

# State of Colorado



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## **Advisory Opinion 16-03**

(Acceptance of Travel Expenses Paid by a Third Party)

**Summary:** It would not be a violation of Colorado Constitution Article XXIX for the Executive Director of the Department of Revenue, Barbara Brohl, 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 the Executive Director of the Department of Revenue (DOR) may accept payment of travel and other expenses in excess of \$59 to travel to Georgetown University in Washington D.C. to attend the Cannabis Expert's meeting to discuss and identify the most significant public health issues relating both to illicit cannabis and to the legalization of cannabis for medical or recreational purposes and to Develop public health priorities for how medical and recreational legalization of cannabis could be structured and implemented—consistently with the core goals of legalization—to minimize undesirable public health outcomes and maximize potential public health benefits.

The conference is scheduled for March 28-29, 2016, and the Executive Director is scheduled to speak to a group of international public health experts that consist of individuals from academic institutions, such as Emory, Columbia University, Johns Hopkins and UCLA, public health departments from several states as well as members from NGOs and civil society such as the Drug Policy Alliance and the ACLU. The trip is sponsored by O'Neill Institute for National and Global Health Law at Georgetown University.

The O'Neill Institute for National and Global Health Law at Georgetown University was established in 2007 through an endowment by Linda and Timothy O'Neill.

The O'Neill Institute's premise is to use the law as a tool for solving critical health problems in local, national, and global communities. The O'Neill Institute looks to multiple ways in which law can be used to improve health and hopes to encourage key decision-makers in the public, private, and civil society sectors to employ the law as a positive tool to enable individuals and populations in the United States and throughout the world to lead healthier lives. The O'Neill Institute receives less than 5% of its funding from for-profit entities.

The first day of the meeting drug policy stakeholders will be presenting to the public health experts on different areas of cannabis regulation including taxation, state regulation, the legal

landscape around the world etc. and the second day the public health experts will deliberate on best practices for cannabis regulation that protect the public health.

The presence the Executive Director is requested due to the agency's experience with regulating the manufacture, marketing, and sale of marijuana, alcoholic beverages, and tobacco products. A goal of this event is to attempt to minimize undesirable public health outcomes and maximize potential public health benefits.

## **II. Jurisdiction**

The Executive Director of the Department of Revenue 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.

## **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 Executive Director has made similar requests to the Commission in the past. Therefore, this opinion is substantially similar to the previous opinions.

In Position Statement 12-01 the Commission ruled that the gift ban does not apply if the gift is to a governmental agency, rather than an individual. The initial question, then, is "whether a public benefit is conferred to a governmental entity as distinct from an individual benefit conferred to the covered individual."

The factors to consider in determining if a gift is to a covered individual or to a governmental entity are as follows:

- 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?

Reviewing the Executive Director's request, the Commission finds the gift is to the governmental agency, not to a covered individual. Because of that finding, the gift ban does not apply. In this instance, although the invitation was extended to Director Brohl, it was in her capacity as the Executive Director of the Department of Revenue. In this capacity she will be representing the state of Colorado. The benefits of participation include an exchange of ideas and policy suggestions from others involved in the issue of marijuana regulation and public health. The five factors listed above also support the gift of travel in this instance as the benefit appears to flow to the Department of Revenue and the state of Colorado, and not to the individual. The invitation was to the Executive Director in her official capacity. Further, the invitation was made *ex officio* in that the invitation is to the Executive Director of the agency charged with regulating legalized marijuana. The topic of the panel for the specific presentation relates to the publically mandated duties of the Executive Director. There is no conflict of interest since the O'Neill Institute is not an agency that would seek to curry favor from the Executive Director or DOR, since neither are in a position to take action against the O'Neill Institute as a non-profit entity. Finally, the conference is an event in which ideas, policies and strategies may be exchanged making it educational in nature.

Because the gift is a benefit to the agency and Colorado, and does not directly benefit the Executive Director in her 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 the Colorado Department of Revenue 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: March 3, 2016