

State of Colorado



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Amy C. DeVan, *Executive Director*

Advisory Opinion 15-07
(Acceptance of Travel Expenses from a Nonprofit Entity)

Summary: It would not be a violation of Colorado Constitution Art. XXIX for the Executive Director of the Colorado Department of Corrections to accept travel expenses from the Integrated Justice Information Systems (IJIS) Institute under the circumstances described in the request.

I. Background

The Colorado Department of Corrections (DOC) has submitted a request asking whether the Executive Director may accept payment of travel expenses in excess of \$59 to participate in a conference in Arlington, Virginia, September 25-27, 2015, regarding use of technology by corrections agencies. Specifically, the Corrections Technology Forum (CTF) “provides corrections administrators and their CIOs an opportunity to network with their counterparts to discuss specific challenges and needs, form potential strategies to overcome technology and system concerns, and to learn about information sharing technology and standards that can provide cost effective solutions to meet corrections technology needs.” In addition, the Forum will allow corrections professionals to engage in direct dialog with corrections technology industry providers regarding information sharing initiatives and value added solutions to corrections related issues and concerns.

The Executive Director has been awarded a scholarship to cover the cost of travel, food and hotel

to attend the CTF. Total cost to attend the CTF, including airfare, hotel for two nights, meals, and ground transportation is estimated to be \$1,219.00.

The request indicates the IJIS Institute is a 501(c)(3) nonprofit corporation representing companies engaged in the corrections technology industry whose primary focus is collaboration with local, state, tribal and federal agencies through providing technical assistance, training, and support services to facilitate information exchange and technology initiatives. The IJIS was formed in 1999 following a request by the United States Department of Justice and related entities for members of the justice information technology community to participate in national-level discussions regarding issues of integrated justice and how it is designed, specified, and procured. In response, industry leaders formed an advisory group comprised of representatives from firms with strong criminal justice expertise. This group came to be known as the Industry Working Group (IWG). IWG became IJIS in 2001. Today, the IJIS Institute is an inclusive organization, welcoming to its membership all companies that provide information technology-related services, products, and solutions to local, tribal, state, and federal agencies in the public safety, law enforcement, justice, and homeland security arenas.

It is the understanding of the Executive Director that there will be no vendor sponsored booths or tables at the event.

II. Jurisdiction

The IEC finds that employees of the Colorado Department of Corrections, including the Executive Director, are government employees and therefore 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 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:

(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 non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.

IV. Discussion

Based on the information provided, the Commission believes that the travel described in the request is the type of travel exempted from Article XXIX analysis, and deemed permissible under other standards. In position statement 12-01 the Commission set forth several factors to consider in determining if gifts of travel are gifts to covered individuals. These factors have also been discussed in numerous Advisory Opinions since PS 12-01 was first issued. As discussed in the statement and the subsequent opinions the relevant factors are:

- 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?

In evaluating the request, the Commission believes the payment of the travel expenses in this instance is not a gift to the covered individual. The invitation was sent to the Executive Director based on his position within Colorado state government, his actual knowledge of the substantive issues to be discussed, and his ability to influence the official actions of his agency with regard to issues involving technology and its use. The IJIS has sought the presence of the Executive Director as someone with experience in the issues to be discussed. Although he is the individual being invited, the Commission has previously stated, and reiterated in various advisory opinions, that being named in the invitation is, alone, not determinative.

The issues to be discussed at the conference are clearly within the duties of the Executive Director and, based on the information provided to the Commission, the trip would be educational, both for the Executive Director as well as those attending the CTF meeting with him. This is not primarily a networking opportunity or social event. Moreover, because the Executive Director is not in a position to take direct official action with respect to the donors of the travel, there is no apparent conflict of interest or appearance of impropriety associated with an attempt to curry favor or otherwise influence him in his official capacity. It is presumed that the Executive Director will not only bring information regarding Colorado's experience with technology in the corrections context, but will also gain valuable information from both suppliers of such technology and other users in how Colorado might benefit from information regarding available resources and new ways to use the resources the State already has.

The Commission recognizes that, given the membership of IJIS, the potential exists for the appearance of a conflict of interest if the Executive Director is meeting with vendors during the seminar, although the Commission understands the purpose of this event is educational in nature. Under the specific facts of this request, the Commission believes there are safeguards in place to

ensure there is no inappropriate influence exercised by vendors, including: as noted above, IJIS was borne out of a Department of Justice program intended to aid law enforcement agencies in meeting challenges and needs in a technologically diverse environment, thus it appears the purpose is very relevant to the continued successful operation of the Department of Corrections; and, the Executive Director has indicated there are safeguards locally regarding vendor contracts including a committee that reviews all vendor contracts and bids prior to his review. This added layer of review would appear to shield him from the appearance of undue influence by vendors at the event. The Commission does caution the Executive Director to avoid events or receptions hosted by vendors who do business with the State of Colorado, in order to alleviate any concern regarding the appearance of impropriety in this instance.

As the inviting entity is also a 501(c)(3) nonprofit corporation, the Commission finds the circumstances presented here also may fall within the exception found at Article XXIX 3(3)(f), detailed above; although the overall source of IJIS funding is not clear. Although the Executive Director is not presenting at this conference, he will be representing the state on state business pursuant to his official role with the Department of Corrections.

V. Conclusion

For the reasons noted above, the Commission believes that under the circumstances of this request there is no ethical violation in the scenario presented by the Requester. The Commission also cautions public officials and employees that this opinion is based on the specific facts presented in this request and that different facts could produce a different result. The IEC therefore encourages individuals with particular questions to request fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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Dated: July 10, 2015