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Advisory Opinion 14-09

(Acceptance of Travel Expenses Paid a Third Party)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Executive Director of the Department of Revenue, or a qualified designee, to accept travel expenses paid for by a nonprofit organization under the circumstances described in the request.

I. BACKGROUND

The Colorado Department of Revenue (“DOR”) has submitted a request to the Independent Ethics Commission (“the Commission”) asking whether the Executive Director, Barbara Brohl¹, may accept payment of travel and other expenses in excess of \$53 to speak at a conference in Washington D.C. sponsored by the Inter-American Drug Abuse Control Commission (“CICAD”). Ms. Brohl has been asked to serve on a panel to discuss the background and developments related to regulating marijuana in Colorado. One of the other panelists is a representative from Uruguay, a country that is also currently rolling out the legalization and regulation of marijuana. CICAD is an intergovernmental entity with 35 member states, including the United States, and receives none of its funds from for-profit organizations.

II. JURISDICTION

The IEC finds that the Executive Director of the Colorado Department of Revenue is a government employee and subject to the jurisdiction of the Commission. See CO Const. Art. XXIX, sec. 2(1) and sec. 3.

¹ Ms. Brohl has waived confidentiality relating to this request.

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 other 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.

IV. DISCUSSION

Before evaluating the propriety of payment of travel expenses to covered individuals, the Commission first distinguishes between a gift to an individual and a gift to a governmental entity. In Position Statement 12-01, the Commission ruled that the gift ban does not apply if the gift is to a governmental agency. Page 5. 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.” *Id.* The Commission also set forth several factors for covered individuals to consider in determining if a gift is to a covered individual or to a governmental entity. Those 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 this gift?
5. Is the purpose of the trip primarily educational?

In evaluating this request, the Commission believes that the gift here is to a governmental agency, not to a covered individual, and therefore the gift ban does not apply. In her official capacity as the Executive Director of the Department of Revenue, Ms. Brohl is representing the State of Colorado. The benefits of her participation for the DOR and the State include learning about the roll out of marijuana regulation in Uruguay, i.e. what has worked and what has not worked (and also about some of their unique programs such as genetic markers to track where marijuana has been cultivated.) In addition, Ms. Brohl believes that her representation on the panel allows other countries to see Colorado's "robust regulatory and enforcement program."

The five factors set out by the Commission also support the gift of travel as being to the DOR and the State and not to Ms. Brohl as an individual. First and second, the invitation went to the Executive Director of the Department of Revenue *ex officio*, based on her position within Colorado government and her knowledge and expertise in the regulation of marijuana. Third, her department is responsible for the roll-out of the new Colorado marijuana legislation, including developing rules and regulations; her panel discussion at the CICAD conference addresses these issues, which are clearly within the Executive Director's public duties. Fourth, there does not appear to be a conflict of interest in accepting the gift because the Executive Director of the DOR is not in a position to take direct official action with respect to CICAD and no evidence demonstrates that CICAD may be attempting to curry some favor by inviting Ms. Brohl to the event. Fifth, the conference is educational, allowing different countries to learn about designing laws and regulation, measuring the impacts of legalizing marijuana, and hearing about reactions from the general public, stakeholders, and other interest groups.

Because the gift here inures to the benefit of the DOR and Colorado, and not to the benefit of Ms. Brohl as a covered individual, the gift ban does not apply. Ms. Brohl can accept payment for travel and other expenses related to her attendance at the CICAD conference.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Executive Director of the Colorado Department of Revenue, or a qualified designee, to accept payment for travel, conference fees and other expenses under the circumstances of this request. The Commission 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 more fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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Dated: April 14, 2014