

State of Colorado



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Advisory Opinion No. 10-11 (revised 08/19/10) (Acceptance of Travel Expenses from a Foreign Government)

SUMMARY: A member of the General Assembly may not accept travel expenses from the government of a foreign city under the circumstances described by the requestor.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether Senator Rollie Heath¹, a member of the General Assembly, may accept travel expenses from Katowice, a city in Poland. Senator Heath seeks to participate in a “trade mission for Colorado businesses, academic and public sector institutions.” Senator Heath spoke to a delegation from Katowice when they were in Denver in 2009. Given his extensive experience in international trade and business activities, the Commission understands why Senator Heath was invited to participate.

The purpose of the mission is “to develop exports (and thus create jobs) for Colorado companies.” The airfare and hotel expenses for the trip will be paid for by the Katowice city government. The total value of the trip is approximately \$2500-\$3000. Senator Heath has been invited by the City President.

¹ Senator Heath has waived confidentiality relating to this request.

II. JURISDICTION

The IEC finds that as a member of the General Assembly, Senator Heath is subject to the jurisdiction of the Commission. CO Const. Art. XXIX (3)(1),(2).

III. APPLICABLE LAW

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.

(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 supplied)

IV. DISCUSSION

Because the expenses to be paid by the City of Katowice in Poland inure to the benefit of the covered individual and because the City of Katowice is not a domestic local government, the payment of such expenses is precluded by Article XXIX.

A. Gifts to Covered Individual

Section 3(2) of Article XXIX prohibits covered individuals from accepting payment for travel expenses in excess of \$50 in any calendar year. In his request, Senator Heath has asserted that the expenses proposed to be paid by the City of Katowice are for a legitimate public purpose, should be considered a gift to the state and should not trigger the gift ban set forth in Section 3 of Article XXIX. The Commission disagrees.

The benefit of the expenses to be paid by the City of Katowice inures to the individual requestor, rather than to the state. The payment of expenses is proposed to be made directly and exclusively to the requestor. Any public benefit of the requestor's participation is derivative of the gift to the requestor. Therefore, the expenses are a gift to a covered individual pursuant to Section 3(2) of Article XXIX.

B. Expenses Paid by Foreign Local Government

The requestor alternatively suggests that this trip would qualify under the exception contained in Article XXIX 3(3)(f) for expenses paid by another state or local government for participation in a trip or government mission.

Section 2 (2) of Article XXIX defines "local government" as a county or municipality. Although the constitution does not expressly limit this definition to domestic counties and municipalities, such a limitation is evident from the underlying purpose of Article XXIX as set forth in Section 1(2): "The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs

of a reasonable and necessary nature should be born by the state or local government.”

Resources from foreign governments and political subdivisions of foreign governments are not subject to the same degree of scrutiny and accountability as domestic state and local governments and, therefore, the Commission declines the invitation to include such entities in the exception to the gift ban contained in Section (3)(f) of Article XXIX.

CONCLUSION

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

The Independent Ethics Commission

Matt Smith, *Chair*
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