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Advisory Opinion 14-16

(Acceptance of Travel Expenses Paid By a Third Party)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for Mr. Lewis Koski, the Director of the Marijuana Enforcement Division at the Department of Revenue, or a qualified designee, to accept travel expenses paid for by two nonprofit organizations under the circumstances described in this request.

I. BACKGROUND

The Colorado Department of Revenue (“DOR”) has submitted a request to the Independent Ethics Commission (“the Commission”) asking whether Mr. Lewis Koski,¹ the Director of the Marijuana Enforcement Division at the Department of Revenue, (“Requestor”) may accept payment of travel and other expenses in excess of \$53 to speak at a conference sponsored by the Florida Alcohol and Drug Abuse Association and the Florida Council for Community Mental Health in Orlando, Florida. Medical marijuana will be on the ballot in Florida in the next election cycle and the sponsors, both non-profits who receive less than 5% of their revenue from for-profit sources, have asked the Requestor if he will be a keynote speaker on the topic of Colorado’s regulatory and law enforcement experiences with the legalization of medical marijuana. Attendees include state agency personnel, corrections personnel, health

¹ Mr. Koski has waived confidentiality relating to this request.

care program directors, judicial liaisons, health care providers, case managers, law enforcement officers and policy makers. The total estimated cost to be reimbursed is \$1232. This includes airfare at \$600, two nights of lodging at \$320, per diem meals and incidentals at \$112 and ground transportation at \$200.

II. JURISDICTION

The IEC finds that the Deputy Senior Director of Enforcement for 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.

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)[now \$53] 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.

Exception 3(3)(f) to the gift ban:

“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 of its funding from for-profit organizations or entities.”

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 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 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 his official capacity as the Director of the Marijuana Enforcement Division at the Department of Revenue, the Requestor is representing the state of Colorado. The benefits of his participation for the DOR and the state include the exchange of policy ideas, sharing expertise on marijuana’s evolving legality, and informing other governments and community service providers about the consequences of legalizing medical marijuana.

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 the Requestor as an individual. The invitation was sent to Mr. Lewis Koski in his official capacity as the Director of the Marijuana Enforcement Division at the Department of Revenue and the topic of the keynote speech, Colorado’s regulatory and law enforcement experiences with the legalization of medical marijuana, is directly related to his

duties at the Department of Revenue. There does not appear to be a conflict of interest in accepting the gift because the Requestor is not in a position to take official action with respect to either of the sponsor organizations, and the conference is purely educational in nature.

Even if the gift was to a covered individual, the Requestor may receive payment for travel expenses under the 3(3)(f) exception to the gift ban. If a person is scheduled to deliver a speech, a non-profit entity can pay for the presenter's reasonable expenses, provided the non-profit receives less than 5% of its revenue from for-profit sources. Here, the two organizations offering to pay for the Requestor's travel expenses are the Florida Alcohol and Drug Abuse Association and the Florida Council for Community Mental Health. They receive most of their funds from contracting with federal and state governments who have allocated resources for substance abuse prevention and treatment programs. The Requestor is speaking at the event, his travel expenses are reasonable, and they are being paid for by appropriate non-profit entities. Therefore the Requestor may accept travel expense reimbursements to attend the conference under exception 3(3)(f) to the gift ban.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Director of the Marijuana Enforcement Division, or a qualified designee, to accept payment for travel, accommodations, meals and other expenses under the circumstances of this request. Because the gift here inures to the benefit of the DOR and Colorado, and not to the benefit of Mr. Lewis as a covered individual, the gift ban does not apply. Even if the gift ban did apply, the Requestor can accept travel expenses under the 3(3)(f) exception. 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: July 7, 2014