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John W. Hickenlooper
Governor

December 20, 2013

Colorado Independent Ethics Commission
1300 Broadway, 13th Floor
Denver, Colorado 80202

Re: Ethics Complaint filed by Compass Colorado dated September 30, 2013

Dear Commissioners:

Compass Colorado filed a complaint dated September 30, 2013 (the "Complaint") with the Colorado Independent Ethics Commission (the "Commission") making certain allegations and asserting certain legal conclusions related to Governor John W. Hickenlooper's hosting of the Democratic Governors Association ("DGA") Summer Policy Conference in Aspen, Colorado in July 2013 (the "DGA Conference"). By letter dated November 21, 2013, the Commission informed the Governor that the Commission has deemed the Complaint non-frivolous and ordered that an investigation be conducted. I am writing on behalf of the Governor to respond to the Complaint.

Governor Hickenlooper did not violate any constitutional provision, statute, rule, reporting requirement or other standard of ethical conduct in preparing for or hosting the DGA Conference. The Governor therefore welcomes this opportunity to respond to the Complaint and hereby submits the following clarifying information to the Commission.

What is the DGA?

The DGA is a nonprofit entity and all 22 Democratic governors are its members. Its counterpart is the Republican Governors Association (the "RGA"). These organizations complement the non-partisan National Governors Association (the "NGA") and the non-partisan Western Governors Association (the "WGA"). Governor Hickenlooper volunteers as Vice Chair of the DGA and he holds leadership positions at the NGA and the WGA as well.

It is our understanding that Governors Ritter and Romer actively participated in the DGA and that Governor Owens actively participated in the RGA. In other words, participating in the DGA and the RGA is what Colorado's governors do. And while these organizations are unabashedly partisan, there is nothing unseemly or unethical in a governor's active participation in their programs and projects.

One of the many important roles of the DGA and the RGA is to provide forums for governors and members of their staffs to engage in conversations about policy issues. The DGA and RGA policy

conferences afford state leaders an opportunity to collaborate on policy issues and share expertise. The DGA Conference that is the subject of the Complaint was one such example and it was hosted by Governor Hickenlooper.

Hotel and Conference Fees

The Complaint alleges that hotel and conference fees paid for by the DGA on the Governor's behalf violate the gift ban of Article XXIX of the Colorado Constitution. These allegations are based on a misunderstanding of certain facts and of the law.

A conference registration fee was charged only to non-members who wanted to attend the policy conference. It is therefore simply not true that the DGA covered or waived Governor Hickenlooper's conference registration fee because it was never contemplated that governor members of the DGA would be charged a conference registration fee.

The DGA did provide overnight accommodations for all of the governors who attended the DGA Conference. The DGA's provision of overnight accommodations to Governor Hickenlooper did not violate the gift ban provisions of Article XXIX of the Colorado Constitution because it was not a gift as that term is defined in Article XXIX.

According to Section 3 of Article XXIX, no public officer shall receive any gift or other thing of value having a fair market value or aggregate actual cost greater than \$53 in any calendar year without the person giving the gift or other thing of value receiving lawful consideration of equal or greater value in return from the public officer. The DGA's provision of lodging was not a gift to Governor Hickenlooper under this definition because the DGA received lawful consideration of equal or greater value in return from the Governor in exchange for the overnight accommodations.

Governor Hickenlooper donated many hours organizing and hosting the DGA Conference. He also shared his policy expertise and leadership experiences with conference attendees by participating extensively in the programmed agenda. The Governor was a speaker and keynoter at the opening and closing receptions and he spoke, facilitated or appeared to answer questions at many of the other panel discussions. The measure of benefit received by the DGA - in terms of the conference participation and policy expertise shared by its governor members - in return for the DGA's provision of hotel accommodations to them makes the calculation of adequate consideration not even a close call.

Commission precedent supports dismissal of the Complaint.

A public officer who is a board member of a nonprofit entity should be treated like any other nonprofit board member. In IEC Letter Ruling 09-03, the Commission recognized that a public officer who also serves as a board member of a nonprofit entity may accept meals provided during meetings because the volunteer time and expertise he or she provides in return is adequate and lawful consideration under the gift ban provisions of Article XXIX. To quote that letter ruling: "The Commission believes that the nonprofit entity offering a meal during a meeting is receiving 'lawful consideration of equal or greater value in return' through the volunteer efforts of the Board Member. The Board Member is giving his or her time and expertise to participate on the Board, which is of equal or greater value to reasonably priced

meals provided during meetings.” This same analysis can and should be extended to the provision of hotel accommodations to a public officer who is a board member when he is hosting and chairing a multi-day conference for the nonprofit organization.

