

State of Colorado



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Advisory Opinion 13-11

(Acceptance of Waiver of Registration Fee and Lodging and Meals)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for the Chairman of the Public Utilities Commission to accept a waiver of registration fees and free hotel accommodations and meals at the “Clean Energy Forum” sponsored by the Aspen Institute 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”) asking whether the Chairman of the PUC may accept a waiver of registration fees, as well as free lodging and meals to attend the “Clean Energy Forum” (“Forum”), a by-invitation- only conference sponsored by the Aspen Institute in Aspen, Colorado. The Chairman is a speaker at the event, which was scheduled for June 20-23, 2013¹. His travel expenses to and from Aspen were paid by the PUC. The Aspen Institute is a nonprofit organization which gets more than 5% of its funding from for profit sources.

According to the request, the Forum “brings together a select group of executives, entrepreneurs, experts, policy makers and thought leaders for a values-

¹ The request was submitted on May 24, 2013. However, due to other business before the IEC, no opinion could be issued prior to the trip. Staff of the Commission discussed issues relating to the trip with an attorney for the PUC.

based discussion on technological, policy and investment challenges and opportunities in clean energy as they relate to the economy, security and the environment.” The Chairman was invited to speak on a variety of topics relating to clean energy issues, including financing a clean energy revolution, developing business models for the power industry, and leadership in the clean energy revolution.

The request also states that the cost of the waiver, meals and lodging for this conference for government employees was \$1400.² Although the cost generally is not broken out, PUC received a breakdown which lists the costs as \$280 per day for lodging, \$150 per day for meals and \$60 per day for the meetings.

II. JURISDICTION

The IEC finds that a Commissioner of the Public Utilities Commission is a government employee and subject to the jurisdiction of the Commission. See CO Const. Art. XXIX, sec. 2(1) 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.

² The cost for non-governmental employees is \$2800, but representatives of government, academia and nongovernmental organizations receive a 50% discount. The Chairman may accept the discount because it is offered to a broad array of individuals.

(e) Admission to and cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or answer questions as part of the scheduled program.

IV. DISCUSSION

A. Free accommodations and meals

In December 2012, the Commission issued Position Statement 12-01 (Travel) which set out guidelines to use in analyzing whether a particular gift of travel was a gift to a covered individual. Under that opinion the factors to consider are whether the invitation is sent to a particular person, whether the invitation is *ex officio*, whether the travel relates to the public duties of the public employee or official and whether there is an appearance of impropriety or conflict of interest. Based on a review of those factors regarding this request, the Commission believes that the travel described in the request is permissible under Article XXIX.³

1. According to information before the Commission, the invitation to speak went to the Chairman based on his position as Chairman of the Colorado PUC, and because of his long-standing involvement in clean energy issues and his expertise in this area. Each of the PUC Commissioners has discrete areas of expertise and knowledge, and the topic of this Forum is relevant to the responsibilities and expertise of the Chairman, as defined by C.R.S. § 40-2-115.
2. There is no apparent conflict of interest or appearance of impropriety. There is no information before the IEC that the invitation was made to curry favor with the PUC. The Aspen Institute, the sponsor of the Forum, does not have any business before the PUC. The Commission notes, however, that some financial

³The Aspen Institute does not fall under the exception contained in Article XXIX, section 3(3)(f) because, according to the request, it receives more than 5% of its funding from for profit sources.

sponsors of the event do have business before the PUC, and the Chairman should avoid potential conflicts in dealing with those companies.

3. The focus of the Forum is educational. The staff of the Commission did express some concern to the PUC that there were dinners and outings that might be considered outside of the conference itself, and that these could be considered gifts. The PUC has assured the IEC that the Chairman would not attend the purely social outings, and that dinners would be reimbursed at the state *per diem* rate, so as to avoid potential appearances of impropriety and similar issues.

B. Waiver of Conference Registration Fee

The Commission has analyzed this conference as a gift which is not to a covered individual. The Commission notes, moreover, that Article XXIX provides a specific exception to the gift ban provisions contained in Section 3 for the cost of admission and meals consumed at an event when a covered individual is speaking as part of the program. (See, Letter Ruling 09-06, and Advisory Opinions 11-03 and 10-01). Because the Chairman has been invited to participate in panels throughout the three-day conference, acceptance of the fee-waiver for the entire conference is consistent with section 3(3)(e) of Article XXIX. See, Advisory Opinion 12-04 (Waiver of Registration Fee). This is especially true in this case because the Chairman may be speaking on more than one day. Thus acceptance of the \$180 for the three days of conference costs and the cost of any meals at which the requestor is speaking are permissible.

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the Chairman of the PUC to accept a waiver of fees and to accept lodging 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

Matt Smith, *Chair*,
Rosemary Marshall, *Vice Chairperson*
Bob Bacon, *Commissioner*
William Leone, *Commissioner* (Did not participate)
Bill Pinkham, *Commissioner*

Dated: July 1, 2013