- Prohibited Activities *****

II. Legislators shall not solicit, accept, or agree to accept anything of value from another for themselves or other persons, if the legislator receives such thing of value:

(a) Knowing or believing the other’s purpose to be the influencing of an action, decision, opinion, recommendation, or other official activity.

(b) Knowing or believing that the giver is or is likely to become subject to or interested in any matter or action pending before or contemplated by the legislator or the General Court.

(c) In return for advice or other assistance relating to a legislator’s official activities.

(d) In return for introducing legislation, testifying before any legislative committee or state agency, voting in committee or in House or Senate session, or otherwise participating in,

¹ Representative Hill was a cosponsor of 2012 SB 372-FN-LOCAL, “An Act establishing an education tax credit,” which was enacted as Chapter 287 of the 2012 NH Laws, a cosponsor of 2012 HB 1607-FN-LOCAL, “An Act establishing an education tax credit,” and 2017 HB 386-FN, “An Act relative to technical corrections to the education tax credit statute,” which was enacted as Chapter 63 of the 2017 NH Laws, and was the prime sponsor of 2018 HB 1686-FN, “AN Act relative to applications for and the use of education tax credits,” which was enacted as Chapter 341 of the 2018 NH Laws.

influencing, or attempting to influence any decision of the legislature, county delegation, or any state agency. ****

(f) In return for having given a decision, opinion, recommendation, nomination, vote, or other official activity.

III. Legislators shall not: ****

(e) Use their public position or office to obtain anything of value for the private benefit of the legislator, a member of the legislator's immediate family, or a household member.

Ethics Guidelines Section 2 – Definitions.

I. "Anything of Value" includes but is not limited to:

(l) A promise of employment or continued employment; ****

RSA 14-C

RSA 14-C:2, IV(a) "Gift" means:

(1) Money in any amount, whether in the form of cash, check, or any other negotiable or non-negotiable instrumentality for the transfer of money. ****

RSA 14-C:2, IV(b) Notwithstanding subparagraph (a), "gift" shall not include:****

(7) 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 legislative position held.

RSA 14-C:3 Prohibition on Gifts; Duty to Report. –

III. 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.

IV. Under no circumstances shall the prohibitions in this section be nullified by filing an honorarium or expense reimbursement report pursuant to RSA 14-C:4 or a declaration of intent under the guidelines enforced by the legislative ethics committee.

Committee Analysis

The issues here are: 1) whether Representative Hill is being offered the job in exchange for sponsoring legislation relating to CSF; 2) would the compensation he would receive from CSF be wages received in his regular course of employment which is unrelated to his legislative position, thus qualifying under the gift exception for wages in RSA 14-C, IV (b) (7); and 3) whether his employment by CSF would bar him from participating in any official activities affecting CSF.

Based on the information before it, the Committee cannot conclude by clear and convincing evidence that Representative Hill knew or believed that CSF's purpose in wanting to hire him was in exchange for his sponsorship of legislation relating to CSF. He states, "I've filed and passed several changes to the program over the past 2 sessions as well as voted and testified in favor. None of these actions were done with the intention of one day becoming a fundraising entity of course."

The Committee also cannot conclude by clear and convincing evidence that Representative Hill's prospective compensation from CSF is related to his position as a member of the House, thus it would qualify for exemption from the definition of gift under RSA 14-C:2, IV(b)(7).

However, as a compensated employee of CSF, Representative Hill's participation in any official activity that would directly affect the interests of CSF would place him in a position in which he could stand in violation of Prohibited Activities II(c), (d), and (f).

Conclusion

Based on the information provided by Representative Hill about his prospective employment with the Children's Scholarship Fund, the Committee advises that his acceptance of employment with the organization would not constitute a violation of the prohibition on the acceptance of gifts set forth in RSA 14-C:3.

The Committee also advises that if Representative Hill were employed with the Children's Scholarship Fund while serving in the House, his participation in certain official activities would constitute violation of the Ethics Guidelines' Prohibited Activities Paragraph II, Subparagraphs (c), (d), and (f). Specifically, the Committee advises that if he were to provide advice or other assistance to CSF which related to his official activities, or if he were to introduce legislation, testify before any legislative committee or state agency, vote in committee or in House session, or otherwise participate in, influence, or attempt to influence any decision of the legislature, county delegation, or any state agency on matters directly related to the interests of CSF, or if he were to give a decision, opinion, recommendation, nomination, vote, or participate in any other official activity directly related to the interests of CSF, his activities would violate the Ethics Guidelines' Prohibited Activities Paragraph II, Subparagraphs (c), (d), and (f). Disclosure of his conflict of interest in relation to his employment with CSF would not excuse or absolve his violation of these prohibitions.

The Committee would note the distinction between being directly compensated to advocate for an organization as in Representative Hill's case, and merely being a member or employee of an organization or profession affected by legislation.

We appreciate the opportunity to be of assistance.

Honorable Donna Sytek, Chairman
Senator Sharon M. Carson, Vice Chairman
Representative Janet G. Wall
Senator Martha Fuller Clark
Representative David A. Welch
Attorney David H. Bradley
Honorable David W. Hess (did not participate in the opinion)

For the Committee,
Donna Sytek
Chairman

[Vote: 6-0]