

Advisory Opinion 2018-2
Response to a Request for an Advisory Opinion
from Senator Robert J. Giuda
(October 9, 2018)

Pursuant to RSA 14-B:3, I (c), Senator Robert J. Giuda has requested an Advisory Opinion about whether, consistent with applicable statutes and the Ethics Guidelines, he may pursue a contract through his aviation consulting business with the New Hampshire Department of Transportation (DOT) to perform airport runway inspections.

According to information provided to the Committee by Senator Giuda, his business, Air Ops Analytics, LLC is a single-member limited liability corporation registered in New Hampshire. He said he first learned about the business opportunity when, after referencing his consulting company at a recent meeting on an unrelated issue, a member of the governor's staff mentioned in passing that DOT had for some time been unable to fill a position to perform runway inspections. Senator Giuda stated that he "offered that as a pilot with significant qualifications and a lifetime of experience in aviation, and with significant aviation safety credentials and experience, (he) would consider offering (his) services to perform runway inspections on a competitive contract basis to the state at much less cost than hiring a full-time or part-time employee."

Senator has asked the Committee:

"(1) whether pursuing this opportunity - fully transparent and through whatever lawful process DOT would utilize - would present any conflict whatsoever with my position and duties as a State Senator; and

(2) if the Committee determines that any conflicts do exist, could the Committee establish specific strictures and/or conditions that would eliminate these conflicts?"

Relevant provisions of Ethics Guidelines and law:

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: ****

(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. ****

Ethics Guidelines Section 2 – Definitions.

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

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

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.

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.

We advise as follows:

Based on the information provided to the Committee by Senator Giuda, we conclude that his pursuit or acceptance of a contract with DOT would not violate the Ethics Guidelines' prohibition against soliciting or accepting anything of value from a "giver who is likely to become subject to or interested in any matter or action pending before or contemplated by the legislator or the General Court" as the Committee does not construe the term "giver," in the context of Senator Giuda's inquiry, as including an agency of the State of New Hampshire, such as DOT.

Salary received from the consulting contract would be exempt from the statutory prohibitions on the acceptance of gifts, as set forth in RSA 14-C:3, because the salary would be in the regular course of his business, which is unrelated to his legislative position. RSA 14-C:2, IV(b)(7).

The Committee assumes that DOT would pursue its standard process for awarding consulting contracts in any decision to enter into a contract with Senator Giuda.

Senator Giuda would not be required under the Ethics Guidelines to recuse himself in general from future votes relating to DOT, but he would be required to fulfill the normal requirements for disclosure of his financial interests relating to the proposed contract with DOT through the use of the appropriate financial disclosure forms and verbal disclosure procedures under the Ethics Guidelines.

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

For the Committee,
Donna Sytek
Chairman

[Vote 7-0]