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Advisory Opinion 13-07

(Solicitation for a Blind Trust)

SUMMARY: It would be permissible for a state employee to solicit funds for a blind trust to defray medical expenses for her adult daughter under the circumstances of this request.

I. BACKGROUND

An employee of the Colorado Department of Labor and Employment (“CDLE”) has submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether it is permissible for her to solicit funds for a nonprofit she has organized to solicit funds to help defray her adult daughter’s medical expenses. The account is solely for the medical and related expenses of her daughter, Samantha, who suffers from several rare and serious diseases. Her goal is to raise \$30,000 so that Samantha may be treated at a clinical program associated with the National Institutes of Health in Maryland. According to the request, a nonprofit has been established as a blind trust to collect funds for this purpose. Only the Treasurer, who is not a covered individual, will have access to the account. All materials relating to this nonprofit will bear a disclaimer stating that donations are not tax deductible, and that no government agency is endorsing the organization. The requestor asks specifically whether she may solicit

donations from co-workers, vendors and contractors with her agency. She further asks whether supervisors at CDLE may send out a general email to all agency employees and/or if posters may be hung in communal areas. Additionally, she asks if there are any other restrictions or guidelines relating to the solicitation or acceptance of these funds. Her daughter is 23 years old, not a dependent nor a government employee.

II. JURISDICTION

The IEC finds that an employee of the Colorado Department the Secretary of Labor and Employment is a “government employee” and therefore is subject to Commission’s jurisdiction. CO Const. Art. XXIX, sec. 2(1). Her daughter is not subject to the IEC’s jurisdiction.

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

The Commission commends the requestor for her efforts to comply with Article XXIX and other standards of conduct found in C.R.S. section 24-18-108.

The requestor is subject to the gift ban provisions contained in Article XXIX; her daughter is not. By the clear language of Article XXIX, she may solicit funds on behalf of her daughter who is not a dependent child. However, because of the potential for a conflict of interest or an appearance of impropriety, the Commission suggests that she follow certain guidelines:

1. Notification of Co-workers and Agency Employees

The agency may post announcements and information, including donation envelopes, in common areas and send out general emails to all agency employees regarding the fund if such postings are in accordance with its own personnel policies and procedures. The announcements and emails, however, should not endorse the nonprofit, neither should there be an appearance or suggestion that agency managers encourage or expect participation. State Employees should not experience any pressure to donate or to donate at a particular level. See Advisory Opinion 10-04 (Donations to public employees)

2. Response to inquiries from persons regulated by CDLE or related entities

The requestor asks if she may direct vendors or contractors to the nonprofit. The Commission believes that if the requestor receives inquiries, she may direct persons to the appropriate web site or individual. She should not, however, on her own initiative solicit contributions from vendors or contractors. Solicitation of vendors and contractors under those circumstances could create the appearance of a *quid pro quo* to individuals who either work or do business with the requestor's agency.

The restrictions on donations of funds from lobbyists as well as the limitations that the donations be from a friend or relative discussed in Advisory Opinion 11-08 (Donations to a Blind Trust) are not applicable here, because Samantha is not a public employee. The Treasurer of the blind trust should be reminded that the names of the donors and the amount donated should not be shared with the requestor.

3. Thank You Notes

The Commission does not have jurisdiction over Samantha. The decision to write thank you notes is therefore not an issue within the IEC's purview.

V. CONCLUSION

It would be permissible for the requestor to solicit donations on behalf of her daughter under the circumstances of this request. The Commission cautions public officials and employees that specific facts may alter the Commission's conclusions. 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*
Sally H. Hopper, *Vice Chairperson*
Rosemary Marshall, *Commissioner*
Bill Pinkham, *Commissioner (Did not participate)*
Matt Smith, *Commissioner*

Dated: April 08, 2013