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## Advisory Opinion 11-08

### (Acceptance of Disbursements through a Blind Trust for Payment of Certain Expenses)

**SUMMARY:** It would not be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly and members of his family to accept disbursements of expenses from a relative or personal friend through a blind trust to help defray medical and related expenses under the circumstances described in the request. Professional lobbyists, however, may not contribute to the trust fund.

### I. BACKGROUND

The Office of Legislative Legal Services of the Colorado General Assembly (“OLLS”) has submitted a request on behalf of a member of the General Assembly asking whether he may accept disbursements from a blind trust to pay for medical and travel expenses he has incurred and will incur relating to his wife’s medical situation<sup>1</sup>. According to the request, the member’s wife is being treated for a rare form of cancer in another state. As a result of this situation, the member has incurred and continues to incur “significant and burdensome medical expenses” in addition to travel and other related expenses. Friends and colleagues of the member both in and out of the General Assembly would like to help defray these costs by contributing to a blind trust

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<sup>1</sup> According to this request, the member referred to in this opinion is not aware of this request and has not asked for this assistance.

which could be used by the member and his family. According to the request, the trust would be administered by an independent trustee, who would maintain as confidential all information relating to the identity of the donors and the amount of their donations. The Trustee would have sole authority to approve payment of expenses out of the trust corpus. The expenses would have to be related to the member's wife's illness.

In the request, OLLS asks two questions:

1. May the member accept disbursements of money from the blind trust to pay for medical and other related expenses, under the circumstances described in the request, without violating Article XXIX or any other standard of conduct under the jurisdiction of the IEC; and,
2. May a professional lobbyist make a donation to the trust fund and may the member accept those funds.

## **II. JURISDICTION**

The IEC finds that 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:

(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 employee who accepted or received the money, forbearance, or forgiveness of indebtedness.

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(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

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(g) Given by an individual who is a relative or personal friend of the recipient on a special occasion.

(4) Notwithstanding any provisions of this section to the contrary, and excepting campaign contributions as defined by law, no professional lobbyist, personally or on behalf of any other person or entity, shall knowingly offer, give, or arrange to give, to any public officer, member of the general assembly, local government official, or government employee, or to a member of such person's immediate family, any gift or thing of value, of any kind or nature, nor knowingly pay for any meal, beverage, or other item to be consumed by such public officer, member of the general assembly, local government official, or government employee, whether or not such gift or meal, beverage or other item to be consumed is offered, given or paid for in the course of such lobbyist's business or in connection with a personal or social event; provided, however, that a professional lobbyist shall not be prohibited from offering or giving to a public officer, member of the general assembly, local government official, or government employee who is a member of his or her immediate family any such gift, thing of value, meal, beverage, or other item.

#### IV. DISCUSSION

##### *A. Acceptance of Funds from the Blind Trust:*

Section 3(3)(g) provides that a covered individual may accept gifts, “[g]iven by an individual who is a relative or personal friend of the recipient on a special occasion.” In Position Statement 08-01 (Gifts) at page 10, the Commission stated that “the term ‘special occasion’ should be broadly construed so as not to preclude public employees and officials from enjoying social situations available to other citizens. The term ‘special occasion’ should not be restricted to birthdays, anniversaries and holidays; nor should it necessarily mean events that are rare or unusual.” The Commission then laid out criteria that should be considered in determining whether an event is a “special occasion”:

1. It can be shown under all of the relevant circumstances that it is a family or personal relationship rather than the governmental position that is the controlling factor; **and**

2. The public official's or employee's receipt of the gift or other thing of value would not result in or create the appearance of:
  - a. Using his or her office for personal benefit;
  - b. Giving preferential treatment to any person or entity;
  - c. Losing independence or impartiality; or
  - d. Accepting gifts or favors for performing official duties.

Applying those criteria to the situation presented, the Commission finds that this event qualifies as a "special occasion" and it would be permissible for the member to accept funds from relatives and personal friends. The Commission appreciates that according to the request, the blind trust will be structured so that the member will not know who has given to this fund and in what amount, so that there is no possibility that these donations are made with the intent to influence the member in performance of his official duties. *Cf.*, Advisory Opinion 10-04 (Donations to Public Employees).

*B. Acceptance of Donations from Lobbyists:*

Professional lobbyists making donations to the trust fund is more problematic. Article XXIX specifically bans gifts (excepting campaign contributions) to a covered individual from any "professional lobbyist." Article XXIX Section 3(4). The "special occasion" exception does not apply to gifts from professional lobbyists. *Id.* The Commission has previously defined "professional lobbyist" as anyone who is required to register as such pursuant to C.R.S. § 24-6-301 and the Rules and Regulations of the Secretary of State. See, Position Statement 09-01 (Lobbyists) at page 4 and the Commission's Rule 3.A (16). Although the Commission recognizes that there may be professional lobbyists who would give money to this trust out of friendship and concern towards the member and his family, the Commission is constrained by the plain language of the Constitution, and cannot create an exception on its own. The Trustee

should not accept donations from professional lobbyists. The names of professional lobbyists are available on the Secretary of State's web site, [www.sos.state.co.us](http://www.sos.state.co.us).

## **V. CONCLUSION**

It would not be a violation of Colorado Constitution Art. XXIX for a member of the General Assembly to accept disbursements from a relative or personal friend through a blind trust under the circumstances presented in this request. However, professional lobbyists may not donate funds to the trust fund. This opinion is based on the unique set of facts before the Commission. Others in similar situations are encouraged to request fact-specific advice through requests for advisory opinion and letter ruling.

### **The Independent Ethics Commission**

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Sally H. Hopper, Commissioner  
Bill Pinkham, Commissioner  
Roy V. Wood, Commissioner*

Dated: May 19, 2011