

Advisory Opinion 2017-2
Response to a Request for an Advisory Opinion
from Representative J.R. Hoell

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 J.R. Hoell has submitted a request for an Advisory Opinion concerning the requirements for reporting sources of income in excess of \$10,000 in the Financial Disclosure Form. Specifically, Representative Hoell asked:

“How do private company owners comply with this reporting requirement? For example, if a couple jointly owns a private firm (Corporation, LLC or sole proprietorship), is the reporting requirement for the money taken as salary from the company or is the reporting requirement for any contracts that the firm has with its customers? Said another way, does a firm need to report the customer list if the firm is owned entirely by members of the household?”

The Committee responds as follows:

With respect to **Section I** of the Financial Disclosure Form:

A legislator who owns a private company from which the legislator received gross income in excess of \$10,000 in the preceding calendar year is required to identify only the company the legislator owns.

A legislator is not required to disclose the identity of any customer with whom the legislator’s company has a contract or other customer relationship -- even if the legislator received in excess of \$10,000 from the customer.

With respect to **Section II** of the Financial Disclosure Form:

If a legislator’s relationship with a customer creates a “financial interest,” the legislator is required to identify and describe that interest in Section II of the Financial Disclosure Form.

Committee Analysis

Every legislator is required to file a Financial Disclosure Form with the Legislative Ethics Committee no later than the third Friday of January in the first legislative session of the biennium. (See RSA 14-B:8 and Ethics Guidelines Section 5.) The form consists of two sections.

Section I, "Sources of Income," requires legislators to identify sources from which a legislator or a household member received income in excess of \$10,000 during the prior calendar year. The sources include “any business, profession, or other organization (including any unit of government)” in which a legislator or legislator’s household member was “an employee, officer, director, associate, partner, or proprietor, or served in any other professional or advisory capacity” (emphasis supplied). A legislator who owns a private company, such as a corporation, limited liability company (LLC), or sole proprietorship, is required to identify the company if he or a household member draws gross income in excess of \$10,000 from the company. The legislator is

not required to disclose the identity of any customer with whom the legislator's company has a contract or other customer relationship -- even if the legislator received income in excess of \$10,000 from the customer.

Sources of retirement benefits exceeding \$10,000 from any business, professional, or other organization must be included, but Social Security, federal retirement and/or federal disability benefits do not need to be included. The sources of income a legislator is required to report do not include securities, such as stocks, bonds, and similar financial instruments.

Section II, "Disclosure of Financial Interests," requires legislators to identify and describe any financial interest a legislator or a household member may have in certain businesses, professions, occupations, groups, or matters. The so-called "checklist" lists categories such as health care, the practice of law, banking or financial services, education, and any business regulated by the Public Utilities Commission. A legislator is considered to have a "financial interest" in one of the businesses, professions, occupations, groups, or matters listed in the checklist if a change in law, administrative rule, or other official action by the General Court affecting a checklist item would potentially have a financial effect on the legislator or a household member that is distinct from and greater than the interests of the public at large.

Depending on the circumstances, a legislator may have a financial interest that is independent of that of his client or customer, i.e., even if legislation benefits or adversely affects his client, the legislator gets paid the same. In this case, the legislator would not need to check off the client's type of business on the checklist.

In some cases, however, the legislator's financial interest is tied to those of his client, as when the legislator is paid on commission or bonus for accomplishing a client's goals. In this situation, the legislator should check off the appropriate category on the checklist and identify and describe his financial interest.

In specific cases, if there is doubt about whether a legislator's relationship with a customer creates a financial interest, the legislator should request an Advisory Opinion from the Committee. RSA 14-B:3, I (c).

We appreciate the opportunity to be of assistance.

October 6, 2017

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]