



Matt Smith, *Chairperson*
Dan Grossman, *Vice-Chairperson*
Sally H. Hopper, *Commissioner*
Bill Pinkham, *Commissioner*
Roy V. Wood, *Commissioner*

Jane T. Feldman, *Executive Director*
Doug Platt, *Communication Director*

INDEPENDENT ETHICS COMMISSION

101 West Colfax Ave., Ste 500, Denver, CO 80202

Ph.: 303/837-2339

Fax: 303/837-2344

E-mail: jane.feldman@state.co.us

doug.platt@state.co.us

www.colorado.gov/ethicscommission

Advisory Opinion 11-09

(Acceptance of a Complimentary Ticket to a Dinner by a Public Employee)

SUMMARY: It would be a violation of Colorado Constitution Art. XXIX for an employee of the Governor's Office of Information Technology/Colorado Benefits Management System to accept a complimentary ticket to a dinner under the circumstances described by the requestor.

I. BACKGROUND

The Independent Ethics Commission ("IEC" or "Commission") has received a request for advisory opinion, asking whether an employee of the Governors' Office of Information Technology/Colorado Benefits Management System ("OIT/CBMS") may accept a complimentary ticket to a dinner to accept a laureate award given to OIT/CBMS by the Computerworld Honors Program. According to the request, "the program, founded in 1988, recognizes organizations and individuals who have used information technology to promote and advance public welfare, benefit society and change the world for the better." The laureates are invited to a dinner in Washington, D.C. at which they are presented with the award. There are 255 laureates, 55 of whom will be selected for an additional award which will be announced at the dinner.

According to the requestor, the cost of the dinner is in excess of \$53 per person, but one person from each organization receiving the laureate award is provided with a complimentary ticket. The requestor has been selected by OIT/CBMS to represent the office. The requestor will pay his own airfare and lodging expenses while in Washington. There is no other monetary component of the prize. OIT/CBMS was nominated for the award by a contractor without the knowledge of the requestor. The sponsor of the dinner does not do business with the State of Colorado.

II. JURISDICTION

The IEC finds that an employee of the Governor's Office of Information Technology is a government employee subject to the jurisdiction of the Commission. 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 three (\$53) 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:

* * *

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;

(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;

IV. DISCUSSION

The requestor seeks to accept admission to the Computerworld Honors Program dinner in Washington, D.C., the value of which is more than \$53. The requestor was selected by his superiors to represent OIT/CBMS at the awards dinner, but the requestor has stated that he is personally paying for his own air travel and lodging. The admission to the awards dinner would inure to the personal benefit of the requestor and, therefore, is a gift to a covered individual for purposes of Amendment XXIX.

The requestor is not scheduled to speak or answer questions as part of the scheduled program for the Honors Program dinner. And while the requestor may be representing the state at the event, there is no indication that Computerworld is a nonprofit organization or a state or local government. Therefore, the situation described by the requestor does not fall within the exceptions to the gift ban set forth in Section 3(3)(e) or (f) or Article XXIX.

V. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for an employee of the Governor's Office of Information Technology/Colorado Benefits Management System to

accept a complimentary ticket to the awards dinner under the circumstances presented by the requestor.

The Independent Ethics Commission

Matt Smith, *Chair* (dissenting)
Dan Grossman, *Vice Chairperson*
Sally H. Hopper, *Commissioner* (dissenting)
Bill Pinkham, *Commissioner*
Roy V. Wood, *Commissioner*

Dated: May, 19, 2011

Commissioner Smith dissents separately as follows:

I respectfully dissent from the Commission's decision noting that Article XXIX was never intended to deny Colorado agencies and state employees from receiving awards. See Advisory Opinion 10-01(Award to a Government Employee) and Advisory Opinion 09-07(Acceptance of a Prize by Government Employees).

Commissioner Hopper dissents separately as follows:

I respectfully dissent from the Commission's decision. This is not a gift to an individual covered by Article XXIX. Rather, the gift is to the Governor's Office of Information Technology/Colorado Benefits Management System.