

BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO

Complaint No. 16-20

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF COMPLAINT 16-20, KIM RANSOM,
Respondent.

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Charles H. Bucknam (“Mr. Bucknam”) alleging violations of the gift ban provisions of Section 3 of Article XXIX of the Colorado Constitution (“gift ban”). Complainant alleges that state Representative Kim Ransom (“Rep. Ransom”) violated the gift ban by accepting a “gold pass” to the Western Conservative Summit, a three-day conference of conservative speakers, workshops, and panels hosted by Colorado Christian University’s (“CCU”) Centennial Institute.¹ The gold pass had a face value of \$600.00. Rep. Ransom reported receipt of the gold pass as a gift to the Secretary of State under section 25-6-203, C.R.S. Rep. Ransom’s filing prompted Mr. Bucknam to file this complaint.

Mr. Bucknam’s complaint alleged that the gold pass exceeded the gift ban limit of \$59.00, fit within the meaning of “gift” in Article XXIX, and did not satisfy any of the exceptions to the gift ban listed in Section 3 of Article XXIX. Mr. Bucknam’s complaint also alleged that the gold pass fit within the meaning of “gift” in section 24-6-203, C.R.S. The Commission found Mr. Bucknam’s complaint non-frivolous and proceeded to investigate the complaint.

In her response, Rep. Ransom asserted that she was invited to the Western Conservative Summit, and offered a free gold pass, by CCU. Rep. Ransom also asserted that she received an

¹ At the hearing, Jeffrey Hunt, the vice-president of CCU and director of Centennial Institute, testified that Centennial Institute does not exist apart from CCU and is a trade name for CCU. Accordingly, the Commission’s inquiry is focused on CCU as the gift-giving entity.

award given by Principles of Liberty² at the Western Conservative Summit. Rep. Ransom alleged that CCU is a Colorado nonprofit corporation and is organized under federal tax law as a 501(c)(3) corporation. Rep. Ransom alleged that acceptance of the gold pass fit within each of the exceptions to the gift ban listed in Section 3(3)(f) of Article XXIX, including: (1) she was scheduled to give a speech; (2) she made a presentation; (3) she participated on a panel; and (4) she represented the state government.

The Commission's Notice of Issues for Hearing included potential violations of: (1) Section 3(2) of Article XXIX (gift ban); and (2) Section 5(1) of Article XXIX (other standards of conduct and reporting requirements), including Rule 21(c) of the Colorado House of Representatives and section 24-6-203(3.5)(a), C.R.S.

On November 29, 2017, the Commission held an evidentiary hearing and deliberated on the merits of the case in public. For the reasons set forth below, the Commission has determined that the gold pass was a gift within the meaning of Article XXIX, that CCU is a "nonprofit organization" receiving less than five percent of its funding from for-profit organizations or entities, and that Rep. Ransom was representing the state government when she attended the Western Conservative Summit pursuant to Section 3(3)(f). Therefore, the Commission finds that Rep. Ransom's acceptance of the gold pass did not constitute an ethical violation under Article XXIX of the Colorado Constitution.

I. Findings of Fact

a. Colorado Christian University

1. CCU is an accredited, nonprofit organization. CCU is organized under federal tax law as a 501(c)(3) corporation.
2. At the hearing, Daniel Cohrs, chief financial officer of CCU, testified that less than five percent of CCU's funding comes from for-profit sources. This testimony was not rebutted.
3. The Centennial Institute is a trade name for CCU, and does not exist as an entity apart from CCU other than its identity as the "think tank" arm of CCU.

b. The Western Conservative Summit

4. CCU hosts the Western Conservative Summit on an annual basis.

² Principles of Liberty is a separate entity that purchased stage time from CCU at the Western Conservative Summit.

