

## Advisory Opinion 2007-3

**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.**

September 4, 2007

Honorable Melanie A. Levesque  
2 McDaniels Drive  
Brookline NH 03303-2497

Dear Representative Levesque,

At its meeting on August 28, 2007, the Legislative Ethics Committee reviewed your request for an advisory opinion. The question you presented is whether the applicable provisions of RSA 14-C and the Ethics Guidelines permit you, as owner of a corporation named Telecommunications Consulting Service of America, to bid on a Request for Proposals (RFP) issued by the New Hampshire Department of Resources and Economic Development (DRED) and, if selected, accept the award of the contract.

You submitted the following 5 specific questions:

- "1) Would my bidding on this RFP and accepting an award of the contract, if selected, be exempt from the statutory prohibitions of RSA 14-C:3, because payments received in a legislator's normal course of business which is unrelated to the performance of official legislative duties is exempted pursuant to RSA 14-C:2, IV(b)(7)?
- "2) If I am permitted to accept the contract, must I report it as an honorarium pursuant to RSA 14-C, or is it exempt from such reporting because the definition of honorarium in RSA 14-C:2, V excludes payments by the state and payments for work unrelated to one's official position?
- "3) Am I prohibited from bidding on the RFP or accepting the award of the contract by the Legislative Ethics Guidelines? For purposes of this question I share with you that:
  - a) I do not feel that if I participate in the bidding or the contract that it would impede my independent judgment regarding items dealing with DRED that come before the Legislature.

- b) I do not know nor believe that DRED would award the contract to me for the purpose of influencing my official legislative action but if it is awarded to me it would be due to my experience in the field and the quality of my proposal, and
- c) I am not using my public position to help secure the contract. In fact, I do not intend to mention my role as a legislator in my bid. However, I do believe DRED is aware that I am a legislator.

"4) Are there any other prohibitions that prevent me from participating in the RFP process or accepting the award, if selected, because of my role as a state legislator?"

"5) If I am awarded the contract and permitted to accept it, what, if any, disclosure forms must I submit about the contract and any real or perceived potential conflicts of interest resulting from it? Must I recuse myself from any future votes dealing with DRED?"

The Committee issues the following opinion:

Your bidding on the RFP and acceptance of the award, if selected, would be exempt from the statutory prohibitions set forth in RSA 14-C:3, because the payments you would receive would be in the regular course of your business which is unrelated to your legislative position and, therefore, exempt pursuant to RSA 14-C:2, IV(b)(7). You would not have to report the award of the contract as an honorarium because the definition of honorarium in RSA 14-C:2, V excludes payments by the state for services provided that are unrelated to or associated with one's official position.

There does not appear to be an applicable prohibition in the Ethics Guidelines prohibiting you from bidding on the RFP or accepting the award of the contract from DRED. There is no statutory provision that the Committee is able to readily identify that would prohibit you from bidding on and accepting the contract.

You would not be required under the Ethics Guidelines to recuse yourself in general from future votes relating to DRED, but you would be required to report your financial interest as a contractor for DRED on the financial disclosure forms required under the Ethics Guidelines. The Committee also cautions you to be sensitive to any situation in which your vote as a legislator could be perceived as creating or promoting an opportunity for you to engage in business relationships with the state. In such a case, your participation could violate Principles of Public Service I of the Ethics Guidelines, which cautions against use of public office to attain private benefits, and Section 3, III(e), which prohibits such conduct.

The Committee also suggests that you avoid placing yourself in a position of prime contractor for the state and awarding subcontracts to other persons, as this might give the appearance of promising an inducement so as to obtain personal benefit, in violation of Section 3, III(c) of the Guidelines.

I am enclosing a copy of the Ethics Booklet which contains the statutory and Guidelines provisions referenced above. Please contact me if I can answer any further questions about this matter.

Very truly yours,  
Russell F. Hilliard  
Chairman

Enclosure

cc: Members of the Legislative Ethics Committee