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INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 12-04

(Acceptance of Waiver of Registration Fee)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a commissioner of the Public Utilities Commission to accept the waiver of a registration fee for a conference at which the commissioner has been invited to speak. However, the gift ban of Section 3 of Article XXIX will apply to privately hosted dinners and other recreational or extracurricular activities not directly related to the program of the conference itself.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether it would be permissible for a Commissioner of the Public Utilities Commission (“PUC”) to accept a waiver of the registration fee to a three-day conference in Aspen, Colorado at which he is speaking. According to the request, the conference is entitled the “Aspen Clean Energy Roundtable” and is presented by Montreux Energy, LLC. The commissioner will be participating in a panel discussion on the second day of the conference and has been invited to participate in other panel discussions throughout the conference to the extent his schedule allows. He asks whether it would be permissible to accept a \$950 waiver to attend all three

days, including several receptions and meals associated with the conference. The invitation does not cover hotel or travel expenses, which will be borne by the state and the commissioner.

The commissioner has submitted a proposed agenda for the conference. According to the brochure, “Montreux Energy is a privately held company that organizes roundtables on the future of global energy investment. The objectives of the company are to “engage constructive, interactive, stakeholder dialogue. [It] hosts key regulators and policy officials, from local, state, federal and international organizations.” Past co-sponsors of the conference include many of the nation’s energy companies and providers, including Xcel Energy, Encana, and Shell Oil, which do business in the State of Colorado and are regulated by the PUC.

II. JURISDICTION

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

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

IV. DISCUSSION

Article XXIX provides a specific exception to the gift ban provisions contained in Section 3 for the cost of admission and meals consumed at an event when a covered individual is speaking as part of the program. The Commission has previously construed this section as requiring that the individual be listed in the program as a speaker, (See, Letter Ruling 09-06, and Advisory Opinions 11-03 and 10-01). Because the commissioner has been invited to participate in panels throughout the three-day conference, acceptance of the fee-waiver for the entire conference is consistent with section 3(3)(e) of Article XXIX.

However, the Commission is concerned that the agenda for the conference includes "private networking and investment sessions" as well as "Dinners in Town of Aspen and at Private Company-hosted Dinners." These activities appear to be outside of the scope of the program of the conference and the exception of Section 3(3)(e) would not encompass such events. Therefore, the gift ban of section 3 would apply to these extracurricular activities.

Moreover, the commissioner is in a position to take direct official action with regards to several of the companies who may be hosting these dinners and/or co-sponsoring the conference. He should be extremely cautious, therefore, in participating in private meetings sponsored or hosted by companies which are regulated by the PUC;

accepting these invitations at a minimum, present an appearance of impropriety, and if the value of these events are in excess of \$53, a violation of Article XXIX.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a commissioner with the PUC to accept a waiver of the admission fee for an event at which he is speaking.. Moreover, he should be careful to avoid an appearance of impropriety in meeting with organizations over which the PUC has regulatory authority.

The Independent Ethics Commission

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Dated: May 7, 2012