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Advisory Opinion 12-07

(Waiver of Registration Fees for a Conference)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Director of the Colorado Lottery to accept the waiver of a registration fee for 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 Abel Tapia, the Director of the Colorado Lottery (“Lottery”), to accept a waiver of registration fees to attend the 2012 World Lottery Summit (“Summit”), which is jointly sponsored by the North American Association of State and Provincial Lotteries (“NAASPL”) and the World Lottery Association.¹

Director Tapia also states that the Lottery is a member of NAASPL and pays dues to that organization in the amount of \$16,000 annually. The Lottery is not a member of the World Lottery Association. As part of the Lottery’s benefits as a dues-paying member of NAASPL, the Lottery is entitled to a registration fee waiver for the

¹ Director Tapia has waived confidentiality regarding this request.

director and the deputy director to attend NAASPL conferences². According to the request, the total cost to attend this particular conference is estimated at \$4,714 for one person, including a registration fee of \$1,200. The requestor has submitted information from NAASPL breaking down the benefits of membership

II. JURISDICTION

The IEC finds that the Director of the Lottery is a “government employee” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (2) (1).

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.

The requestor has submitted information regarding how the membership dues are allocated by NAASPL. Because the Lottery is a dues-paying member of NAASPL and the travel reimbursement to the Lottery director for NAASPL conferences is included in the membership benefits, such reimbursement is supported by consideration

² The Deputy Director position is currently vacant, so only the Director will be attending this conference.

of equal or greater value and is, therefore, not a gift to a covered individual for purposes of Article XXIX. See Advisory Opinion 12-06 and Position Statement 10-01.

Acceptance of such reimbursement is therefore permissible.

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

As the Commission stated in Advisory Opinion 12-06, “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.” Advisory Opinion 12-06 at page 3. The Director 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. “ Advisory Opinion 12-06, page 4. See *also*, Advisory Opinion 12-04.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Director of the Colorado Lottery to accept reimbursement from NAASPL under the circumstances of this request. The Commission cautions public officials and employees, however, 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.

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Dated: August 24, 2012