



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

INDEPENDENT ETHICS COMMISSION

1300 Broadway, 12th floor, Denver, CO 80203

Ph.: 720.625.5697

Fax: 720.625.5696

Jane T. Feldman, *Executive Director*

Email: jane.feldman@state.co.us

www.colorado.gov/ethicscommission

Advisory Opinion 12-12

(Acceptance of Travel Expenses from a Federal Agency)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a commissioner of the Public Utilities Commission to accept travel expenses to participate in a workshop funded by the United States Department of Energy under the circumstances described in the request.

I. BACKGROUND

The Public Utilities Commission (“PUC”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) on behalf of PUC Commissioner James Tarpey asking whether he may accept payment of expenses in excess of \$53 to participate in the “Getting Rights of Way Right” workshop to be held in Arizona. The workshop is jointly sponsored by the Western Governors Association, the Sonoran Institute, the Lincoln Institute of Land Policy and Headwaters Economics. According to the request, Mr. Tarpey’s travel would be paid by the United States Department of Energy (“DOE”) through funds “administered and distributed by the Western Governors’ Association.” (“WGA”). DOE has offered to pay travel expenses for other invited guests as well. The request states that the Commissioner has served as a member of the WGA Transmission Task Force, whose goal is to improve the “efficiency

and quality of transmission siting and permitting” in the western United States.

Commissioner Tarpey was appointed to the Task Force by Governor John W.

Hickenlooper. The Commissioner is also a speaker at the workshop.

II. JURISDICTION

The IEC finds that a commissioner of PUC is a public officer and is subject to the jurisdiction of the Commission. See CO Const. Art. XXIX, sec. 2(6) and sec. 3.

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, 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:

(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

This advisory opinion is the first request the Commission has received since the issuance of Position Statement 12-01. In that opinion, the IEC noted that whether travel

is permissible under Article XXIX begins with an evaluation of whether the gift is to a covered individual. See Position Statement 12-01, page 4-5.

In the present situation it appears that the offer to pay the Commissioner's travel is not a gift to a covered individual. Commissioner Tarpey, because of his expertise in this subject matter, has been designated as Colorado's representative on the WGA Transmission Task Force by Governor Hickenlooper. He is a recognized expert in this field as evidenced by the invitation to speak at the workshop.

The fact that the invitation went to him personally does not render the offer a gift to him as an individual. Position Statement 12-01 acknowledges that gifts to people *ex officio*, because of their expertise, training and experience are not gifts to a covered individual. See Position Statement 12-01 at pages 6-7.

The fact that DOE is paying the way of other individuals supports the conclusion that Mr. Tarpey is not being singled out for special benefits, and there is no apparent conflict of interest relating to his selection. The subject matter of the workshop is a matter of statewide, regional and national concern, in which DOE is working with Colorado officials. The draft agenda provided to the Commission shows that this is a working conference, and not merely a networking opportunity. See Position Statement 12-01, pages 6 and 10.

The IEC believes that the travel described in the request is the sort of travel which should be permissible under Article XXIX. Under the facts presented in this request, the Commission finds that payment of these expenses is not a gift to a covered individual, and therefore permissible under Article XXIX.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a Commissioner of the PUC to accept a gift of travel 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. 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

Dan Grossman, *Chair (did not participate)*
Sally H. Hopper, *Vice Chairperson*
Bill Pinkham, *Commissioner*
Matt Smith, *Commissioner*

Dated: January 7, 2013