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Advisory Opinion 11-12

(Reimbursement of Travel Expenses by a For Profit Entity)

SUMMARY: It would be a violation of Colorado Constitution Art. XXIX for the state of Colorado to accept reimbursement from NBC News of travel expenses incurred by the Governor and his staffer under the circumstances of this request.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether it would be permissible for the state of Colorado to accept from NBC News reimbursement for travel expenses incurred by the Governor of Colorado, John W. Hickenlooper¹, and a member of his staff. According to the request, the Governor participated in a panel discussion with nine other governors and Brian Williams of NBC News on issues relating to education in the United States from the states’ perspective. Issues discussed included budget cuts, the federal No Child Left Behind Act, early childhood education, graduation rates, the “achievement gap,” charter schools, and the federal Race to the Top program. The request avers that these are issues that are important to the State of Colorado and the nation and that the Governor has been involved on a national level with education reform for several years.

¹ The Governor has waived confidentiality relating to this request. The IEC does not know the identity of the staff member.

According to the request, the Governor and his aide spent two days in New York for the taping of the panel discussion. NBC News, a subsidiary of the National Broadcasting Company, Inc. is a for profit company.

II. JURISDICTION

The IEC finds that the Governor is a “public officer”, and a member of his staff is a “government employee” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (1)(6).

III. DISCUSSION

Article XXIX, Section 3(2) of the Colorado Constitution prohibits covered individuals from accepting gifts, including travel expenses, in excess of a threshold amount. Section 3(3)(f) exempts reimbursement for travel expenses incurred in participating on a panel, provided that the reimbursement comes from another state or local government or from non-profit organization that receives less than 5% of its funding from for-profit organizations or entities.

Because the Governor states in his request that the source of the reimbursement, NBC News, is a for-profit corporation, the panel participation exemption of Section 3(3)(f) is not applicable. Therefore, whether or not accepting the reimbursement is consistent with the gift ban of Article XXIX turns on whether or not such reimbursement constitutes a gift to a covered individual.

According to the Governor’s legal counsel, the state of Colorado paid for the travel expenses of the Governor and his staffer. The travel was paid for out of a discretionary fund in the Governor’s Office budget. The Governor now seeks to have the Commission approve reimbursement for such expenses from NBC News.

In a purely technical sense, the reimbursement is not to a covered individual but, rather, to the state of Colorado. However, it is clear that the reimbursement is for travel that inured to the benefit of the Governor and his staffer. While the state may have benefitted indirectly from the Governor's presence on the NBC News panel, the bolstering of the Governor's national profile on an important political issue very directly benefits the Governor. Neither the request nor the Governor's legal counsel identified any specific state legislative or administrative issue or agenda that required the Governor's presence on the panel. Rather, the Governor considers the trip a valuable opportunity to interface with other state governors in a discussion about education generally.

Given the foregoing, the Commission determines that the reimbursement from NBC News sought by the Governor is a gift to a covered individual subject to the prohibition of Section 2 of Article XXIX of the Colorado Constitution.

The Commission has previously stated that the public functions of government are properly paid for with public resources. This principle is derived from the underlying purpose of Article XXIX as set forth in Section 1(2): "The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary nature should be born by the state or local government."

The Governor's office was reasonable in its determination that the Governor's appearance on the NBC News education panel was an important enough priority to justify the expenditure of scarce state resources. And while it is also reasonable that the Governor's office would seek to offset such expenditures with private funds, such an

approach under these circumstances is not consistent with the proscriptions of the state Constitution.

IV. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for the state to accept reimbursement from NBC News under the circumstances described in this request and the expenses incurred for the Governor's participation on the NBC News panel are appropriately borne by the state of Colorado.

The Independent Ethics Commission

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