5. The Western Conservative Summit is a gathering of conservative-minded speakers directed at advancing issues central to CCU's mission, including "traditional family values, sanctity of life, compassion for the poor, Biblical view of human nature, limited government, personal freedom, free markets, natural law, original intent of the Constitution, and Western civilization."
6. In 2016, CCU offered multiple tiers of pricing for attendance at the Western Conservative Summit: (1) \$200 for a "silver pass," which included attendance at all three days of the conference and a Friday night concert; (2) \$600 for a "gold pass," which included attendance at all three days of the conference, a Friday night concert, reserved/preferred seating, book signings, photo opportunities with speakers, and a banquet on Saturday night; (3) \$100 for a "Patriot pass," which included the same features as the silver pass but was discounted for veterans, teachers, and clergy; and (4) \$120 for single-day passes, which included attendance at a single day of the conference.
7. In 2016, CCU invited all members of the General Assembly, regardless of political party affiliation, to attend the Western Conservative Summit free of charge.
8. Specifically, in 2016, CCU offered complementary gold passes to each legislator and his or her spouse.
9. CCU did not offer the option of complementary silver passes or other pass options to members of the General Assembly.

c. Rep. Ransom's Acceptance of the Gold Pass

10. Rep. Ransom testified that she inquired of her staff whether she was permitted to accept CCU's offer of a gold pass, and she was told that she could.
11. Rep. Ransom accepted CCU's offer of a gold pass to the Western Conservative Summit.
12. After CCU offered Rep. Ransom a gold pass to the Western Conservative Summit, CCU notified Rep. Ransom that she was nominated for a "Legislator Award" from Principles of Liberty, a non-affiliated entity that had purchased stage time at the conference.
13. The Principles of Liberty Legislator Award was to be presented to Rep. Ransom at the conference.
14. The Principles of Liberty Legislator Award was based on Rep. Ransom's voting record on issues important to Principles of Liberty.

d. Rep. Ransom’s Attendance at the Western Conservative Summit

15. Rep. Ransom attended all three days of the Western Conservative Summit.
16. Rep. Ransom accepted the Principles of Liberty Legislator Award.
17. Rep. Ransom did not give any comments, speeches, or public remarks at the Western Conservative Summit.
18. The only public remarks Rep. Ransom can recall making is introducing herself to the crowd as an elected official when that opportunity was made available.
19. Rep. Ransom testified that she wore her badge identifying herself as a member of the House of Representatives.
20. Rep. Ransom attended and ate the dinner at the Saturday night banquet.
21. Rep. Ransom took advantage of the reserved/preferred seating available to gold pass members.
22. Rep. Ransom testified that, at the time she attended the Western Conservative Summit, she was on the Health Insurance and Environment Committee in the House of Representatives.
23. Rep. Ransom testified that she attended sessions at the Western Conservative Summit related to health insurance.
24. Rep. Ransom testified that she used the knowledge gained at the Western Conservative Summit in her role as a state legislator.
25. Rep. Ransom was unable to identify or recall what particular knowledge she gained at the Western Conservative Summit that she had used in her role as a state legislature.

II. Conclusions of Law

a. Jurisdiction

26. Rep. Ransom is a member of the General Assembly. The Commission has jurisdiction over Rep. Ransom pursuant to Section 2(1) of Article XXIX. Colo. Const. art. XXIX, § 2(1).
27. Rep. Ransom was subject to the Commission’s jurisdiction at the time of the events in question.
28. Rep. Ransom is subject to the gift ban found in Section 3 of Article XXIX. Colo. Const. art. XXIX, § 3(1).

