

State of Colorado



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Advisory Opinion 13-02

(Acceptance of Travel Expenses to attend a Symposium)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Secretary of State to accept travel expenses to participate in a symposium sponsored by William and Mary School of Law under the circumstances described in the request.

I. BACKGROUND

The Office of the Secretary of State (“SOS”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether the Secretary may accept payment of expenses in excess of \$53 to participate in the Annual Election Law Symposium sponsored by the Election Law Program at William and Mary Law School. (“Law School”) The Symposium will be held at the Law School in Williamsburg, Virginia on February 22, 2013; from 3:30-5 p.m. It is free and open to the public. According to the Program Director, the Election Law Program is sponsored jointly by the Law School and by the National Center for State Courts¹. It is primarily run by the bipartisan Student Election Law Society. The goal of the program is “to provide resources to state court judges on election law issues.” The agenda for the one day symposium is

¹ The National Conference of State Courts is a nonprofit organization consisting of public agencies involved in court administration and related issues. Its members include states, law firms and other organizations involved in law. According to the 2011 Annual Report, it receives approximately 4% of its funds from conference fees and donations. Colorado’s Judicial Branch and Office of the State Court Administrator are members of the organization.

not detailed, although several speakers have been confirmed. A review of the biographies of the speakers shows that they include a range of perspectives and backgrounds. The total amount to be reimbursed is expected to be approximately \$750. The Law School is a Commonwealth-funded institution.

II. JURISDICTION

The IEC finds that the Secretary of State is a public officer and is subject to the jurisdiction of the Commission. See CO Const. Art. XXIX, sec. 2(6) and sec. 3.

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, 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:

(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 takes this opportunity to further discuss Position Statement 12-01. (Travel). In that opinion, the IEC stated that whether travel is permissible under

Article XXIX begins with an evaluation of whether the gift is to a covered individual. See Position Statement 12-01, page 4-5.

In the present situation it appears that the offer to pay the Secretary's travel is not a gift to a covered individual. The Secretary of State, by virtue of his role as the chief elections official of Colorado, is uniquely positioned to discuss the subject matter of the Symposium, long lines for voting. The Commission believes that this invitation went to the Secretary *ex officio*, and based on the Secretary's expertise in this area. According to the request, Secretary Gessler has a nationwide reputation on elections law issues and the request relates to the public duties of the Secretary. The Symposium itself has an educational purpose and is organized to present varying views and positions. From the facts presented, the IEC does not believe that acceptance of reimbursement for these expenses present a conflict of interest or an appearance of impropriety.

The Secretary asserts that because the Law School is a commonwealth-sponsored institution, it would qualify as a "state or local government" under Article XXIX section 3(3)(f). The Election Law, program, however, is funded by grants, donations, and fees. The Commission therefore cannot make a determination of this issue at this time.

The Commission notes that the Secretary will be flying to Virginia for a symposium lasting only 90 minutes. The IEC therefore reminds the Secretary that permission to accept the travel reimbursement does not mean permission to attend entertainment or social events unrelated to the conference. Covered individuals are reminded that they should not attend any social events outside of the conference or

they should pay their own way (assuming that the event is valued at over \$53). These events need to be individually evaluated and may be impermissible gifts.

The IEC believes that the travel described in the request is the sort of travel which should be permissible under Article XXIX. Under the facts presented in this request, the Commission finds that payment of these expenses is not a gift to a covered individual, and therefore permissible under Article XXIX.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Secretary of State to accept a gift of travel under the circumstances of 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 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: February 15, 2013