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Amy C. DeVan, *Executive Director*

Advisory Opinion 15-02

(Acceptance of Travel and Conference Expenses Paid by a Third Party)

Summary: It would not be a violation of Colorado Constitution Article XXIX for the Director of Marijuana Coordination for the State of Colorado to accept travel expenses under the circumstances described in this request.

I. Background

The Office of the Governor seeks an Advisory Opinion regarding the permissibility of acceptance of conference expenses (including mileage reimbursement, lodging, meals, conference fees and related expenses) by the Director of Marijuana Coordination for the State of Colorado. The Director has been invited to participate in the 2015 Annual Forum to be held in Colorado Springs. The sponsor of the Forum is The Seminar, a non-profit group which is described on its website as follows: The Seminar is “the premier organization of the highest-ranking communications and public affairs executives at the world's most influential corporations, nonprofit organizations, academic institutions and public relations agencies. The Seminar is at once an organization and an event, providing top professionals with a forum and a network for the sharing of ideas at an annual three-day meeting.”

The primary business of The Seminar is to host the annual forum, bringing together people from around the country for a free exchange of thoughts and ideas focusing on the areas of

technology, economics, health care and the environment, as well as others. In addition, The Seminar places a focus on areas of personal fulfillment, leadership and wellness. Attendees at this year's forum will include communications and public affairs staff at academic institutions, non-governmental organizations, public relations agencies, and corporations including a number of Fortune 500 companies.

The Seminar has requested that the Director participate in several sessions during the three day event, taking place this year in Colorado Springs from May 31 through June 3. Specifically he is scheduled to participate on a panel on the final day of the forum, Wednesday June 3, titled "The Business of Legalizing Marijuana." Although the schedule is not yet final, the other panelist is tentatively listed as Vincenza Trivigno, Secretary General of the Department of Health in Canton Zug, Switzerland. The panel will be moderated by Eli Stoklols, political reporter and anchor for local stations KDVR Fox 31/KWGN Channel 2. Additionally, The Seminar has asked that the Director contribute to other sessions where his experience is considered helpful. On Monday morning, June 1, he will participate in a session called "New Media Environment" with three journalists from major media outlets. It is anticipated he will provide input regarding the management of press relations, working with news entities to focus on facts in their reporting, and the issue of perception v. reality, all dealing with the interpretation and implementation of Colorado marijuana legislation. On Tuesday, June 2, the Director will participate in a session called "Law and the Social Change: Where We're Headed Next?" The primary speaker for this session is the former Chief Justice of Massachusetts. All Seminar speakers are asked to attend and be active participants in forum sessions and breaks through the entire conference.

It is expected that the Director will, in part, use the time during the forum to fulfill his statutory duties under C.R.S. §24-38.3-101(2), which requires, among other things, that the Director coordinate the executive branch response including “strategic planning, coordination of regulations, educational content planning and implementation, community engagement...” Specifically this will present him an opportunity to describe the Colorado approach to legalization and clarify any misconceptions participants might have. It is explained that his participation will benefit the State in that it will involve him in the exchange of ideas about marijuana’s evolving legality and impact on Colorado governments, universities and businesses.

The invitation was extended to the Director, in both his individual and professional capacities.

Although The Seminar is a nonprofit entity under IRS §501(c)(6) it does receive more than five percent (5%) of its funding from for profit sources. Primarily the forum is funded through the payment of conference fees by participants who attend. The speakers are not asked to pay the attendance fee.¹

The question before the IEC is whether the Director may accept payment of costs to attend this conference – to include conference fee (which is waived for all speakers), meals, lodging, and mileage.²

¹ The attendance fee for the Annual Forum, which speakers are not required to pay, is \$2,250. It is estimated by The Seminar staff that approximately 200 people attend the Annual Forum, of which 10% come from nonprofit entities, the remaining 90% are representatives of for profit enterprises. Thus, of the approximately \$450,000 raised by attendance at the Forum, approximately \$45,000 comes from nonprofit sources with the remaining \$405,000 coming from for profit companies or individuals.

² The requester estimates expenses to include mileage at \$86 round trip, room fee for three nights dependent on the rate negotiated by The Seminar for a block of rooms at a reduced conference rate, meals (three per day for three days) and the \$2,250 conference fee as noted above. It seems reasonable to assume overall costs will be somewhere in the range of \$2,750 for the Director to attend.

II. Jurisdiction

The IEC finds that the Director of Marijuana Coordination for the State of Colorado is a government employee and subject to the jurisdiction of the Commission. *See* Colo. Const. Art. XXIX, sec 2(1) and (3).

III. Applicable Law

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, 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.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

(e) Admission to and cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or answer questions as part of the scheduled program.

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the nonprofit organization receives less than five percent (5%) of its funding from for profit organizations or entities.

IV. Discussion

The Commission addressed the issue of payment of travel expenses in Position Statement 12-01, which clearly stated the difference between the gift of travel when extended to an individual as compared to the institution or the State. In this instance, there is no other individual within state government comparably suited to the Director, and therefore no viable alternative to attend the

Annual Forum if he is unable to do so. It does, however, seem apparent that the invitation is extended to him in his official, rather than individual capacity, and the issue(s) about which he is to speak are directly related to his duties with the State, and his obligations under the Colorado Revised Statutes. Thus it does appear the offer is made *ex officio*. The remaining question, then, is whether the Seminar may pay all related travel expenses, given their status as a nonprofit enterprise with the majority of funding coming from for profit sources.