b. Gift Ban

29. Section 3 of Article XXIX prohibits covered individuals from soliciting, accepting, or receiving any gift or other thing of value worth more than \$50.00, adjusted to account for inflation to \$59.00, without providing lawful consideration of equal or greater value in return. Colo. Const. art. XXIX, § 3(2); *see* Position Statement 15-01.
30. The Commission finds that the value of the gold pass was \$600.00. The value of an item is set at its face value, or the cost at which it is sold to the public. *See* Letter Ruling 12-01 at 2, 4 (rejecting association’s contention that the value of complementary tickets is the cost of the meal to the association, and finding instead that the value of the ticket is “the price the item is offered for sale or service.”). The amount of the gift, therefore, “is the price that the ticket is offered to the general public.” *Id.* at 4. The gold pass was offered to the general public for \$600.00. The Commission finds unavailing Rep. Ransom’s contention that the value of the gift is the value of the gift to her. Such a standard would be too subjective to reasonably enforce. Jeffrey Hunt, the vice-president of CCU and director of Centennial Institute, testified that the pricing structure was based on the price CCU believed the public would pay. Mr. Hunt further testified that he believed the value of three days of high-caliber speakers far exceeded the cost of the silver pass, which was the purported value according to Rep. Ransom.³ Mr. Hunt’s testimony is supported by the fact that the Western Conservative Summit operates at a loss of \$400,000, indicating that the value of the gold pass would likely be higher than \$600.00 if its face value were not the method of valuation.
31. The face value of the gold pass exceeded \$59.00.
32. Rep. Ransom did not provide lawful consideration of equal or greater value in return for the gold pass.
33. Accordingly, the Commission finds that the gold pass was a “gift” within the meaning of Section 3 of Article XXIX.

a. Gift Ban Exception

34. There are specific exceptions to the gift ban. At issue here is Section 3(3)(f), which states:

³ The Commission notes that, even if the silver pass value—\$200.00—were the controlling value, that amount still exceeds the gift ban’s \$59.00 limit.

The prohibitions ... of this section do not apply if the gift or thing of value is Reasonable expenses paid by a nonprofit organization ... 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[.]

Colo. Const. art. XXIX, § 3(3)(f).

35. Because the gold pass was a “gift” within the meaning of Section 3 of Article XXIX, Respondent bears the burden of proof to demonstrate that one of the exceptions set forth in Section 3(3)(f) applies.

i. Nonprofit Status

36. The Commission finds that CCU is a non-profit within the meaning of Section 3. In addition, the Commission finds that less than 5 percent of CCU’s funding comes from for-profit organizations or entities.
37. The testimony of Mr. Cohrs credibly demonstrates that less than 5 percent of CCU’s funding comes from for-profit organizations or entities.

ii. Reasonable Expenses

38. In determining whether the Section 3(3)(f) exception applies, the Commission considers whether expenses incurred when attending certain conventions, fact-finding missions, and other meetings are “reasonable” and “not excessive.” *See* Advisory Op. 09-08 at 4-5; Advisory Op. 14-17 at 2.
39. In Advisory Opinion 14-17, the Commission considered a \$200.00 per day cost to attend a conference to be reasonable. Advisory Op. 14-17 at 2.
40. Because no travel expenses are at issue here, the Commission considers only whether Rep. Ransom’s acceptance of the \$600.00 gold pass was a reasonable cost for attendance at the Western Conservative Summit.
41. Both Mr. Hunt and Rep. Ransom testified that CCU only offered Rep. Ransom (and all other members of the General Assembly) the gold pass.
42. The Commission finds that the cost of the gold pass was reasonable in relation to the value received, *i.e.*, three full days of attending a conference with nationally recognized guest speakers and one meal.

iii. Purpose of Attendance

43. In determining whether the Section 3(3)(f) exception applies, the Commission looks to the purpose of attendance at a conference. Article XXIX mandates that attendance must be “to deliver a speech, make a presentation, participate on a panel, or represent the state or local government.” Colo. Const. art. XXIX, § 3(3)(f).
44. At the hearing, Rep. Ransom argued that she was representing the state government when she attended the Western Conservative Summit.
45. Rep. Ransom relied in part on Advisory Opinion 11-07, which considered a legislator’s request to attend a Washington, D.C. conference for People for the American Way Foundation.
46. Specifically, Rep. Ransom cited to Advisory Opinion 11-07’s language that the legislator would be representing the State of Colorado “by virtue of her position as a member of the General Assembly.” Advisory Op. at 2.
47. Consequently, Rep. Ransom testified that she was representing the state government when she accepted an invitation sent to all legislators, introduced herself as a legislator at the Western Conservative Summit, wore her badge identifying herself as a state representative, and gleaned knowledge that she considered applicable to her work in the General Assembly.
48. It is important to note that Advisory Opinion 11-07 was not premised on the Section 3(3)(f) exceptions at issue here, but on Position Statement 08-02, which has since been overruled and withdrawn.
49. Advisory Opinion 11-07 does not mention several important details contained in the request, particularly the requester’s reliance on the “gift to state” exception contained in Position Statement 08-02.
50. Position Statement 08-02 was expressly overruled by the Commission in Position Statement 12-01, which recognized that Position Statement 08-02’s “gift to state” exception drifted too far afield of Article XXIX’s mandate. *See* Position Statement 12-01 at 2. In Position Statement 12-01, the Commission set forth criteria to be considered when weighing acceptance or offers of payment or reimbursement. *Id.* at 5-8; *see also* Advisory Op. 12-11; Advisory Op. 13-08; Advisory Op. 16-04; Advisory Op. 16-07. These criteria are to be considered independently of whether a Section 3(3)(f) exception

