

State of Colorado



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INDEPENDENT ETHICS COMMISSION

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Advisory Opinion No. 09-07 (Acceptance of a Prize by Government Employees)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for government employees to accept a certain cash prize from professional organizations in their field of employment.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether government employees may accept a cash prize in excess of fifty dollars (\$50) offered jointly by the Geological Society of America and the American Association of Geologists. The total amount of the prize is \$1000 which would be split evenly between two government employees.

II. JURISDICTION

The IEC finds that employees of a state agency are government employees 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.

In Position Statement 08-01 (Gifts), at pages 8-9 the Commission stated that:

1. Prizes

If a prize is awarded to a public official or employee, then, assuming that the competition was fair, was open to everyone similarly situated, that it was not rigged in favor of the public employee or official, and that there is no evidence that the prize is being given based upon the official's or employee's governmental status, acceptance of a prize is not a breach of the public trust and is therefore permissible. This includes scholarly recognition such as the Nobel Prize, where the Prize is awarded based upon extraordinary achievement, and not to influence a particular official decision.

The Commission also stated in Position Statement 08-01 that it interprets Article XXIX in a manner that preserves what it believes was the intent of the electorate "to improve and promote honesty and integrity in government and to assure the public that those in government are held to standards that place the public interest above their private interests."

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. The Commission has previously determined that it

believes that government officials and employees should not be prohibited from accepting offers and benefits given to the general public or a class of people under circumstances where others receive the same opportunity. It would be unfair to penalize people because they are in government, any more than they should not be rewarded for being in government. See, Position Statement 08-01, page 7.

According to information before the Commission, the requesting government employees have been awarded the John C. Frye Memorial Award in Environmental Geology, awarded by the Geological Society of America and the Association of American Geologists. The Prize carries with it a \$1000 cash award, to be split evenly between them, as a result of the performance of exemplary work. The two employees wrote a paper relevant to their area of employment and expertise; the paper was submitted by their supervisor to a panel representing two professional organizations which jointly award the prize. The review panel reviewed nominations from across the country and selected this paper for recognition. The background research for the paper, as well as the writing of the paper, was done as part of their regularly assigned duties on state time and using state resources.

According to the information before the Commission, the Prize at issue is only available to papers published by the Geological Society of America or by a state geological survey, and government employees of the State of Colorado have won and accepted this prize prior to the enactment of Article XXIX.

Applying the rationale described in Position Statement 08-01 to the request currently before the Commission, the Commission makes the following determinations:

1. Fairness of the Competition:

The Prize is available to individuals throughout the country in environmental geology. These government employees were nominated and awarded the prize based on the merits of their work. There is no information before the Commission that the prize was rigged, or that these government employees received special consideration. Therefore, the requirement that the competition be fair appears to be satisfied.

2. Governmental Status of the Recipients:

This particular prize is available only to persons who have published papers on a particular subject matter. There is no information before the Commission that these particular employees were singled out because of their specific employment or that the donors had a motive to influence the employees in the performance of an official act. This criterion therefore appears to be satisfied.

3. Other issues:

Finally, the Commission has considered whether there is an inherent or potential conflict of interest or appearance of impropriety in this instance, since the work was done at the request of the government employees' supervisor as part of a regular assignment. The Commission determines that this circumstance is analogous to the situation in which a university professor performs research as part of his or her duties, and receives recognition for that work. This recognition could include a prize such as a Nobel Prize, which the Commission has already determined could be accepted. See Position Statement 08-01, page 8.

The Commission believes that under the facts presented by the requestor, there is no conflict of interest or appearance of impropriety. The Commission cautions other

public employees, however, that similar prizes may not be permissible, depending upon the policies and procedures of the department, or under different circumstances in which a conflict of interest or appearance of impropriety may apply. Therefore the Commission encourages other public employees to request an advisory opinion before accepting a prize.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for government employees to accept a prize with a monetary award from a professional organization in their area of employment under these circumstances.

The Independent Ethics Commission

Matt Smith, Chairperson
Roy Wood, Vice Chairperson
Nancy E. Friedman, Commissioner
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner

Dated: June 16, 2009