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Advisory Opinion No. 10-01

Acceptance of an Award by a Government Employee

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for an employee of the Colorado Department of Law to accept the Richard Marden Davis award from the Denver Bar Association under the circumstances described by the requestor.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion, asking whether an employee of the Colorado Department of Law may accept the Richard Marden Davis Award, ("Award") given by the Denver Bar Association to a Denver lawyer "under the age of 40 who so combines excellence as a lawyer with creative civic, cultural, educational and charitable leadership as to best exemplify the character and promise of Richard Marden Davis at that stage in his career."

According to the request, the award includes a cash prize of approximately $1500 which the requestor intends to donate to a charitable organization. The award is presented at a dinner at the Brown Palace Hotel; the requestor and her family, none of whom are current government employees under the jurisdiction of the IEC, would be

permitted to attend the dinner free. Also invited to attend the dinner free is a colleague who is a government employee under the jurisdiction of the IEC who would introduce the requestor at the dinner. The dinner is valued in excess of $50. The requestor would also be invited to future award dinners as a past recipient.

The requestor was nominated for the award by another Denver lawyer without the knowledge of the requestor.

II. JURISDICTION

The IEC finds that an employee of the Colorado Department of Law is a government employee subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1).

III. APPLICABLE LAW AND PRECEDENT

Section 3 of Article XXIX (Gift ban) reads in relevant part:

> (2) No public officer, member of the general assembly, local government official, or government employee, either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse or dependent child, shall solicit, accept or receive any gift or other thing of value having either a fair market value or aggregate actual cost greater than fifty dollars ($50) in any calendar year, including but not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts, from a person, without the person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who solicited, accepted or received the gift or other thing of value.

IV. DISCUSSION

The Commission believes that this request falls under the criteria contained in Position Statement 08-01 (gifts), in which the Commission stated, at page 8, that an award or prize was not a prohibited gift under certain circumstances:

> If a prize is awarded to a public official or employee, then, assuming that the competition was fair, was open to everyone similarly situated, that it was not rigged in favor of the public employee or official, and that there is no evidence that the prize is being given based upon the official's or employee's governmental status, acceptance of a prize is not a breach of the public trust and is therefore permissible. This includes scholarly recognition such as the Nobel Prize, where the Prize is awarded based upon extraordinary achievement, and not to influence a particular official decision [1]

Based upon the information before the Commission, the requestor is being honored because of her contributions to the community, not because of her position as a government employee. The requestor did not ask to be nominated, but rather was nominated without her knowledge. There is no indication that this award is being offered to influence an official act. The information before the Commission is that the competition for the award is fair, and was not rigged in favor of the requestor.

While the Commission believes that it is admirable that the requestor is donating the proceeds to charity, the Commission finds that she could retain the cash award if she chose to. Similarly, the Commission believes that she may accept a free meal at the awards dinner in this and in future years.

None of the members of the requestor's family are under the jurisdiction of the IEC or are covered under the provisions of Article XXIX, section 3. Her colleague, also a government employee, may accept the free dinner under the provisions of Article XXIX, section 3(3)(e) because he is scheduled to speak at the dinner.[2]

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[1] The Commission also reviewed the facts of Advisory Opinion 09-07 (Acceptance of a Prize by a Government Employee)

[2] There is no information in the request relating to whether the requestor will also make a speech.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for an employee of the Colorado Department of Law to accept the Richard Marden Davis award under the circumstances presented by the requestor.

The Independent Ethics Commission

Matt Smith*, Chair*
Roy Wood*, Vice Chairperson*
Dan Grossman*, Commissioner*
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Larry R. Lasha*, Commissioner*

Dated: January 6, 2010