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Advisory Opinion 11-06

(Acceptance of Travel Expenses paid for by a Nonprofit Organization)

SUMMARY: It would be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly to accept travel expenses from a nonprofit under the circumstances described in the request.

I. BACKGROUND

Senator Kevin Grantham¹, a member of the General Assembly, has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether he may accept travel expenses from the State Legislative Leaders Foundation’s Leadership Education Fund (“SLLF Ed Fund”) to attend the Emerging Leaders Program. Senator Grantham was nominated by the Senate Minority Leader to be Colorado’s representative at this conference. According to the request, the SLLF is a nonprofit which receives more than 5% of its funding from for profit sources. The Ed Fund, however, does not accept contributions from for profit sources. According to the SLLF the Ed Fund is funded exclusively “from registration fees paid by individual persons..., contributions from individual legislators, funds received from state governments, and sales from an exempt purpose publication.” The total amount of the reimbursement is

¹ Senator Grantham has waived confidentiality relating to this request.

approximately \$3000, including airfare, hotel, meals, tuition, books and reading materials and incidental expenses.

II. JURISDICTION

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

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 three dollars (\$53) in any calendar year², 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 supplied)

IV. DISCUSSION

The Commission finds that Senator Grantham, by virtue of his elected position and his having been nominated to attend this conference by the Minority Leader of the State

² The gift limit was raised effective April 8, 2011, pursuant to Article XXIX section 3(6). See, Position Statement 11-01.

Senate would be representing the State of Colorado. According to information before the Commission, the costs of the program appear reasonable. The only issue to resolve therefore is whether these expenses come from a nonprofit organization which receives less than 5% of its funding from for profit sources.

The organization, State Legislative Leaders Foundation, does receive more than 5% of its funding from for profit sources. Senator Grantham asks whether acceptance of this gift would still be permissible, since the money to pay his expenses would come from a fund within the organization which does not accept donations from for profit entities. The Commission is constrained by the plain language of the Constitution that it is the organization that must receive less than 5% of its funding from for profit sources, and acceptance of these expenses is not permissible.

V. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly to accept certain expenses under the circumstances presented in this request.

The Independent Ethics Commission

*Matt Smith, Chairperson,
Dan Grossman, Vice Chairperson
Sally H. Hopper, Commissioner
Larry R. Lasha, Commissioner (Did not participate)
Roy V. Wood, Commissioner (Did not participate)*

Dated: April 21, 2011