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Advisory Opinion 15-01

(Acceptance of Travel Expenses Paid for by a Foreign Government)

Summary: It would not be a violation of Colorado Constitution Art. XXIX for the Executive Director of the Department of Revenue to accept travel expenses from the Government of Germany under the circumstances described in the request.

I. Background

The Colorado Department of Revenue (DOR) has submitted a request asking whether the Executive Director may accept payment of travel expenses in excess of \$53 to participate in a conference in Bielefeld Germany regarding potential legalization of marijuana as well as participate in meetings with German officials regarding Colorado's experience with the legalization of marijuana, and to discuss issues faced by the German officials as they explore options for regulation, legalization or liberalization of their laws governing the use and sale of marijuana.

The request indicates the Executive Director was invited primarily by two nonprofit organizations, Integrative Drogenhilfe e.V (a drug treatment service) and Drogenberatung Bielefeld e.V (a drug counseling service). Both organizations do work in the public health sector. The German Medical Association will also be a sponsor of the conference. The Executive Director was invited by Integrative Drogenhilfe e.V. The conference summary states that the organizing entities are interested in learning about the experience of marijuana legalization in

Colorado – how the system was implemented, questions raised and discussions undertaken during the legalization process, problems that were addressed during the process and how obstacles were overcome. All travel expenses and conference fees will be paid by Integrative Drogenhilfe e.V and Drogenberatung Bielefeld e.V, which will share the costs of travel and accommodation for the Executive Director.

II. Jurisdiction

The IEC finds that employees of the Colorado Department of Revenue, 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 deemed permissible by Article XXIX. 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 were also discussed in Advisory Opinion 14-02, the subject of which was also acceptance of travel expenses paid for by a foreign government by the Executive Director of the Department of Revenue under circumstances nearly identical to those presented here. As discussed in the statement and the opinion 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 are not gifts to the covered individual. The invitation was sent to the Executive Director based on her position within Colorado state government, and her actual knowledge of the substantive issues to be discussed. The entities listed have sought the presence of the Executive Director as someone with experience in the issues to be discussed. Although she is the individual being invited, the Commission has previously stated, and reiterated in Advisory Opinion 14-02, that the fact of being named in the representation is, alone, not determinative.

The issues to be discussed at the conference are clearly within her duties as 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 conference and meeting with her. 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 her in her official capacity. It is presumed that the

Executive Director will also be exposed to other viewpoints on the legalization of marijuana, which may aid her as Colorado continues to work through ongoing issues related thereto.

Both inviting entities are funded solely by government grants, with no private funding source.

Because the entities sponsoring the travel are nonprofit receiving less than five percent of their 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

Under the circumstances presented here, it would not be a violation of Article XXIX of the Colorado Constitution for the Executive Director of the Colorado Department of Revenue to accept travel expenses to Germany to attend the conference. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in this request. The IEC therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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