applies. *See* Advisory Opinion 16-04; Advisory Opinion 15-01. However, many of the factors are informative as to whether a covered individual is “represent[ing] the state or local government” within the meaning of Section 3(3)(f).

51. Additionally, Advisory Opinion 11-07 contains so little detail that the Commission referred to it as akin to an “unpublished decision” at the hearing. The Commission does not consider Advisory Opinion 11-07 binding precedent in this case, especially given that Position Statement 08-02 was overruled in 2012.
52. Applying the factors set forth in Position Statement 12-01, the Commission considers “the entire context” of Rep. Ransom’s acceptance of the gold pass and attendance at the Western Conservative Summit in determining whether she was representing the state at that conference. *See* Position Statement 12-01 at 8.
53. First, the Commission finds that the gift to Rep. Ransom was an offer to all legislators, indicating an institutional benefit rather than a personal one. *See* Position Statement 12-01 at 5.
54. Second, the Commission finds that the gift to Rep. Ransom was *ex officio*, and was made by virtue of her position as a state legislator. *See* Position Statement 12-01 at 6-7.
55. Third, the Commission finds that the Western Conservative Summit was related to Rep. Ransom’s public duties. *See* Position Statement 12-01 at 7. This determination is a close one, as Rep. Ransom was unable to articulate how she had used the knowledge she gained at the Western Conservative Summit to benefit the General Assembly. Nonetheless, she testified that she had attended at least one session that related to her work on the Health Insurance and Environment Committee, that she was new to the committee, and that she was attempting to gain as much information as possible regarding health insurance markets in the state of Colorado at the time. The Commission finds this testimony credible and sufficient to demonstrate a relationship to Rep. Ransom’s public duties.
56. Fourth, the Commission finds that there was not an existing or potential conflict of interest or appearance of impropriety. *See* Position Statement 12-01 at 7. Although Complainant alleged, and Rep. Ransom conceded, that Principles of Liberty sought to influence Rep. Ransom’s votes on specific legislation, Principles of Liberty was an entity distinct from CCU and was not the entity that gave the gold pass to Rep. Ransom.

57. Fifth, the Commission finds that the purpose of the conference is educational, rather than primarily a networking opportunity or entertainment. *See* Position Statement 12-01 at 7-8; Letter Ruling 14-01 (legislator and staff may attend a primarily educational conference concerning current topics in healthcare policy hosted by the Colorado Health Institute, a non-profit organization). Mr. Hunt testified that the purpose of the Western Conservative Summit is primarily public discourse and that CCU welcomes speakers of other political persuasions. Rep. Ransom testified that she viewed the conference as an educational experience. The Commission finds that the conference was primarily educational in purpose rather than focused on networking, receptions, entertainment, or sightseeing. *See* Position Statement 12-01 at 7.
58. Given the totality of the factors listed in Position Statement 12-01, the Commission finds that Rep. Ransom was representing the state when she attended the Western Conservative Summit and, accordingly, is exempt from the gift ban pursuant to Section 3(3)(f) of Article XXIX of the Colorado Constitution.
59. The Commission cautions that this finding is fact-specific and different facts may result in different conclusions. For example, Mr. Hunt testified that CCU now employs a lobbyist, although it did not employ a lobbyist when Rep. Ransom attended the Western Conservative Summit in 2016. That fact may be an important factor going forward. *Cf.*, Letter Ruling 14-01 (legislator may accept gift of attendance at a conference if the gift is from a non-profit with no lobbying activities); Position Statement 12-02; Advisory Opinion 14-01; Colo. Const. art. XXIX, § 3(4); C.R.S. § 24-18-104(1)(b).
60. For the reasons set forth above, the Commission also finds no violation of Section 5(1) of Article XXIX. The facts set forth at the hearing do not demonstrate any violation of Rule 21(c) of the Colorado House of Representatives or Section 24-6-203(3.5)(a), C.R.S.

