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Advisory Opinion 12-06

(Acceptance of Travel Expenses to a Conference)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for employees of the Colorado Lottery to accept travel reimbursement to a conference under the circumstances of this request.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request for advisory opinion, asking whether it would be permissible for several employees of the Colorado Lottery (“Lottery”), including a Commissioner, a staff member, and the Lottery’s legal counsel to attend a conference sponsored by North American Association of State and Provincial Lotteries (“NAASPL”). According to the request, the Lottery has ongoing contracts with vendors who provide a “central gaming system” and “Scratch ticket” production. These vendors are for-profit companies. The request also states that under the terms of these contracts, the vendors agree to reimburse the Lottery for reasonable travel and *per diem* expenses for Lottery staff to attend specific conferences and industry-related training programs, and that the “cost to the vendors to provide the travel is built into the price that the Lottery pays to each

vendor for the services provided.” The total cost to attend this particular conference is estimated at \$2,279 per person.

The Requestor has stated that the Lottery is a member of NAASPL and pays dues to that organization in the amount of \$15,000 annually. As part of the Lottery’s benefits as a dues-paying member, the Lottery is entitled to reimbursement for the costs associated with the director and his or her deputy director attending NAASPL conferences.

II. JURISDICTION

The IEC finds that members of the staff of the Lottery are “government employees” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2)(1). The Commissioner is not subject to the Commission’s jurisdiction because he or she is a member of a Commission which does not receive a salary, and therefore is specifically excluded from the Commission’s jurisdiction. Art. XXIX (2)(6).

III. APPLICABLE LAW

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 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. (Emphasis added).

IV. DISCUSSION

A. Reimbursement by NAASPL.

Because the Lottery is a dues-paying member of NAASPL and the travel reimbursement to the Lottery director and deputy director for NAASPL conferences is included in the membership benefits, such reimbursement is supported by consideration of equal or greater value and is, therefore, not a gift to a covered individual for purposes of Article XXIX. See Position Statement 10-01. Acceptance of such reimbursement is, therefore, permissible.

B. Reimbursement by Vendors.

The promise to pay for this travel is included in the contracts for services between the Lottery and the various vendors. There is a cost associated with this provision in the contracts, and the Lottery is therefore paying consideration to the vendors in exchange for the promise of conference travel reimbursement as provided in such contracts.

Given that the Lottery is providing consideration of equal or greater value to the vendors for conference travel reimbursement, such reimbursement is therefore not a gift to a covered individual under Article XXIX. See also, Advisory Opinion 12-02 (Acceptance of Travel Expenses from a Nonprofit Entity) at page 4. The Commission also notes that each of the contracts specify the number of individuals whose travel to conferences will be reimbursed in any contract year. The Lottery is advised to ensure that these contract provisions are not abused or manipulated to provide inappropriate benefits to covered individuals, and that they conform to applicable State laws and regulations. See, Rule

5-1 (Travel) State of Colorado Fiscal Rules, 07/01/09.. Furthermore, the Lottery is in a position to set contract terms and thus control the reimbursable aspects for covered individuals. The Lottery should endeavor to publicly provide not only the contract clause but also those covered individuals who utilize the provision.

C. Applicability of Article XXIX to Covered Individuals throughout the Conference.

The Commission reminds the Lottery that covered individuals who attend these conferences are subject to the proscriptions of Article XXIX throughout the event. Meals, gifts, outings and other extracurricular activities that are outside of the scope of the conference itself likely would be considered gifts subject to the prohibition contained in Section 3 of Article XXIX. Attendees should exercise particular caution to avoid accepting benefits that are provided by vendors or other individuals who have financial interests over which the attendees take or have the potential to take official action. See, Advisory Opinion 12-04 (Waiver of Registration Fee).

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for staff of the Colorado Lottery to accept reimbursement from vendors under the circumstances of this request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in this request, and that different facts could produce a different result. Moreover, compliance with state and agency travel policies does not necessarily ensure compliance with Article XXIX. The IEC therefore

encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings.

The Independent Ethics Commission

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Dated: June 28, 2012