

State of Colorado



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

Jane T. Feldman, *Executive Director*
Doug Platt, *Communication Director*

INDEPENDENT ETHICS COMMISSION

633 17th St., Ste. 1300, Denver, CO 80202

Ph.: 303/866-5727

Fax: 303/866-3777

E-mail: jane.feldman@state.co.us

doug.platt@state.co.us

www.colorado.gov/ethicscommission

Advisory Opinion No. 10-06

Acceptance of Travel Expenses from a For Profit Entity

SUMMARY: A member of the General Assembly may not accept travel and expenses to attend and participate in a conference organized by a for-profit entity under the circumstances described by the requestor. The payment of expenses in these circumstances is not supported by lawful consideration on the part of the requestor. Moreover, any legitimate state purpose served by the requestor's participation in the conference is frustrated by the overwhelming dominance of the conference by special interests seeking access to and influence over policymakers participating in the conference.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion, asking whether a member of the General Assembly may accept travel and expenses from a for-profit entity. According to the request, the requesting member has been invited to participate on a panel for an annual conference to be held in Arlington, Virginia in August, 2010, entitled "East Coast Forum on Tracking State Laws and Aggregate Spend." The member's travel and expenses would be paid

for by the sponsor of the conference, the Center for Business Intelligence (“CBI”), a “for profit conference production company that specifically develops conferences for the pharmaceutical, biotechnology, and medical device industries.” Additional corporations in the pharmaceutical and medical technology fields sponsor and underwrite portions of the conference. The conference is described in the brochure as geared to a “senior level executive at a biotech, medical device or pharmaceutical company with responsibilities or involvement in the following areas: State Law Reporting, Legal, IT, Sales Marketing and Operations, Compliance, Medical Affairs/Education, Commercial Operations, Ethics, Regulatory, Business Analysis, Meeting Management.” Attached to the request was information on last year’s conference, and it appears that almost all of the participants were from the private sector, although several panelists and participants were from state governments or the federal government. The amount of the expenses paid to the requestor for the conference has not been calculated, but it is estimated to be around \$1000-\$1200.

The member of the General Assembly making this request has been involved in issues addressing transparency in the medical field, and has introduced legislation in the last two sessions relating to the topics of this conference. He notes, furthermore, that he will have to dedicate “a considerable amount of time in advance of the conference to educate him,” and states that this could be valid consideration for the cost of the trip.

Because this gift of travel would come from a for-profit entity, the requestor acknowledges that Article XXIX, section 3 (3)(f) does not apply.

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.

IV. DISCUSSION

A. Lawful Consideration

In Position Statement 10-01, the Commission held that expenses for legislators to attend conferences paid for by a Government Exchange Organization ("GEO") may be paid by such GEO if supported by lawful consideration in the form of dues paid to the GEO by the state and a portion of such dues are dedicated to covering such travel expenses. Position Statement 10-01, page 7.

The requestor of this Advisory Opinion does not contend that the state pays dues to the Center for Business Intelligence ("CBI"). Rather, the requestor states that he will give up several days away from his family and work and spend considerable time

preparing for the conference. While such sacrifices may, indeed, constitute a cost to the requestor, they fall short of the standard set forth in Section 3 of Article XXIX.

Because the payment of expenses in the circumstances described by the requestor is not supported by lawful consideration of equal or greater value, such payment is precluded by Section 3 of Article XXIX, unless it can be established that the payment is, in fact, a gift to the State rather than to the requestor.

B. Gift to the State

In Position Statement 08-02 (travel), the Commission stated that some gifts of travel which do not fall under the specific exemptions laid out in Article XXIX section 3 may still be permissible as gifts to the State. Position Statement 08-02 (Travel), page 3.

The Commission therefore analyzes this request in light of the criteria set forth in Position Statement 08-02 which must be met before travel can be considered 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 member of the General Assembly as described in the request does not meet the definition of a legitimate state purpose. While the issues being discussed at the conference are matters of state concern, and the requestor has introduced legislation over the past two sessions relating to the topic of the conference, a primary purpose of the conference is to provide access to policymakers to members of the pharmaceutical, biotech and medical device industries.

According to the brochure for the event on the CBI web site, 15 for-profit companies from these industries are sponsoring the conference. Sponsorship opportunities range from underwriting a dinner during the event to distributing

promotional materials such as briefcases, travel mugs and USB memory sticks with the sponsoring company's name emblazoned upon the materials.

In short, the CBI conference appears to be a networking and lobbying opportunity for the pharmaceutical, biotech and medical device industry rather than an idea exchange opportunity that would benefit the State. Therefore, the Commission determines that the payment of requestor's expenses by CBI would not serve a legitimate state purpose.

Because the facts as set forth by the requestor do not satisfy the first condition required to establish a gift to the State, the Commission need not rule on whether the other conditions set forth in Position Statement 08-02 are met.

The payment of the requestor's expenses by CBI would constitute a gift to the requestor rather than to the state and, therefore, such payment is precluded by Section 3 of Article XXIX.

V. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly to accept travel expenses from a for profit entity under the circumstances described in the request.

The Independent Ethics Commission

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

Dated: April 22, 2010