

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 10-12

(Travel Paid for by a Non Profit Entity which receives more than 5% of its funding from For Profit Sources)

SUMMARY: It would be a violation of Article XXIX of the Colorado Constitution for an employee of the Colorado Department of Education to accept travel expenses from the Multicultural Mosaic Foundation, a non-profit entity that receives more than 5% of its funding from for-profit sources under the circumstances described in the request.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion asking whether an employee of the Colorado Department of Education may accept travel expenses from the Multicultural Mosaic Foundation, (“Foundation”) a non profit entity which receives more than 5% of its funding from Colorado for-profit businesses. According to the request, during the trip, the requestor “will have the opportunity to discuss education reform in the United States and the Turkish education system and exchange ideas.

II. JURISDICTION

The IEC finds that an employee of the state executive branch is “a government employee” and subject to the jurisdiction of the IEC 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, 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

In its invitation to the requestor, the president of the Foundation, Ismail Akublut, wrote:

Multicultural Mosaic Foundation was founded in 2003 by the Turkish-American community of Colorado as a non-profit organization. We organize conferences, public forums, art performances, and host delegations to the country of Turkey as opportunities to bring people together from different communities and ethnic backgrounds. Our income source is charitable donations from individuals who are part of our community and from their businesses. Currently, more than 5% of our income comes from Colorado for-profit businesses.

Given that more than 5% of the funding of the Multicultural Mosaic Foundation comes from for-profit sources, the requestor is precluded from relying on the exception to the constitutional gift ban contained in Section 3 of Article XXIX.

V. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for an employee of an executive branch agency to accept travel expenses from a nonprofit entity under the circumstances described in the request.

The Independent Ethics Commission

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

Dated: July 1, 2010