



Matt Smith, *Chairperson*
Rosemary Marshall, *Vice-Chairperson*
Bob Bacon, *Commissioner*
William Leone, *Commissioner*
Bill Pinkham, *Commissioner*

Jane T. Feldman, *Executive Director*

INDEPENDENT ETHICS COMMISSION

1300 Broadway, 12th floor, Denver, CO 80203

Ph.: 720.625.5697

Fax: 720.625.5696

Email: jane.feldman@state.co.us

www.colorado.gov/ethicscommission

Advisory Opinion 13-12¹

(Acceptance of Waiver of Registration Fee and Lodging and Meals from a For Profit)

SUMMARY: It would not be a violation of Colorado Constitution Art. XXIX for a member of the Public Utilities Commission to accept a waiver of registration fees and free hotel accommodations and meals at the Annual Transmission Seminar 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 Commissioner James K. Tarpey² may accept a waiver of registration fees, as well as free lodging and meals to attend the “Annual Transmission Seminar” (“Seminar”) sponsored by a private management company, Ecology and Environment, Inc. (“E & E”). According to the request, Mr. Tarpey has been invited to speak and participate throughout the four day conference to be held September 23-26 in New York State. The PUC will pay the cost of his flight to and from New York, and E & E has offered to pay his registration, lodging and meal expenses, valued at approximately \$660.

¹ This Opinion was listed as Advisory Opinion 14-01 on the published Agenda for August 5.

² Mr. Tarpey has waived confidentiality relating to this request.

According to the request, the Seminar “brings together key industry and regulatory leaders to share best practices and discuss evolving issues.” The Agenda for the 2013 conference has not been prepared, but a representative of E & E has informed the Commission that the 2013 conference will be “very similar (to the 2012 conference) but likely with more of a focus on the role of independent transmission development in the wake of FERC Order 1000 as well as a focus on construction monitoring.”

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.

(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. This is not a Gift to a Covered Individual

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. In analyzing gifts of travel under that opinion, public employees and officials must consider several factors, including 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.

1. According to information before the Commission, the invitation to speak went to Mr. Tarpey based on his expertise in transmission issues and his expertise in this area. Each of the PUC Commissioners has discrete areas of expertise and knowledge, and the general topic of this Seminar is relevant to Commissioner Tarpey's responsibilities and expertise.
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 Commission has been informed that E & E does not currently have any clients with business before the PUC, and does not expect to have any matters before the PUC in the foreseeable future.

3. The focus of the Seminar is educational. The IEC generally requires that the Agenda for the conference be available for review before issuing an opinion. However, based on the representations of E & E that the 2013 conference agenda is “very similar” to the 2012 agenda, the Commission believes it has sufficient information to find that the program is educational.

B. Application Article XXIX, section 3(3)(e)

Even if this were a gift to a covered individual, acceptance of the cost of admission and meals would still be permissible pursuant to Article XXIX (3)(3)(e). That section provides a specific exception to the gift ban provisions contained in Section 3 when a covered individual is speaking as part of the program. The Commission has previously construed this section as requiring that the individual be listed in the program as a speaker, (See, Letter Ruling 09-06, and Advisory Opinions 13-11, 11-03 and 10-01). The Commission has been told that this conference is participatory, rather than a series of lectures and that Commissioner Tarpey will be participating on panels throughout the conference. Acceptance of the fee-waiver for the entire conference is therefore consistent with section 3(3)(e) of Article XXIX. See, Advisory Opinions 13-11 (Acceptance of Waiver) and 12-04 (Waiver of Registration Fee).

IV. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for a Commissioner 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

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Dated: August 5, 2013