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Advisory Opinion 12-03

(Gift of Travel)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for employees of the Colorado Department of Education to accept payment of travel expenses from the government of Taiwan 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 two employees of the Colorado Department of Education (“DOE”) to accept payment of travel expenses from the Taiwan Ministry of Education (“Taiwan”). According to the request, DOE and Taiwan have negotiated a Memorandum of Understanding (“MOU”) regarding a teacher exchange program. According to the request, teachers from Taiwan would come to Colorado and licensed Colorado teachers would go to Taiwan to observe classrooms especially those which have been successful in the area of STEM (“science, technology, engineering and math”). The MOU states that its purpose is “the development of a work plan to maintain and enhance co-operation in educational matters and to promote mutual understanding and the pursuit of common benefits and collaborative development in that sector.” The MOU also provides that it will encourage

“joint efforts in language teaching” and the exchange of information in educational research.

The Government of Taiwan has invited Colorado’s “highest ranking education official” and one other individual to attend the signing ceremony in Taiwan in June 2012. DOE would pay the airfare, approximately \$1800 per person, and Taiwan would pay the cost of hotels, meals and transportation within Taiwan, estimated to be approximately \$1600.¹ The second employee going on the trip is the employee who negotiated the MOU and who has been involved in setting up the program. She has been working on this MOU since summer 2011 and has invested considerable time on this project.

II. JURISDICTION

The IEC finds that the highest ranking education official 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. 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.

¹ DOE estimates the hotel costs at \$250 per night for five nights, meals at \$250 per person, and transportation at \$150 for the group.

IV. DISCUSSION

The Commission has reviewed the MOU negotiated between the Government of Taiwan and the Department of Education. The MOU sets up a process for the exchange of benefits to both parties. The IEC believes that under the circumstances of this request the gift is not to covered individuals. Evidence of this may be found in the fact that the invitation was to the “highest ranking education official” and another person of DOE’s choosing. Furthermore, according to the request, this is not an invitation for a sight-seeing or pleasure trip, but rather a trip to take official action within the officials’ area of expertise. The Commission also notes that more than half the cost of the trip is being paid for by DOE, suggesting that the agency believes that this trip fulfills a legitimate state purpose. There is no indication that this trip will entail the solicitation of business or lobbying opportunities. The agenda schedule for the trip will be set by the government of Taiwan.²

The Commission also notes that the purpose of this trip, the expansion of educational opportunities, is within the purview of DOE. The trip is therefore appropriate for the individuals selected.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Department of Education to accept reimbursement from Taiwan under the circumstances described in this request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in this request, and that different facts could produce a different result. The IEC therefore encourages individuals with

² Although the agenda has not been finalized, the activities that are contemplated focus on educational and ceremonial activities. The Commission reminds covered individuals that any recreational and entertainment activities outside of official activities may be considered gifts under Article XXIX.

particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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Dated: April 3, 2012