

Advisory Opinion 2017-3
Response to a Request for an Advisory Opinion
from Representative Joseph A. Pitre
(October 30, 2017)

Representative Pitre has sought an Advisory Opinion about whether acceptance of payment for the costs related to attendance at an event in Las Vegas sponsored by the Specialty Equipment Market Association (SEMA), will qualify for exemption from the prohibition on “Gifts” under RSA 14-C:3, as “Expense Reimbursement” under RSA 14-C:2, IV(b)(10), as defined in RSA 14-C:2, III.

Joining for the majority:

Honorable Donna Sytek, Chairman, Senator Sharon M. Carson, Vice-Chairman, Representative Janet G. Wall, Senator Martha Fuller Clark, Representative David A. Welch, and David H. Bradley, Esq.

According to an agenda submitted by Representative Pitre, it appears that the educational sessions at the 2017 SEMA Show held October 30 through November 3, 2017, are geared toward sales and marketing, employee relations, and social media. While the sessions may be of interest to car aficionados, the conference clearly does not satisfy criteria required to qualify for an expense reimbursement under our ethics law and guidelines. As the Committee held in *Interpretive Ruling 2013-1*:

This exemption allows legislators to accept payment for the costs of travel to and attendance at an event, for example, fares, meals, accommodation, registration or attendance fees. The exemption applies only where the event is a *bona fide* conference, meeting, seminar, or educational or informational program that relates to the legislator’s duties. In this context, a “bona fide” event is taken to mean an event that is primarily focused on communicating information relating to matters of legislative concern to New Hampshire legislators, rather than directed at providing opportunity for tourism, entertainment, or recreation. Reimbursement for “junkets” or “see the sites” trips as part of a legislative group doesn’t qualify for the exemption — the event must offer, as a genuine and central element, organized learning about subjects that are or may become the focus of legislative activity in New Hampshire. (Emphasis supplied)

The SEMA Show is unlike other events that were the subject of prior advisory opinions. Those events were designed specifically for legislators to learn about an issue, such as a conference sponsored by the Republican Legislative Campaign Committee which focused on topics like U.S. energy policy, Medicaid reform, and cybersecurity (AO 2015-3), or the BIA-sponsored Legislative Leadership Summits for legislators held at the Mt. Washington Hotel which focused on issues such as New Hampshire's tax structure, energy supply and cost, and healthcare availability and expense (AO 2015-2). Those events qualified as exceptions to the gift prohibition.

Based on the information provided by Representative Pitre about the conference’s purpose and activities, acceptance of the payment of expenses associated with the event would not qualify for exemption from the prohibition on “Gifts” under RSA 14-C:3, as “Expense Reimbursement” under RSA 14-C:2, IV(b)(10), as defined in RSA 14-C:2, III.

The Honorable David W. Hess, dissenting, filed the following minority report:

I dissent from the Majority Response. I believe the reliance of that Response on *Interpretive Ruling 2013-1* is misplaced and unwarranted. Rather than follow that Ruling and cite it as precedent, I believe the language quoted from that Ruling is totally erroneous, without any basis in the underlying statutory and Ethics Guidelines language, and should be explicitly overturned and reversed. Consequently, I believe acceptance of the reimbursement of expenses associated with this event does qualify under RSA 14-C:2, IV(b)(10) as an exemption from the prohibition on “Gifts” under RSA 14-C:3.

Interpretive Ruling 2013-1 states in pertinent part: “In this context, a ‘bona fide’ event is taken to mean an event that is primarily focused on communicating information relating to matters of legislative concern to New Hampshire legislators...the event must offer, as a genuine and central element, organized learning about subjects that are or may become the focus of legislative activity in New Hampshire.” (emphasis added). The Ruling does not explain why the term “bona fide” “[was] taken to mean” what it then proceeded to baldly assert. The Ruling cites no authority or basis for reaching that conclusion, or for adding such additional criteria or interpretive gloss to the meaning of “bona fide” as that phrase appears in statute and the Ethics Guidelines. RSA 14-C:2, III uses the phrase “bona fide” without any qualifications or further restrictive language. The same is true of Ethics Guideline 4, I(e). In the absence of such language in the governing authorities, I turn to the plain meaning of the phrase as generally understood.

Webster’s defines “bona fide” as: “In or with good faith; without fraud or deceit; authentic; genuine, as a bona fide transaction”. I believe Ruling 2013-1 came close to correctly interpreting this phrase consistent with this definition when it held that an event was not “bona fide” when it was “directed at providing an opportunity for tourism, entertainment or recreation...[i.e.] for junkets or ‘see the sites’ trips”. (In further clarification, I would add the word “primarily” before the word “directed” to this description.)

There is no question that SEMA is a legitimate organization or that this SEMA Conference was anything but “genuine” or “authentic”. The list of seminars - over 110 by my count - runs from 8 A.M. to 5 P.M. for four full days and an additional half-day. Legislation is a topic of some of those seminars, although concededly not the “primary” or “central” topic of the conference. Further, the fact that Representative Pitre is identified as a member of the New Hampshire Chapter of the State Automotive Enthusiast Leadership Caucus is testimony to the fact that attending this conference is related to his office. There is no evidence or allegation that this conference was primarily a junket, or that fraud, deceit, bad faith or other nefarious motive was in any way involved in either the conference or in the proffered reimbursement of Rep. Pitre’s expenses to attend this conference.

In short, there is no basis for finding that this proffered reimbursement of expenses is a prohibited “gift” under RSA 14-C:3 except for what I believe to be the totally erroneous interpretive gloss put on the statutory phrase “bona fide” by *Interpretive Ruling 2013-1*.

We appreciate the opportunity to be of assistance.

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: 6-1]