THEREFORE, the Commission finds there was no violation of Article XXIX by Respondent Kim Ransom, and dismisses Complaint 16-20.

The Independent Ethics Commission

Matt Smith, *Chair*

April Jones, *Vice Chair*

William Leone, *Commissioner*

Jo Ann Sorensen, *Commissioner*, concurring

Gary Reiff, *Commissioner*, concurring in judgment only

DATED: December 21, 2017

CONCURRENCE (Commissioner Jo Ann Sorensen):

Due to illness on December 21, 2017, I was not present at deliberations regarding the draft findings of fact and conclusions of law. I was present at the hearing and participated in the final vote dismissing the complaint regarding Representative Ransom. I concur in the judgment and opinion.

CONCURRENCE (Commissioner Gary Reiff):

I write separately to concur in judgment only and to urge my fellow Commissioners to revisit how this Commission determines when covered government officials can attend educational forum tuition-free. In my opinion, the Commission’s approach is formulaic, encourages the wrong behavior, and leads to illogical results. Two months ago, Jefferson County government employees asked us if they could attend the invitation-only Harvard Leadership for a Networked World Health & Human Services Summit (the “Harvard Summit”) that addressed important public policy issues, sponsored by two departments within Harvard University, the American Public Human Services Association (“APHSA”), and Accenture. *See* Advisory Opinion 17-08. Because Harvard University segregated the Harvard Summit from its university-wide financial records with two “centers” that each received more than 5% of their revenues from for-profit businesses, we ruled that the employees could receive allocated free tuition only to the extent allocated to Jefferson County’s contribution to APHSA, but not to the extent paid by the Harvard centers. *Id.* During our public deliberation, one Commissioner noted

that, if the Jefferson County employees had been invited to speak, rather than merely to attend to learn, travel and tuition to the entire conference could have been exempt. At that time, I expressed my concerns with the outcome of the decision but supported it, in hindsight, in error. This case proves the error.

Colorado Christian University (“CCU”), through a trade name, “Centennial Institute”, sponsors the Western Conservative Summit (“WCS”), a gathering of conservative thought and political leaders and invites all 100 Colorado state legislators to attend free of charge (the public must pay up to \$600 per ticket, depending on the ticket). CCU does not segregate the “Centennial Institute” on its financial records or the sponsorships for this event from the university itself so we are unable to determine how much private sponsorship actually supports WCS. In fact, when the Vice President in charge of the conference and the Chief Financial Officer of CCU were asked if they knew the level of sponsorship for the Principles of Liberty, a presenting sponsor of awards, including to State Representative Ransom, both said that they did not know either the amount of sponsorship or even an estimate of range. So, we do not know how much of the sponsorship of WCS was specifically sponsored by Principles of Liberty⁴ or any for-profit businesses either directly or funneled through a non-profit which subsequently contributed to CCU.⁵ The CFO also noted that his ledger showing for-profit and non-profit sponsorship to CCU, although denominated as Form 990, was created specifically for this hearing and not as part of the actual Form 990 that was submitted to the IRS. And, State Representative Ransom could only specifically remember (and then generically describe) one seminar she attended but otherwise used broad terms to describe the types of things she heard, but could not recall any other specific sessions or speakers (other than the headline speaker).

⁴ We also have no idea if Principles of Liberty is non-profit, and, even if it is non-profit, whether it is funded by for-profit businesses and simply funneling money to CCU.

