

State of Colorado



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Amy C. DeVan, *Executive Director*

Advisory Opinion 15-08
(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 International Corrections & Prison Association (ICPA) 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 Melbourne, Australia, October 25-30, 2015, with the overall subject matter of “Managing Risk in Contemporary Correctional Systems”. Specifically, the conference is designed to provide a worldwide perspective by corrections officials, giving participants solutions, techniques and successes in corrections, providing global insights into new, different and practical applications in corrections globally. Participants will include international corrections and prison leaders from more than 80 nations worldwide. Topics to be covered at the conference will include intelligence and security practices; applications of electronic monitoring; post sentence supervision schemes; assessment, classification and placement of prisoners; and management of self-harming and at risk prisoners, as well as numerous other substantive issues.

The Executive Director has been invited specifically to offer a presentation titled “Opening the Steel Door: Re-Thinking the Use of Solitary Confinement.” His presence and presentation were requested based on his official role as Executive Director of the Colorado Department of Corrections.

The ICPA is unable to fund the cost for the Executive Director to take the trip; however, the Association of State Correctional Administrators (ASCA) has offered to pay the costs, along with travel cost for the director of the Washington State Department of Corrections to attend and present at the conference. The Executive Director and the Washington director will both be representing their states, the United States, and the ASCA at the conference. Total cost to attend the conference, including registration fee, airfare, hotel, meals and incidentals is estimated to be \$7,500.00.

ASCA membership consists of persons who are appointed to serve on a full-time basis to be directly responsible for the administration of the correctional facilities or correctional system of a jurisdiction. These persons include heads of state corrections agencies, Los Angeles County, heads of Cook County (Chicago), the District of Columbia, New York City, Philadelphia, the Federal Bureau of Prisons, The Correctional Service of Canada, each province of Canada, and any United States territory, possession, and/or commonwealth. ASCA Associate members include former administrators of the above jurisdictions who have successfully served as administrators for an aggregate of at least three years in one or more jurisdictions and who have been nominated and accepted into associate status by ASCA's Executive Committee.

ASCA is a 501(c)(3) nonprofit entity with less than five percent of its funding from for profit sources.

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 related not only to his topic, about which he is considered a leader nationally and globally, but also with regard to the numerous other topics to be covered at the conference. The ICPA 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 for the Executive Director. 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 corrections related issues, and provide his specific insight into the use of solitary confinement, which is a relevant topic of great interest, but will also gain valuable information from the other attendees at the conference, including how Colorado might benefit from information regarding available resources and new ways to use the resources the State already has.

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.

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 7, 2015