

State of Colorado



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Advisory Opinion No. 10-17)

(Acceptance of Travel Expenses from a For Profit Entity Doing Business with the State)

SUMMARY: A government employee may not accept travel expenses from a for profit entity doing business with the State of Colorado under the circumstances described by the requestor.

I. BACKGROUND

A state government employee submitted a request for advisory opinion, seeking advice from the Independent Ethics Commission (IEC or Commission) as to whether a government employee working in the executive branch may accept reimbursement of travel expenses from a for-profit entity that does business with the State. According to materials submitted by the requestor, the business invited the requestor to speak at a workshop at its headquarters in Virginia. The workshop would include employees from the company's sales, marketing and business service groups. The event would not be open to the general public. The requestor would be speaking for three to four hours on a number of topics, most of which are directly related to his job duties for the State of Colorado. The company would not pay the requestor for his time, but would reimburse him for the cost of travel and expenses. The trip would be for three days, and the estimated total reimbursement would be between \$1500 and \$2000.

The requestor acknowledges that the company involved has current business with the State of Colorado, and is expected to bid on another project before the end of 2010. The requestor states that he does not, and will not, have any direct involvement with the awarding of this contract; however he does supervise the person who will be managing the request for proposal and the awarding of the contract.

II. JURISDICTION

The IEC finds that a state employee in the Executive Branch is subject to the jurisdiction of the Commission. CO Const. Art. XXIX Section 2(1).

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, 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:

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of the scheduled program.

(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. (Emphasis supplied)

IV. DISCUSSION

In this request, the covered individual seeks to accept reimbursement of approximately \$2000 for a three to four hour talk. The requestor does not suggest that this workshop would benefit the State of Colorado and the Commission is unable to discern any benefit from the covered individual's participation that would inure to the State. According to the request, this workshop would be similar to workshops previously conducted for other companies.

Section 3(2) of Article XXIX prohibits covered individuals from accepting payment for travel expenses in excess of \$50 in any calendar year unless it falls under a specific exception. None of the enumerated exceptions to Section 3(2) apply to the facts as described by the requestor. The travel expenses would not be paid by a state or local government or a nonprofit entity which makes less than 5% of its income from for profit sources. This travel therefore does not fall under exception 3(3)(f) contained in Article XXIX, and acceptance would violate Section 3(2).

The Commission notes that the company involved currently does business with the State of Colorado, and will continue to do so in the foreseeable future. The acceptance of expenses from a company that will be in competition for a contract within the next few months creates the impression that the paying of these expenses is done in order to curry favor with a state employee who, directly or indirectly, may be able to influence a procurement decision in the company's favor. Such an appearance of impropriety would likely, in itself, render the acceptance of travel expenses inappropriate. .

CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for a government employee in the executive branch to accept travel expenses from a private business under the circumstances described in the request.

The Independent Ethics Commission

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Dated: October 7, 2010