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Amy C. DeVan, *Executive Director*

Advisory Opinion 15-11 (Acceptance of Travel Expenses Paid by a Third Party)

Summary: It would not be a violation of Colorado Constitution Article XXIX for two senior employees of 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 asking whether two high level employees of the Department of Revenue (DOR) may accept payment of travel and other expenses in excess of \$59 to travel to Jamaica to consult with and provide education to government personnel including the Jamaican Ministry of Justice and the Cannabis Licensing Authority of Jamaica.

The meetings with government officials will take place over the course of four to five days in late 2015 or early 2016. In early 2015 Jamaica’s Parliament approved amendments to the country’s Dangerous Drugs Act (DDA) including decriminalization of the possession of up to 2 oz. of marijuana, as well as new licensing authority to regulate medical marijuana. As Jamaica moves toward legalization and implementation of its new marijuana laws, it seeks input from Colorado officials about their experience with cannabis legalization, including a discussion of the regulatory system overall, sharing insights and experiences as they relate to legalization. In

addition, through meetings with the various government officials, the DOR representatives will also learn about Jamaica's marijuana legalization history, steps toward decriminalization and regulation, and various policy issues that might be of use as Colorado's policies continue to evolve.

The meetings will include individuals involved in some way with the implementation and regulation of legalized cannabis, consisting primarily of officials and staff of Jamaica's various government agencies. All travel will be paid by the Open Society Institute, a 501(c)(3) private foundation, which receives the entirety of its funding and endowments from George Soros, a private individual. There is no for profit funding.

The presence of DOR representatives is requested due to their direct knowledge and experience with marijuana legalization and regulation, as well as their roles within the Colorado Department of Revenue's Enforcement Division. It is stated that the goal of participation in this event is to achieve an exchange of policies, ideas, data, cost-benefit analysis, and updates on the impact of marijuana legalization on the overall policy-making functions of the state. It should be noted that although Mr. Koski is specifically listed on the invitation, depending on the timing of the trip he may or may not be able to attend. In the event he is unable to do so, another high level DOR representative, including potentially the Executive Director, may assume his place.

II. Jurisdiction

The Deputy Senior Director of Enforcement, Director of Enforcement, and Executive Director of the Department of Revenue are government employees and are 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 early in 2015.

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 individual named, it was in the capacity as an official with the Enforcement division for the Department of Revenue, and the officials who attend will be representing the state of Colorado. The benefits of participation are set forth

above, and 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 individuals. The invitation in this instance was sent to Mr. Koski in his official capacity. Were he to be unavailable or unable to attend, which may be the case as noted above, alternate members of the Department's senior management could attend 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 the panel for the specific workshop mentioned relates to the public duties of the individual, and there do not appear to be conflicts of interest since the Department of Revenue is not in a position to take direct official action with regard to either of the nonprofit entities extending the invitation, and thus it does not appear they are attempting to curry favor by inviting the requesters to the event. Finally, the event 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.

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, along with another senior employee, 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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Dated: November 6, 2015