

State of Colorado



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Advisory Opinion 11-04

(Solicitation of Funds by an Association of Covered Individuals)

SUMMARY:

It would be a violation of Article XXIX of the Colorado Constitution for a county commissioner covered by Article XXIX to solicit or accept monetary contributions to support his candidacy for vice president of the National Association of Counties (“NaCo”). It also would be a violation of Article XXIX for the county commissioner to solicit or accept monetary contributions from Colorado Counties, Inc., (“CCI”) for the same purpose.

I. BACKGROUND:

The Colorado Independent Ethics Commission (“IEC or “Commission”) has received a request from CCI on behalf of itself and one of its member county commissioners asking whether CCI may solicit funds to support the county commissioner’s campaign to be the 2nd vice president of NaCo. According to information before the Commission, election as 2nd vice president ultimately leads to service as the president of NaCo, which would be an honor for Colorado and CCI. CCI is an active participant in NaCo. Both CCI and NaCo are nonprofit corporations organized under section 501(c)(4) of the Internal Revenue Code. According to their respective web sites, both NaCo and CCI are organizations of county officials and

employees which provide education and training to their members and represent the concerns of county governments on legislative issues before the Colorado General Assembly and the United States Congress respectively. Both CCI and the county represented by this commissioner are members of NaCo. The commissioner is the official CCI representative to NaCo, and as such he represents both Colorado's and his county's interests at NaCo meetings.

According to the request, "NaCo has established guidelines for candidates that limit non-travel campaign expenditures to no more than \$25,000, along with other limitations on the duration of the campaign and the extent of travel to other states to campaign." CCI proposes assisting the member county commissioner in raising these funds to support his candidacy and has sought the guidance of the Commission on the issue of the propriety of such support in the context of Article XXIX of the Colorado Constitution.

II. JURISDICTION:

The IEC finds that a county commissioner of a non-home-rule county is a local government official subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(3).

III. APPLICABLE LAW:

Section 3 of Article XXIX reads in relevant part:

(1) No public officer, member of the general assembly, local government official, or government employee shall accept or receive any money, forbearance, or forgiveness of indebtedness from any person, without such 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 accepted or received the money, forbearance or forgiveness of indebtedness.

(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:

(a) A campaign contribution as defined by law.

IV. DISCUSSION:

Because the county commissioner who is the subject of this advisory opinion is a local government official, his conduct is governed by the gift ban set forth in Section 3 of Article XXIX. As a covered individual, the county commissioner is prohibited by Section 3(1) from accepting or receiving any money in any amount from any person without providing such person consideration in return. However, the gift ban does not apply if the gift or thing of value is a campaign contribution "as defined by law." Article XXIX, Section 3(3)(a).

Although the term "campaign contribution" is not defined under Colorado law, because the "campaign" that is the subject of this advisory opinion is not for public office but, instead, for election to a leadership position within a private organization, monetary gifts to support such an effort are not "campaign contributions" and are, therefore, proscribed by Section 3 of Article XXIX.

Having CCI solicit monetary support on behalf of the county commissioner likewise would violate the gift ban in Section 3. As the Commission stated in **Advisory Opinion**

10-07 (Organization and Funding of Colorado Legislative Women’s Caucus), covered individuals cannot use an association to do something on their behalf that they are otherwise prohibited from doing under Article XXIX.

Finally, the Commission acknowledges that the county commissioner, as an elected official, likely has an active campaign account that is governed by the Colorado Fair Campaign Practices Act. The Commission offers no opinion as to the propriety of expending funds from such a campaign account for his campaign for election as second vice-president of NaCo, but notes that contributions to such an account are not subject to the gift ban in Section 3 of Article XXIX of the Colorado Constitution.

V. CONCLUSION:

The Commission finds that it would be a violation of Article XXIX for a covered individual to accept or receive monetary contributions to support his efforts to win election to a leadership position in a private organization. Moreover, it would also violate Article XXIX for the covered individual to accept or receive monetary contributions that are contributed or raised on his behalf by CCI.

The Independent Ethics Commission

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April 21, 2011