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Advisory Opinion No. 10-02

Acceptance of Travel Expenses from the Federal Government

SUMMARY: Employees of the Division of Emergency Management in the Colorado Department of Local Affairs may accept travel and expenses from the federal government under the circumstances described by the requestor in accordance with the Independent Ethics Commission's Position Statement 08-02.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion, asking whether employees of the Division of Emergency Management ("Division") of the Colorado Department of Local Affairs may accept travel and expenses from the United States in support of federally-funded programs. According to information before the Commission, the salaries of the affected employees are partially federally-funded¹, and each employee receives training four to six times per year from the federal government to "conduct, or support the planning, organizing, equipping, training, exercising, responding and recovering from natural and human

¹ The Commission understands that approximately 25 employees are the subject of this request. According to information before the IEC, approximately 80% of the "division's salary and operating expenses" come from federal funding sources." The Division receives grants from these agencies for operations and salaries. Some of the employees' salaries are 100% covered from federal funds.

caused emergencies and disasters.” Funds for these trips come from the United States Departments of Homeland Security and Defense, and the Federal Emergency Management Agency, as well as others. The United States government pays for these trips at little or no cost to the State of Colorado. The Director of the Division decides which employees travel on which trips.

II. JURISDICTION

The IEC finds that an employee of the Colorado Department of Local Affairs 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.

IV. DISCUSSION

The Commission has previously issued Position Statement 08-02 (travel), in which the Commission laid out five criteria which must be met before travel can be considered a gift to the State. The Commission believes that in most circumstances, travel paid for by the federal government will qualify as a gift to the State, since it is

unlikely that the expenses will be unreasonable, or given to curry favor with the public employees involved, or that a violation of the public trust could result. See, Position Statement 08-02 and Article XXIX, section 1. Under these circumstances, in which the employees travel regularly and repeatedly in support of joint federal-state programs, it appears that the travel most likely qualifies as a gift to the State

Condition #1: The gift is for a legitimate State or local government purpose.

The Commission finds that the travel by the Division's employees as described in the request clearly meets the definition of a legitimate state purpose. The employees are travelling in order to better prepare for natural disasters and other emergencies. This criterion is satisfied.

Condition #2: The arrangements are appropriate to that purpose.

There is no specific information about the travel arrangements in the request. The explanation of this criterion is in Position Statement 08-02. If the arrangements are appropriate, then this criterion would be satisfied.

Condition #3: The event is no longer than reasonably necessary to accomplish the business which is its purpose.

There is no information about this criterion in the request. The guidelines are contained in Position Statement 08-02.

Condition #4: The government official or employee who will be attending is not currently, was not in the recent past, and will not in the reasonably foreseeable future, be in a position to take direct official action with respect to the donor.

Under the facts presented, it is highly unlikely that the Division employees are or will be in a position to take official action with respect to the federal agencies involved. This

criterion appears to be satisfied.

Condition #5: Government officials and employees are required to verify compliance with conditions #1 through #4 above.

Ordinarily, the employees involved would be required to perform the analysis set forth in Position Statement 08-02 for each trip, and get approval in accordance with the internal process of their agency. As the Commission stated in Advisory Opinion 08-02, the criterion may be met by obtaining supervisory approval in accordance with the internal processes of the agency. The Commission believes that especially given the circumstances, i.e., the amount of travel involved for these employees, the number of employees involved, and most importantly that this travel is in support of joint federal-state programs, the Commission finds that it would be permissible for the Department of Local Affairs and the Division of Emergency Management to establish internal rules or procedures to evaluate these requests in order to minimize the administrative burden on the Division. If this travel is in accordance with these internal rules or procedures of the Division or Department, and the appropriate supervisor approves the travel, then the travel would qualify as a gift to the State. (See, Position Statement 08-02, page 5, condition 5a).

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX employees of the Colorado Department of Local Affairs to accept travel expenses from the United States government assuming that the trips meet the criteria set forth in Position Statement 08-02 (travel).

The Independent Ethics Commission

Matt Smith, *Chair*

Roy Wood, *Vice Chairperson*

Dan Grossman, *Commissioner*

Sally H. Hopper, *Commissioner* (did not participate)

Larry R. Lasha, *Commissioner*

Dated: February 11, 2010