

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Advisory Opinion No. 09-08

Acceptance of a Fellowship from a Nonprofit Entity (Rodel Foundations and Aspen Institute)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a member of the general assembly accept a fellowship from a nonprofit entity to attend a 24 month leadership program offered by the Aspen Institute and the Rodel Foundations under the circumstances described by the requestor.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether a member of the general assembly may accept a two year fellowship to attend the Public Leadership Program (“Program”) offered by the Aspen Institute. The total cost of the Program, including transportation, lodging, meals, receptions and other miscellaneous costs is \$18,000 for a week and a weekend in the United States, as well as approximately \$18,000 per week for the two week international portion of the Program for a total of \$54,000. The entire cost will be paid for by the Rodel Foundations, a nonprofit entity, which according to the requestor receives less than 5% of its funding from for profit entities.

II. JURISDICTION

The IEC finds that a member of the general assembly is a government employee subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1).

III. APPLICABLE LAW AND PRECEDENT

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, rewards, promises or negotiations of future employment, favors or services, honoraria, 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 ... 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.

In Position Statement 08-01 (Gifts), as in all subsequent position statements and opinions rendered by the Commission, the Commission interpreted Article XXIX in a manner that preserves what it believes was the intent of the electorate - "to improve and promote honesty and integrity in government and to assure the public that those in

government are held to standards that place the public interest above their private interests.”

The facts underlying Advisory Opinion 09-05 (Acceptance of a Fellowship from a Nonprofit Entity) are similar to those in this request. In Advisory Opinion 09-05, the Commission determined that it would not be a violation of Article XXIX for a governmental employee to accept a fellowship to the John F. Kennedy School of Government where the fellowship was paid for largely by the Gates Foundation. Although some of the facts that formed the basis of that opinion are not present in the instant case, the Commission believes that the result is the same.

IV. DISCUSSION

Section 3 prohibits a public official or employee from soliciting, accepting or receiving any gift or other thing of value worth more than \$50 in any calendar year, from a person, without that person receiving lawful consideration of equal or greater value in return, unless it falls under a listed exception. Sec. 3(3)(f) [exception (f)] exempts reasonable expenses paid by a nonprofit organization for participating in a convention, fact-finding mission, trip, or other meeting under certain circumstances. This exception is limited to nonprofits that receive less than 5% of their funding from for-profit entities or organizations.

The requesting member of the general assembly has been offered a fellowship to attend the Aspen Institute’s Rodel Foundations Public Leadership Program. The 24 month program consists of three plus weeks: one week in Aspen, one weekend in Louisiana, one week in Asia and one week in the Middle East. All costs would be paid by the Rodel Foundations. According to information supplied by the requestor, “The

Rodel Fellowship program is open by invitation only. Each public leadership class consists of twenty four fellows, twelve Republicans and twelve Democrats, identified by the Aspen Institute as America's most promising new public leaders." Prior classes have included Colorado legislators, as well as the Governors and Attorneys General of several states. This year's invitees also include legislators from Texas and Arizona, as well as the Attorney General of Missouri, and several local officials from across the country.

The requester quotes the Aspen Institute's web site as stating that "[t]he Rodel Fellowship is not a political program but an educational and leadership training program based on the belief that by exposing participants to a variety of philosophies, viewpoints and strategies, we will improve the quality of problem-solving in the states and in our local communities."

Exception (f):

Under Article XXIX, a government employee may not accept a gift, or other thing of value worth more than \$50 in any calendar year, unless it falls under an enumerated exception. Exception (f) exempts: [r]easonable expenses paid by a nonprofit organization...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.

Applying exception (f) to the request currently before the Commission, the Commission makes the following determinations:

1. “Reasonable Expenses”

The request does not contain any specific information pertaining to the breakdown of expenses for the trip. The requestor asserts that “the travel and accommodation arrangements for this opportunity are appropriate and conducive to that purpose.” If this information is correct, then the requirement that the expenses be reasonable appears to be satisfied.

2. Purpose of Attendance

In order to decide whether exception (f) applies, the Commission must determine whether the recipient of the fellowship is attending “a convention, fact-finding mission or trip, or other meeting” and if he is representing the State. As previously noted, the Commission determined in Advisory Opinion 09-05 (Acceptance of a Fellowship from a Nonprofit Entity) that “trip or other meeting” may be interpreted to cover this type of Program. Although in that situation the Commission relied on the fact that the employee’s agency was paying for a portion of the trip as evidence that there was a state purpose, the Commission believes that is not a necessary requirement to find a gift to the state. Moreover, the Commission believes that participation in this fellowship by a member of the general assembly provides a real benefit to the State. This criterion therefore appears to be satisfied.

3. Nonprofit Entity

The final criterion that must be met under exception (f) is that the donor of the gift must qualify as a nonprofit entity that receives less than 5% of its funding from for-profit entities or organizations. The Rodel Foundations is a tax exempt nonprofit under section 501(c)(3) of the Internal Revenue Code. According to the requestor he has been

assured that the Foundations do not receive funding from for profit sources. The Commission therefore believes that this request falls squarely under exception (f), and acceptance of the fellowship would be permissible.

Finally, the Commission believes that there is no inherent or potential conflict of interest or appearance of impropriety in this instance. The Commission has been informed that neither the Aspen Institute nor the Rodel Fellowship Program are affiliated with or use lobbying entities. Furthermore, there is no indication that the fellowship was offered to solicit the goodwill of the government employee or to influence an official act.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a government employee to accept a fellowship to attend this type of program, expenses of which would be paid by a nonprofit entity that receives less than 5% of its funding from for-profit sources.

The Independent Ethics Commission

Roy Wood, Vice Chairperson
Dan Grossman, Commissioner
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner

Dated: August 21, 2009

