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Amy C. DeVan, *Executive Director*

Advisory Opinion 15-06 (Acceptance of Travel Expenses Paid by a Third Party)

Summary: It would not be a violation of Colorado Constitution Article XXIX for the Director of Enforcement for the Colorado Department of Revenue to accept travel expenses paid for by a nonprofit organization under the circumstances of this request.

I. Background

The Colorado Department of Revenue (DOR) has submitted a request to the Independent Ethics Commission (IEC or “Commission”) requesting an opinion regarding whether Lewis Koski, Director of Enforcement, may accept payment of travel and other expenses in excess of \$59 to speak at a conference in Florida. The event is the annual summer conference of the Florida Police Chiefs Association and they have invited Director Koski or another senior staff member from the Colorado Department of Revenue to speak.

The workshop will be attended by police chiefs from around the State of Florida. Mr. Mr. Koski has been asked to conduct a training session along with two other individuals regarding the marijuana legalization experience in Colorado. The training session will likely encompass half of one day of the overall conference.

The presence of Mr. Koski or another senior Department of Revenue official is requested due to his direct knowledge and experience with marijuana legalization and regulation, as well as his role within the Colorado Department of Revenue’s Enforcement Division.

II. Jurisdiction

The Director of Enforcement is a government employee and is subject to the jurisdiction of the Commission for purposes of this request under Colo. Const. Article XXIX, sec. 2(1) and sec. 3.

III. Applicable Law

The application portion of Article XXIX, section 3 (the “gift ban”) reads in relevant part:

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, now \$59) 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.

IV. Discussion

The Commission notes that this request is nearly identical to others submitted by this agency.

Therefore, the logic set forth herein will mirror the rationale in prior opinions on this issue; most recently in 2014.

Before evaluating the propriety of travel expenses to covered individuals, the Commission first distinguishes between a gift to an individual and a gift to a government entity. In Position Statement 12-01 the Commission ruled that the gift ban does not apply if the gift is to a governmental agency. The initial question is “whether a public benefit is conferred to a governmental entity as distinct from an individual benefit conferred to the covered individual.”

The Commission also set forth several factors to consider in determining if a gift is to a covered individual or to a governmental entity:

- 1) Is the gift to a specific individual or to the designee of an agency?
- 2) Is the offer made *ex officio*?
- 3) Is the travel related to the public duties of the traveler?
- 4) Is there a potential conflict of interest or appearance of impropriety in acceptance of the gift?
- 5) Is the purpose of the trip primarily educational?

In evaluating this request, the Commission believes that the gift here is to the governmental agency, not specifically to a covered individual, and therefore the gift ban does not apply. In this instance, although the invitation was extended to the named, it was in his capacity as an official with the Enforcement division for the Department of Revenue, and he will be representing the state of Colorado. The benefits of participation would appear to include an exchange of ideas and policy suggestions from others involved in the issue of marijuana legalization, a topic that continues to present challenges to State government.

The five factors noted above also support the gift of travel in this instance as the benefit appears to flow to the Department and the State, and not to the individual. The invitation in this instance was sent to Mr. Koski or another senior management official, in his official capacity. Were he unavailable or unable to attend, alternate members of the Department's senior management could go to the conference in his place, because the subject matter relates directly to the Department's oversight of marijuana legalization in Colorado. Additionally, the offer was made *ex officio* in that the invitation references the official duties of the requester as being the purpose for the request. The topic of discussion mentioned relates to the public duties of the individual, and there does not appear to be a conflict of interest since the Department of Revenue is not in a position to take direct official action with regard to the nonprofit entity extending the invitation, and thus it does not appear there is an attempt to curry favor by inviting the requester to the event. Finally, the conference is educational in nature and will be of benefit to all attending, including the requester.

Because the gift here benefits the Department and the State, and does not directly benefit the individual in his individual capacity, the gift ban does not apply. The requester may accept payment for travel and other expenses related to attendance at this event.

Additionally, the inviting entity is a nonprofit, receiving less than five percent of its funding from for profit resources. Because the entity sponsoring the travel is a nonprofit receiving less than five percent of its funding from for profit organizations, the Commission finds the circumstances presented here also may fall within the exception found at Article XXIX 3(3)(f), detailed above.

V. Conclusion

It would not be a violation of Colorado Constitution Article XXIX for the Director of Enforcement of the Colorado Department of Revenue, or another designee in his place, to accept payment for travel, accommodations, conference fees and other expenses related to this request. The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The IEC therefore encourages individuals with particular questions to request more fact specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

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