The more recent Advisory Opinion 13-12 further supports the argument that the travel and conference fee claims in the Complaint should be dismissed. In that opinion, the Commission concluded that it was not a violation of Article XXIX’s gift ban for a state official to accept from a private entity a waiver of registration fees and free hotel accommodations and meals at an out-of-state conference that was designed to bring together key industry and regulatory leaders to share best practices and discuss evolving issues.

The Commission based its conclusion in that case on these key factors: (a) the state official was invited based on his position and his expertise in the relevant topics of the conference, (b) there was no conflict of interest or appearance of impropriety because the private entity paying the costs did not have any clients or business with the state official’s agency and therefore would not be in a position to improperly influence the state official’s decisions and (c) the nature of the event was educational and public policy in nature. Moreover, the Commission stated that even if the payment of costs could be considered a “gift” under the gift ban, it was permissible because the state official was invited as a speaker and the entire four-day conference was participatory, not passive lecture.

Similar facts are presented here. The Governor was invited to host and attend the DGA Conference not in his individual or personal capacity but in his capacity as the Governor of Colorado and based on his expertise in the relevant topics of the conference. There is no actual or apparent conflict of interest or appearance of impropriety with the DGA because it has no clients or business interests before the Governor or with the State of Colorado. The DGA Conference was educational and focused on public policy and it was participatory, not passive lecture, in nature.

Sponsored Meals and Receptions

The Complaint also alleges improprieties in the Governor’s attendance at the receptions, breakfasts, luncheons and dinners associated with the DGA Conference. For all of the reasons set forth above as to why the Governor’s acceptance of overnight accommodations from the DGA was not a gift, including the rationales of IEC Letter Ruling 09-03 and Advisory Opinion 13-12, the Governor’s consumption of food and beverages at the DGA Conference’s receptions and meals cannot be deemed a gift from the DGA.

Although we do not believe the Governor’s free admission to, or consumption of food and beverages at, the DGA Conference fall within the definition of “gift” in Section 3 of Article XXIX, I would be remiss not to also remind the Commission of the specific exception to the gift ban found in Section 3(3)(e), which unequivocally states that the gift ban provisions do not apply to “admissions 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.” Even taking the facts alleged by the Complaint at face value, which, for the reason set forth above, we cannot, it is readily apparent that Section 3(3)(e) of Article XXIX would permit the Governor to accept free admission to and free food and beverages consumed at the DGA Conference because of his speaking and facilitation roles throughout the conference’s scheduled programs.

Use of State Resources for the DGA Conference

The Complaint alleges that the Governor used state staff to plan, travel to and attend the DGA Conference in violation of the state's standards of conduct. It is our view that the limited use of state employees in preparing for and staffing him during the DGA Conference was lawful and appropriate given the public policy nature of the DGA Conference.

As demonstrated by the email correspondence attached as an exhibit to the Complaint, use of state staff time was limited to coordinating the Governor's schedule for his speaking engagements at the DGA Conference (and concurrently coordinating his schedule for other public policy conferences including the NGA and the Aspen Institute Financial Security Summit) and briefing him on the policy issues that he would be expected to present or discuss. Contrary to the Complaint's assertion that this demonstrates some impropriety, it reveals that the activities of the Governor's state staff were limited to scheduling and preparing substantive policy briefings for the Governor; there is no mention whatsoever of state staff organizing or participating in fundraising or other partisan activities related to the DGA Conference or any other event. The Governor's campaign staff appropriately managed those activities.

The Governor traveled to the DGA Conference in his state car accompanied by his security detail. The state's Fiscal Rule 11.6 makes clear that in the case of travel by the Governor, security, protocol, ceremonial functions and time demands may require considerations not accorded any other state official or employee. C.R.S. Section 24-33.5-216 mandates that the Colorado State Patrol provide a motor vehicle and driver for the Governor and troopers to protect him. This means that the Governor is to travel in a state car with security protection whether he is traveling on state business, for personal pleasure or for political purposes. In addition, C.R.S. Section 1-45-117(2) makes clear that costs related to the Governor's state car and security detail do not need to be reimbursed to the state even when he is traveling to or from a campaign event so clearly they do not need to be reimbursed for his travel to or from a policy conference, even one such as the DGA Conference that has some perceived partisan overtones.

Conclusion

Given that no state funding was used to subsidize the DGA Conference and given that the Governor received no gift from the DGA in connection with it, the Complaint fails to state a claim in law or in fact to support an ethics complaint under Article XXIX of the state constitution or under any other provision of Colorado law. The Governor therefore requests that the Commission dismiss the Complaint without further delay.

To the best of my knowledge, information and belief, all of the foregoing statements set out in this response to the Complaint are true.

Respectfully submitted,



Jack Finlaw
Chief Legal Counsel