

State of Colorado



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Advisory Opinion 10-10

(Acceptance of Expenses for Travel paid for by a Nonprofit which receives less than 5% of its funding from For-Profit sources)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Governor of Colorado and selected members of his cabinet and staff to attend an economic development and trade mission under the circumstances described in the request.¹

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion by the Governor asking whether he and selected members of his staff and cabinet may accept payment of expenses in excess of \$50, to participate in an economic trade mission to Israel organized by the Allied Jewish Federation ("AJF"), a non profit which receives less than 5% of its funding from for profit sources.² The Governor, First Lady, several cabinet officers and members of the Governor's staff ("the state delegation") are scheduled to be in Israel from July 12 through July 18, 2010.

¹ The Governor and the other attendees have waived confidentiality relating to this request. The First Lady is not under the jurisdiction of the IEC, unless the gift could be viewed as an indirect benefit to the Governor. Since the Commission finds that the trip is appropriate under Article XXIX, it does not need to address that issue.

² The Commission has received a letter from AJF confirming that it does not receive more than 5% of its funding from for-profit sources.

While there, they will attend meetings with representatives from renewable energy and technology companies, as well as research institutes and other entities. There will also be time reserved for sight-seeing. The expenses for the state delegation will be paid for by the AJF. In order to defray some of the cost, other non-governmental participants will be included in the trip, and they will pay \$1500 in addition to the cost of the trip.³ According to the request, this extra money will be considered as a tax deductible contribution to the AJF. The AJF may also receive funding from the Israeli Consulate in Denver to help pay the costs of the state delegation. No state monies will be used.

II. JURISDICTION

The IEC finds that the Governor and members of his cabinet are “public officers” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(6). Members of the Governor’s staff are “government employees” also subject to the jurisdiction of the Commission pursuant to 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, 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

³ The non-governmental participants have not been selected as of the date of the request, and invitations will be made by AJF. The IEC does have concerns that these invitations could be improper, and/or create an appearance of impropriety if these individuals are seeking direct official action by the Governor or the other members of the state delegation.

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:

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, **fact-finding mission or trip**, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or **represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.** (emphasis added).

IV. DISCUSSION

The Governor asks two questions on behalf of the state delegation:

1. May the AJF pay reasonable expenses for the Governor, First Lady, several members of his cabinet and staff to represent the State on an economic development and trade mission to Israel?
2. May the Israeli Consulate make a donation to the AJF to help defray costs of the economic development and trade mission that does not change the AJF's status as a nonprofit which receives less than 5% of its funding from for profit sources?

The Commission finds that this request falls within exception 3(3)(f) of Article XXIX. The Governor and his staff are participating in "a fact finding mission or trip", and they are "representing the state" in this trip.⁴ The Commission believes that this is the sort of travel which was contemplated by the drafters of Article XXIX by creating exception 3(3)(f). The Commission assumes that the statement from the AJF that it does not receive more than 5% of its funding from for profit sources is correct. Although

⁴ Assuming that the members of the cabinet and staff are also representing the state, and that there is a connection between their official duties in Colorado and their participation in the trip, the Commission need not reach the issues raised in Advisory Opinions 09-03 and 09-09 regarding security and staff accompanying the Governor.

there is no information in the request relating to the travel arrangements; assuming that those arrangements are reasonable, then the trip is permissible under the circumstances described. The Commission does not believe that the sight-seeing involved detracts from this as a fact-finding mission or trip. Such activities, if not excessive, are a reasonable component of this type of mission or trip.

The second question concerns whether the Israeli government may assist in the cost of the trip by making a donation to the AJF. The Commission does not have enough information regarding the participation by the Israeli government to decide this question. Furthermore, the Commission believes that this request is speculative, since it is not certain that these funds are forthcoming.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for Governor Ritter, the First Lady, members of his cabinet and staff to accept travel expenses from the AJF to participate in an economic and trade mission to Israel under the circumstances described in the request.

The Independent Ethics Commission

Matt Smith, Chairperson,

Dan Grossman, Vice Chairperson (Recused, and did not participate)

Sally H. Hopper, Commissioner

Larry R. Lasha, Commissioner

Roy Wood, Commissioner

Dated: June 17, 2010