



INDEPENDENT ETHICS COMMISSION

633 17th St., Ste. 1300, Denver, CO 80202

Ph.: 303/866-5727

Fax: 303/866-3777

E-mail: jane.feldman@state.co.us

doug.platt@state.co.us

www.colorado.gov/ethicscommission

Matt Smith, *Chairperson*

Roy Wood, *Vice-Chairperson*

Dan Grossman, *Commissioner*

Sally H. Hopper, *Commissioner*

Larry R. Lasha, *Commissioner*

Jane T. Feldman, *Executive Director*

Doug Platt, *Communication Director*

Advisory Opinion 10-03

(Acceptance of Expenses for Attendance at the National Governor's Association Annual Meeting)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Governor of Colorado to attend the annual meeting of the National Governor's Association meeting assuming that the facts are as described in the request.¹

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion by the Governor asking whether he may accept payment of expenses in excess of \$50, in order to attend the annual meeting of the National Governor's Association ("NGA") in Washington D.C. According to the request, the "Governor is regularly invited to attend conferences hosted by the NGA to represent the State of Colorado. The NGA is a bipartisan, non-profit entity comprised of the governor's of all fifty states, three territories and two commonwealths...The NGA is primarily funded by membership dues. For example, in 2010, Colorado paid \$106,000 in membership dues. Approximately 10% of the NGA's funding, however, comes from for profit sources."

¹ The Governor has waived confidentiality relating to this request.

II. JURISDICTION

The IEC finds that the Governor is a “public officer” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(6).

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, 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.

In Position Statement 10-01 (Payment for Conferences by State and Local Governments), the Commission clarified the meaning of the provisions of Section 3(3)(f) relating to nonprofits and what the Commission labeled “government exchange organizations”. In Position Statement 08-02 (Travel), the Commission recognized that travel that is not expressly exempted from Article XXIX Section 3 may nonetheless be permissible in certain circumstances as a gift to the State or local government, rather

than to the public official or employee, when certain specified conditions are met. The Commission believes that under certain circumstances, the attendance by these public employees and officials may be considered a gift to the state. In his request, the Governor suggests that these two opinions may be contradictory and requests a clarification with respect to his acceptance of travel and participation at the NGA Annual Meeting.

IV. DISCUSSION

In Position Statement 10-01, the Commission determined that if the State or a local agency pays dues to an organization, and the public employee or official can demonstrate that the dues specifically cover travel and related expenses to annual meetings or conferences, then there is valid consideration for the travel provided, and the gift is not a prohibited gift under Article XXIX, even if the sponsor of the conference is a nonprofit which receives more than 10% of its funding from for-profit sources. As the Commission stated in Position Statement 10-01, at page 5:

The Commission believes that in the circumstance in which the state is paying dues, a substantial portion of the cost of operating these organizations is borne by the state members, constituting lawful consideration of the payment of expenses related to GEO events. "In such a circumstance, acceptance of the payments and attendance at the events would be permissible, even if the overall funding of the non-profit GEO exceeds 5% from for-profit sources.

The Commission did not intend to overrule Position Statement 08-02 (Travel), but rather to offer an alternative means of analyzing whether a gift is permissible or prohibited under Article XXIX. The Commission therefore analyzed this request in light of the factors discussed in Position Statement 10-01 as well as the criteria set forth in Position Statement 08-02 (Travel) in determining if the Governor's acceptance of

expenses is permissible.

A. Is there lawful consideration for the Governor to accept expenses from the NGA?

There is no information in the request regarding the amount of the expenses which would be covered by the NGA. According to the request, however, the State pays \$106,000 in membership dues annually to belong to the NGA. Given the large amount involved, the Commission presumes that the dues cover the Governor's participation in the two conferences scheduled each year. That should be verified with the NGA by the Governor. If the dues cover the cost of the conference, then there is lawful consideration for the expenses, and the payment of expenses in excess of \$50 is not a prohibited gift.

B. Is the Governor's participation a gift to the State?

Because it is unknown if there is lawful consideration for the expenses provided, the Commission also reviewed the request in light of the five criteria contained in Position Statement 08-02:

Condition #1: The gift is for a legitimate State or local government purpose.

The Commission finds that the Governor's participation in the annual meeting of the NGA a legitimate state purpose. A review of the agenda for the meeting provided to the Commission lists several topics for discussion which are clearly of interest to the State of Colorado: education, natural resources, economic development, and health and human services. The Commission notes that Governor Ritter is the Chair of the Education, Early Childhood and Workforce Committee. This criterion appears to be satisfied.

Condition #2: The arrangements are appropriate to that purpose.

According to the request, Governor Ritter's air and hotel costs are being paid by the State. The conference consists primarily of meetings with other Governors and their staffs, and well as with the President of the United States. The Governor will be staying at the same hotel as the other Governors. This criterion appears to be satisfied.

Condition #3: The event is no longer than reasonably necessary to accomplish the business which is its purpose.

According to the request, Governor Ritter will be staying in Washington, D.C. for the duration of the conference, but is not arriving earlier, or staying later. This criterion appears to be satisfied.

Condition #4: The government official or employee who will be attending is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor.

There is no information before the Commission that the Governor is in any position to take official action with respect to the NGA, except as a member or participant. This criterion appears to be satisfied.

Condition #5: Government officials and employees are required to verify compliance with conditions #1 through #4 above. This condition is satisfied by the issuance of this Opinion.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for Governor Ritter to accept expenses in excess of \$50 to attend the National Governor's Association Annual Meeting under the circumstances described in this Opinion.

The Independent Ethics Commission

Matt Smith, Chairperson,
Roy Wood, Vice Chairperson, dissenting
Dan Grossman, Commissioner
Sally H. Hopper, Commissioner (did not participate)
Larry R. Lasha, Commissioner

Dated: February 16, 2010