

State of Colorado



Matt Smith, *Chairperson*
Rosemary Marshall, *Vice-Chairperson*
Bob Bacon, *Commissioner*
William J. Leone, *Commissioner*
Bill Pinkham, *Commissioner*

Jane T. Feldman, *Executive Director*

INDEPENDENT ETHICS COMMISSION

1300 Broadway, Suite 240, Denver, CO 80203

Ph.: 720.625.5697

Fax: 720.625.5696

Email: jane.feldman@state.co.us

www.colorado.gov/ethicscommission

Advisory Opinion 14-02

(Acceptance of Travel Expenses Paid for by a Foreign Government)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Executive Director of the Department of Revenue and members of her staff to accept travel expenses from the Government of Switzerland under the circumstances described in the request.

I. BACKGROUND

The Colorado Department of Revenue (“DOR”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether the Executive Director and members of her staff may accept the payment of travel expenses in excess of \$53 to participate in a conference in Basel, Switzerland regarding the legalization of marijuana, as well as participate in a series of meetings with Swiss officials regarding Colorado’s experience with the legalization of marijuana. According to the request, the Executive Director was invited by the Federal Commission on Drug Issues (“Swiss Commission”), a “consultative body of the Swiss Government...The Commission is charged to council (sic) the administration of the Federal act on Narcotics Laws, and works after all on questions concerning drug consumption, addiction policies, and market regulation.” The invitation states that the Swiss Commission is interested in

hearing about the Colorado model regarding marijuana enforcement. The invited staff members are also directly involved in the regulation of marijuana in Colorado. All travel expenses and conference fees will be paid by the Swiss Commission.

II. JURISDICTION

The IEC finds that employees of the Colorado Department of Revenue are government employees and subject to the jurisdiction of the Commission. See CO Const. Art. XXIX, sec. 2(1) 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

Based on the information provided in the request, the Commission believes that the travel described in the request is the sort of travel which is permissible under Article

XXIX. In Position Statement 12-01, the Commission set forth several factors to consider in determining if gifts of travel are gifts to covered individuals. Those factors are:

1. Is the gift to a specific individual or to the designee of an agency
2. Is the offer made *ex officio*
3. Is the travel related to the public duties of the traveler
4. Is there a potential conflict of interest or appearance of impropriety in acceptance of this gift.

In evaluating this request, the Commission believes the payment of travel expenses in this instance are not gifts to covered individuals. The invitation went to the Executive Director of the Department of Revenue and the Director of the Division of Marijuana Enforcement *ex officio*, based on their positions within Colorado government and actual knowledge and experience in the substantive issues being discussed. The Swiss Commission sought out the Department of Revenue as the agency in Colorado with the most direct experience and knowledge. Although the invitation was addressed to the Executive Director personally, the Commission has previously stated that that fact is not determinative. Advisory Opinion 13-08. These issues are clearly within her public duties. Based on the information provided to the Commission, this trip would be educational; it is not primarily a networking opportunity for the requestors. Moreover, the requestors are not in a position to take direct official action with respect to the donors, and therefore there is no apparent conflict of interest or appearance that these invitations were made to curry favor with these particular individuals. The requestor has informed of the Commission that the trip would also provide benefit to the State of

Colorado. She stated that there are other countries and localities which will be present at the conference with experience in the regulation of marijuana. She and her staff hope to learn from their experiences and gain additional insight into issues in order to improve the Colorado system. In addition, she hopes to speak to officials from countries which have dealt with issues of diversion of marijuana across borders, and which have regulated marijuana for some time.

The Commission does not believe that this request fits within the exception provided in Article XXIX section 3(3)(f). The travel expenses are being paid by a foreign government, and therefore are not covered by this exception. See, Advisory Opinion 10-11.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for employees of the Colorado Department of Revenue to accept travel expenses 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

Matt Smith, *Chairperson*
Rosemary Marshall *Vice Chairperson*
Bob Bacon, *Commissioner*
William J. Leone, *Commissioner (abstained)*
Bill Pinkham, *Commissioner*

Dated: February 10, 2014