⁵ The definition of non-profit also is formulaic and can lead to troublesome results. We only look at the for-profit donations to the actual non-profit that is sponsoring the event to see if they are less than 5%. However, if a second non-profit were formed solely by for-profit businesses and solely for the purpose of contributing those dollars to the sponsoring non-profit, and the second non-profit contributed those “for-profit” dollars to the sponsoring non-profit, the money would be “cleansed” and the sponsoring non-profit could say that it received less than 5% of its revenues from for-profit business.

However, this Commission will find that Representative Ransom appeared in her representative capacity⁶ and no violation of the gift bar occurred.

One could argue that the Harvard Summit was clearly driven by public policy focused at government employee thought leaders -- to bring ideas back to their communities and, by contrast, that the CCU conference was a political event where leaders attend to see and be seen with members of a like philosophical bent (and to grant public recognition to those who had voted, as encouraged, on specific legislation). However, because CCU's corporate form is different than Harvard's corporate form—CCU accumulates all contributions under one corporate umbrella and Harvard segregates into different corporate centers, we reach different results unrelated to ethics, but directly related to corporate form. So, even though, on a relative merit, one could argue that the Harvard Summit delivers a better educational experience to our citizenry than the CCU event, the corporate form of CCU as compared to Harvard seems to drive a contrary result.

That said, I do concur in judgment although I believe that this Commission's interpretation of the rules can lead to troublesome results. The Commission has a string of decisions where it allows State executives to attend conferences internationally because they were "invited to speak". *See, e.g.*, Advisory Opinion 16-01 (Vienna); Advisory Opinion (16-03 (Washington DC); Advisory Opinion 16-04 (Toronto); Advisory Opinion 16-07 (Berlin); Advisory Opinion 15-01 (Bielefeld, Germany); Advisory Opinion 15-11 (Jamaica); Advisory Opinion 14-02 (Switzerland); Advisory Opinion 14-05 (Squaw Valley). This Commission even finds it appropriate for a foreign government to pay for travel. *See, e.g.*, Advisory Opinion 14-02 (paid by Switzerland); Advisory Opinion 12-03 (paid by Taiwan). This Commission also has found it acceptable for a so-called "non-profit" representing for-profit businesses to sponsor a trip, as long as the recipient receives an invitation to speak. *See, e.g.*, Advisory Opinion 15-07. So, as one Commissioner suggested during the deliberation on the Harvard Summit, there was a work around -- get invited to speak. By encouraging "invitations" to speak, we unintentionally

⁶ It is beyond the scope of this concurrence, but the Commission's analysis of representative capacity also should be reviewed for inconsistent application. In this context, the Commission concludes that Representative Ransom was in her representative capacity because all 100 legislators were invited and she wore her name badge.

also may be encouraging subterfuge, not transparency. We should be encouraging transparency, not formulaic following of rules. Ethics is about doing what is right, not doing what merely complies with poorly drafted rules.

We have another decision where a State legislator attended a gathering for left-leaning political thought leaders, but this Commission found it permissible because she was invited in her representative capacity (again, whatever that means). *See* Advisory Opinion 11-07. Yet we decline to allow hard-working government employees to attend a tuition-free educational conference because the university sponsoring the conference was completely transparent in how it structures its organization and how it receives its contributions. I believe that, in passing Amendment 41, the citizens of the State of Colorado were far more concerned with our elected officials attending politically tilted events free of charge and receiving awards for casting the votes or senior government executives flying around the world because they were “invited to speak” than they were about government employees going to conferences to learn important facts and bring them back. I also believe that our citizens would find it incomprehensible that we allow officials to attend gatherings to receive awards for how they voted and to travel worldwide because they are “invited” to speak, but decline to allow people to attend truly educational conferences where they can learn simply because the world class university is transparent in its corporate sponsorship.

That said, I would concur in judgment because I believe that it is not this Commission’s prerogative to decide which educational events bring the best service to the community. I believe that any of our elected officials and state and local government employees who attend bona fide educational or thought conferences should be able to do so, with their reasonable expenses and tuition paid, without us making arbitrary decisions on whether somebody was invited, whether the sponsorship was through a subsidiary organization and transparent, or through a second-tier non-profit which itself may have received some significant portion or all of its money from a for-profit business.