

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Letter Ruling No. 09-06

(Participation in a tour by members of the General Assembly paid for by a corporation or trade association)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for members of the general assembly to attend a tour paid for by a corporation which retains professional lobbyists under the circumstances described in the request. However, the participating members of the general assembly should be careful that the \$50 limitation on gifts in a calendar year is not exceeded.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for a letter ruling, asking whether a corporation which has retained professional lobbyists may sponsor a legislative tour. The corporation would pay for a bus for the legislators and provide lunch. In the alternative, an industry association may pay for these costs. The letter ruling also requests a clarification of the provisions of Article XXIX Section 3(3)(e).

Specifically, the requestor asks three questions:

1. May the requestor corporation pay for a bus for a tour of its facilities and similar facilities for a selected group of legislators¹? Could a trade association pay for the bus?

2. May the requestor pay for lunches for the legislators as long as the cost of the lunch is less than \$50 per legislator? May the trade association pay for the lunch?

3. Would the \$50 gift limitation apply since the program “allows legislators to speak or answer questions.”?

II. JURISDICTION

The IEC finds that a member of the general assembly is a government employee subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1).

III. APPLICABLE LAW AND PRECEDENT

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

¹ There is no information in the request regarding how these legislators were selected or how many legislators have been asked.

IV. DISCUSSION

Section 3 prohibits a public official or employee from soliciting, accepting or receiving any gift or other thing of value worth more than \$50 in any calendar year, from a person, without that person receiving lawful consideration of equal or greater value in return, unless it falls under a listed exception. Section 3(3)(e) (“exception (e)”) exempts “[a]dmission to and the cost of 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.

According to its submissions to the Commission, the requestor corporation retains professional lobbyists and also employs an in-house lobbyist. Under Position Statement 09-01, it is the lobbyist, and not the organization he or she represents, who is barred from giving the gift. Therefore the requestor is permitted to give gifts to a member of the general assembly so long as the aggregate value of the gifts provided in any calendar year does not exceed \$50. The requestor also asks whether a nonprofit trade association could pay for the cost of the bus and the lunch. The requestor also suggests that the lunch should not be considered part of the gift since the members of the general assembly who participate will be allowed to speak or answer questions.

1. Exception 3(3)(e):

Under Article XXIX, a government employee may not accept a gift, or other thing of value worth more than \$50 in any calendar year from a person, unless it falls under an enumerated exception. Exception 3(3)(e) exempts “[a]dmission to and the cost of 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.”

The Commission finds that this exception covers those situations in which a public employee or official is making a speech at an event or participating on a panel and there is a cost to attend the event. If public officials and employees were required to pay that admission fee, and/or the cost of the meal that is provided, then public employees and officials would be disinclined to participate, and there would be fewer opportunities for members of the public to hear from public officials and employees. The Commission does not believe that merely “allowing” a member of the general assembly to say a few words or answer one or two questions, would be sufficient to fall under this exception. The public employee must be actively participating as a speaker or as a panelist and be listed on the program as a speaker to fall under this exception. The Commission finds that allowing several legislators to “say a few words” in order to fall under this exception would be contrary to the spirit of Article XXIX.² The exception requires more formal participation than is required under Section 3(3)(f), in which mere presence may be enough. See Advisory Opinion 09-05 (Acceptance of a Fellowship). This interpretation is supported by the fact that the drafters of Amendment XXIX added the requirement that the speech or panel must be part of the “scheduled program.” Under the circumstances described by the requestor, therefore, the total cost of the gift (including both the lunch and the bus) must be less than \$50 in any calendar year.

2. Cost of the lunch and the bus:

Neither the requestor nor the trade association is a professional lobbyist, although they both retain professional lobbyists. Either therefore is permitted to provide a gift valued at less than \$50 in the aggregate in any calendar year. There is no

² Neither would it be permissible for the requestor to fall under this exception by preparing a list of attendees who may speak and calling it a “scheduled program”. The Commission believes that this exception requires a substantive prepared speech or active participation on a panel.

information in the request relating to the cost of the bus. Assuming that the cost of the bus and the lunch is less than \$50 then either the requestor or the trade association may pay those costs, or the two could split it under the provisions of Article XXIX.³ The Commission cautions, however, that there may be an appearance of impropriety if the gift were of significant value, and the cost were split multiple ways merely to get around the \$50 limit.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a private corporation to sponsor a bus tour and a lunch for members of the general assembly so long as the aggregate cost of the gift coming from a single source does not exceed \$50 in a calendar year.

The Independent Ethics Commission

Matt Smith, Chairperson
Roy Wood, Vice Chairperson
Dan Grossman, Commissioner
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner

Dated: November 20, 2009

³ The Commission reiterates that pursuant to Position Statement 09-01, the ban on gifts from lobbyists relates to the professional lobbyist, and not to the organization he or she represents. See Position Statement 09-01, pages 5-6.