

State of Colorado



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INDEPENDENT ETHICS COMMISSION

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Advisory Opinion 11-10

(Acceptance of a Voucher for a Conference and Travel Expenses by a State Agency)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Colorado Bureau of Investigation to accept a voucher for free conference and travel expenses under the circumstances described in the request.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether the Colorado Bureau of Investigation (“CBI”) may accept a voucher for free conference and travel expenses. According to the request, every year, the CBI Forensic Services Division sends staff to the “Symposium on Human Identification.” This conference is put on by a for-profit organization, and CBI pays for one or more employees to attend. According to the request, last year one of the CBI employees attended an evening session, and had her conference credentials scanned to be entered into a drawing. The drawing was for a voucher for the cost of the conference, and travel expenses for the 2011 conference. The voucher is valued at approximately \$2200. An employee of CBI won the random

drawing.¹ The employee turned the voucher in to her supervisor to be used by CBI to help defray costs for this year's conference. CBI is asking whether it is permissible for it to use this voucher to pay for an employee to attend the 2011 conference.

The final decision as to which employee will attend the conference using the voucher will be made by the Director of CBI, based on recommendations made by the agent-in-charge of the Forensic Services Division, not by the employee who "won" the voucher. The request also states that although the for-profit organization that puts on the conference does do business with the State of Colorado, the employee who "won" is not involved in the negotiation of that contract or the procurement of goods or services from this vendor.

II. JURISDICTION

The IEC finds that employees of the Colorado Bureau of Investigation are government employees subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1). The Colorado Bureau of Investigation, however, is not a "covered individual."

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

¹ The drawing required the winner to be present, and two other names were selected first, but were not present. The CBI employee was the third name drawn.

assembly, local government official, or government employee who solicited, accepted or received the gift or other thing of value.

IV. DISCUSSION

In Position Statement 08-01 (Gifts) at page 9, the Commission stated that, “[a]cceptance of winnings in raffles, lotteries or silent auctions is not a violation of the public trust and is therefore permissible...provided that these contests are not rigged in favor of the public employee or official based upon his or her governmental status.”

There is no indication from the information before the Commission that this contest was rigged in favor of CBI or the individual employee. In fact, because the CBI employee was the third person whose name was drawn the Commission finds that this drawing appears to be fair and impartial. Although the voucher was received by the individual employee, the recipient of the “gift” is CBI, not that person. The gift involved in this request therefore does not inure to the personal benefit of the public official or employee, but rather to CBI, and therefore is not a gift to a covered individual for purposes of Amendment XXIX. To avoid a conflict of interest the Commission further suggests that the ultimate recipient, like the winners of the raffle, should not be in a position to influence the award of future contracts. The agency should also proceed with caution to avoid the appearance of impropriety in any future arrangements with the organization that has made the award.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Colorado Bureau of Investigation, Forensic Services Division, to accept the voucher for the 2011 conference and travel expenses under the circumstances presented by the requestor.

The Independent Ethics Commission

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

Dated: June 20, 2011

Commissioners Wood and Grossman dissent as follows:

The minority opinion is that the voucher is a gift to a covered individual. That the prize was won through a drawing of conference participants does not mitigate the violation of Article XXIX. That the award may be passed to another individual also does not change the situation. We support the spirit of the caution regarding conflict of interest and the appearance of impropriety.