

State of Colorado



Matt Smith, *Chairperson*
Dan Grossman, *Vice-Chairperson*
Sally H. Hopper, *Commissioner*
Larry R. Lasha, *Commissioner*
Roy Wood, *Commissioner*

Jane T. Feldman, *Executive Director*
Doug Platt, *Communication Director*

INDEPENDENT ETHICS COMMISSION

101 W. Colfax Ave, Ste 500 Denver CO 80202

Ph.: 303/837-2339

Fax: 303/837-2341

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

doug.platt@state.co.us

www.colorado.gov/ethicscommission

Advisory Opinion 11-01

(Acceptance of Expenses for Travel paid for by a Nonprofit Organization)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a state wide elected official and his deputy to accept travel expenses to attend a national conference under the circumstances described in the request.

I. BACKGROUND

State Treasurer Walker R. Stapleton, on behalf of himself and the Deputy State Treasurer, submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether they may accept payment of expenses in excess of \$50, to attend four conferences in 2011 sponsored by the National Association of State Treasurers. (“NAST”).¹ The money for expenses would come from the Western States Scholarship Fund (“WSSF”) which was derived from the Western States Treasurers Association (“WSTA”). WSSF is a nonprofit organization organized under 501(c)(3) of the Internal Revenue Code. The Treasurer has been offered \$4000 in scholarship money to attend three conferences, plus an additional \$1500 to attend the fourth.

¹ The Treasurer and Deputy State Treasurer have waived confidentiality relating to this request.

Until approximately ten years ago², WSTA sponsored regional conferences for State Treasurer's from the west. Western states, including Colorado, paid dues to WSTA as well as to NAST (membership in NAST was a requirement for membership in WSTA, and is required to receive a scholarship from the fund.) Money earned at these conferences through registration fees, membership fees, and corporate sponsorship was maintained in a fund to help pay scholarships to the western states' treasurers. Although WSTA has not held a conference for over ten years, there is still money left in that fund, and WSSF continues to pay scholarships. No donations have been made to the fund for over ten years, although the fund continues to accrue interest. The fund is currently overseen by the State Treasurer of Utah.

II. JURISDICTION

The IEC finds that The State Treasurer and Deputy State Treasurer are a "public officer" and a "public employee", respectively, and are subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(6), (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, 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.

² Neither the Commission nor the Treasurer has been able to ascertain the exact date that WSTA ceased operations.

(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.

IV. DISCUSSION

The Commission believes that this is the sort of travel which was contemplated by the drafters of Article XXIX by creating exception 3(3)(f). Under the facts presented in this request, the Commission finds that the State Treasurer and Deputy State Treasurer would be attending a fact finding mission or trip, and the Treasurer's elected position is sufficient to establish that he and the Deputy State Treasurer are representing the State of Colorado. Presently the State of Colorado is a member of NAST. The remaining issue therefore is whether the acceptance of expenses paid by the WSSF is permissible.

According to information before the Commission, Colorado was a dues-paying member of the WSTA, and participated in the conferences they sponsored. The Commission has been unable to determine the amount of dues and fees the State of Colorado paid into the fund. The Commission finds that since there have not been any fundraising by WSTA for at least ten years, the payment of expenses would be by a "non-profit organization (which) receives less than five percent (5%) of its funding from for-profit organizations or entities." Article XXIX, section 3(3)(f). The Commission notes, furthermore, that this fund predates the passage of Article XXIX.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the State Treasurer and Deputy State Treasurer to accept travel expenses from the Western States Scholarship Fund under the circumstances described in this opinion.

The Independent Ethics Commission

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

Dated: March 3, 2011