

State of Colorado



INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 10-19

(Acceptance of Expenses for Travel paid for jointly by a Government Exchange Organization, and a Nonprofit which gets less than 5% of its funding from For Profit sources)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly to accept travel expenses to attend a legislative leaders' study tour of Israel under the circumstances described in the request.

I. BACKGROUND

Senator Evie Hudak, a member of the Colorado General Assembly, submitted a request to the Independent Ethics Commission ("IEC" or "Commission") asking whether she may accept payment of expenses in excess of \$50, to participate in a legislators leaders' study tour of Israel.¹ The tour is sponsored jointly by the National Conference of State Legislatures ("NCSL") and the American-Israel Friendship League ("AIFL"), a nonprofit organization. The approximate cost of the trip is \$3600; NCSL will be paying the cost of the airfare, \$1400, and the remainder will be paid by AIFL.

According to the request, the other attendees of this trip include legislators from across the United States. The participants will meet with representatives of the Knesset

¹ Senator Hudak has waived confidentiality relating to this request.

and other members of the Israeli government, and will visit historic and cultural sites.²

NCSL invited the current President of the Senate to participate in this tour, and he designated Senator Hudak to go in his stead. She is scheduled to be in Israel from November 9 through 17, 2010.

Specifically, Senator Hudak asked two questions:

1. *May she accept the payment of the travel-related expenses, including airfare paid by NCSL, and the payment of reasonable hosting expenses in Israel including hotel accommodations and meals that would be provided by the AIFL?*
2. *If the IEC finds that any portion of these expenses are not properly covered by lawful consideration or an exception to the gift ban or otherwise permissible, what portion of the expenses may Senator Hudak accept in order to take advantage of this educational opportunity?*

II. JURISDICTION

The IEC finds that Senator Hudak is a member of the General Assembly and is subject to the jurisdiction of the Commission. CO Const. Art. XXIX (3).

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

² The Commission reviewed the itinerary for a similar trip sponsored by NCSL in 2009. Although that tour included a number of historic and cultural sites, there were a number of meetings with governmental and business leaders as well. The balance between site-seeing and meetings is similar to that of the Governor's trip to Israel in July 2010. See Advisory Opinion 10-10.

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 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 Commission believes that this is the sort of travel which was contemplated by the drafters of Article XXIX by creating exception 3(3)(f). Under the facts presented in this request, the Commission finds that Senator Hudak would be attending a fact finding mission or trip, and her designation as Colorado's representative by the President of the Senate on an NCSL-sponsored tour is sufficient evidence that she is representing the State of Colorado. The remaining issues therefore are whether the payments of expenses by NCSL and AIFL are permissible.

a. Expenses Paid by NCSL:

NCSL is a co-sponsor of this trip, and proposes to pay the cost of the airfare to Israel, approximately \$1400. NCSL is also a "government exchange organization" of which the State of Colorado is a dues-paying member. Colorado has paid \$166,753 in dues to NCSL in FY2011. In Position Statement 10-01 at page 3, the Commission determined that "if the State or a local agency pays dues to an organization, and the

public employee or official can demonstrate that the dues specifically cover travel and related expenses to annual meetings or conferences, then there is valid consideration for the travel provided, and the gift is not a prohibited gift under Article XXIX.” Cf., C.R.S. §2-3-311. The Commission finds that acceptance of the payment from NCSL under these circumstances is appropriate.

b. Acceptance of Expenses from AIFL:

Senator Hudak provided a letter to the Commission stating that 90% of the AIFL’s donations are from not for profit organizations, and that private donors transfer the money through charitable foundations. She interprets this letter to mean that AIFL does not receive any money from for profit sources. The Commission finds that assuming that AIFL gets less than 5% of its funding from for profit sources Senator Hudak may accept expenses from AIFL.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for Senator Hudak to accept travel expenses from NCSL to participate in a legislative leaders’ study tour of Israel. She can accept expenses from AIFL under the circumstances described in this opinion.

The Independent Ethics Commission

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

Dated: November 5, 2010