The Commission has addressed this issue previously in advisory opinions. Several of the advisory opinions on the issue are related to speaking requests by commissioners of the Public Utilities commission. In Advisory Opinion 12-04 the commission stated that while it was not a violation for the commissioner to accept a waiver of the registration fee for a conference at which the commissioner was invited to speak, it was not appropriate for the commissioner to attend privately hosted dinners or other recreational or extracurricular activities not directly related to the program itself. It is noted that the Annual Forum at issue here has several extracurricular outings planned, according to the schedule, and the Director indicates if he is to attend those he will pay that cost himself. This does not, therefore, appear to be an issue.

In Advisory Opinion 12-08, the Commission found that it would not be a violation for a Public Utilities Commission commissioner to accept waiver of the registration fee for a conference at which he was speaking; however, acceptance of travel expenses would not be permissible. In reaching that conclusion the Commission stated that the travel was similar to that detailed in AO 12-04, however in that instance the commissioner at issue was invited to participate only on a panel at a forum preceding the actual conference for which the request was made. Therefore,

acceptance of travel fees to attend the conference was deemed impermissible. In this instance, the Director has been invited to attend the entire three day event and will be listed on the program as part of a panel on the third day of the conference but states that he is expected to participate in panel discussions on other days during the event. Additionally, staff at The Seminar have confirmed to IEC staff that speakers are expected to attend the entire event, rather than simply arriving on the day they are scheduled to speak, in order to facilitate discussion and an exchange of ideas, which is one of the bases upon which the Annual Forum is marketed.

The Commission also reviewed this question in Advisory Opinion 13-11 and determined it was permissible for the Chairman of the Public Utilities Commission to accept a waiver of registration fees and free hotel accommodations and meals at a Forum which appeared to be quite similar to that outlined here. In that instance the Commission found the travel described to be permissible because:

- 1) The invitation to speak was sent to the Chairman based on his position with the Public Utilities Commission and his expertise in the area of participation, and the conference as described was relevant to his responsibilities and expertise as Chairman;
- 2) There was no apparent conflict of interest or impropriety; and,
- 3) The focus of the event was educational.

Those same factors would appear to be present here. The invitation to participate in panel discussion(s) was extended to the Director based on his position with the State of Colorado as a result of his expertise in the area of marijuana legalization, a topic of great interest not only at this seminar but at events nationwide. The topics about which he will speak are directly in line with his areas of expertise and responsibility. There does not appear to be a conflict of interest or

an attempt to curry favor by The Seminar, the host of the Forum. However, it is noted there may be paying attendees who will have the desire to curry favor with the Director or the State for various reasons, and he is cautioned to be mindful of this issue and avoid any interactions which may appear to be a conflict of interest or lend themselves to an appearance of impropriety. The focus of this event is educational and The Seminar describes itself as a forum and network for the sharing of ideas. Additionally, as noted in AO 13-11, because the Director will be participating in events throughout the conference, and is expected to generally participate in the exchange of ideas and information even outside the structured panel setting, acceptance of the fee-waiver for this conference is consistent with section 3(3)(e) of Article XXIX of the Colorado Constitution.

In addition, the Commission has previously analyzed travel issues of this type in Position Statement 12-01, in which a distinction was drawn between gifts to the state and gifts to covered individuals. Only gifts to covered individuals, as opposed to gifts to the state, are subject to Article XXIX. The relevant questions under Position Statement 12-01 are:

- 1) Is the offer made to a specific individual, or to a designee of an agency or government entity?
- 2) Is the offer made *ex officio*?
- 3) Is the event relevant to the duties of the covered individual?
- 4) Is there an existing or potential conflict of interest or does an appearance of impropriety exist?
- 5) What is the purpose of the conference?

In this instance, the offer is extended to the Director of Marijuana Coordination in his official

capacity and is relevant to his duties to the State. Part of the Director's duties include public education regarding the issue of marijuana legalization. Attending and participating in the Seminar, which is attended largely by individuals from the communication sector, ensures that the message about Colorado's marijuana policy is understood and disseminated in an appropriate fashion. Thus there is a beneficial purpose to the State, directly tied to the duties of the covered individual. Also addressed by PS 12-01 is the question of consideration and whether it exists. It is determined that, in this instance, it does since the Director will be speaking and participating on panels and in group discussion throughout the three day event. This activity may, therefore, be analyzed pursuant to the previously issued opinions issued discussed above, and/or under PS 12-01, in which case the activity is not subject to the restrictions of Article XXIX. With this Opinion, the commission clarifies that PS 12-01 does include reasonable lodging costs in the travel expenses exempted by that Position Statement.

V. Conclusion

It would not be a violation of Colorado Constitution Article XXIX for the Director of Marijuana Coordination for the State of Colorado to accept a waiver of the conference fee and related travel expenses under the circumstances of this request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in the request and that different facts could produce a different result. The IEC therefore encourages individuals with particular questions to request facts specific advice for their specific circumstances through requests for advisory opinions or letter rulings.

The Independent Ethics Commission

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Dated: May 11, 2015