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Advisory Opinion 14-11

(Travel)

SUMMARY: It would be a violation of Article XXIX for a County Clerk and Recorder¹ to accept a gift from a vendor. A government employee may not accept travel expenses from a for profit entity doing business with the State of Colorado under the circumstances of this request.

I. BACKGROUND

A County Clerk and Recorder (“Requestor”) submitted a request for an advisory opinion, seeking advice from the Independent Ethics Commission (“IEC” or “Commission”) as to whether she can accept travel expenses to be on a Vendor advisory board. The Requestor has been invited to join an advisory board for a Voting System Vendor (“Vendor”). It is an on-going appointment. The Vendor is a for-profit company which sells software and firmware that runs the hardware which counts votes. The County currently has a contract with the Vendor. The advisory board meets two times a year to discuss future development of their products and business plans. They also want feedback from customers on how they can better their products and services.

¹ The County Clerk and Recorder has not waived confidentiality relating to this request.

The Vendor would reimburse the Requestor for travel costs which is estimated to be between \$750 and \$1000 a trip or between \$1500 and \$2000 per year. The County Clerk's Office, as well as the individual County Clerk and Recorder, are in a position to make decisions regarding retaining this Vendor or contracting with a different vendor.

II. JURISDICTION

The IEC finds that a County Clerk and Recorder who does not reside in a home rule county is a government employee and subject to the Commission's jurisdiction. CO Const. Art. XXIX, sec. 2(1)(3).

III. APPLICABLE LAW

Section 1 of Article XXIX (Purposes and Findings) provides that:

- (a) The conduct of public officers, members of the general assembly, local government officials and government employees must hold the respect and confidence of the people;
- (b) They shall carry out their duties for the benefit of the people of the state;
- (c) They shall, therefore, avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated;
- (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust

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) [now \$53] 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.

IV. DISCUSSION

Section 3(2) of Article XXIX prohibits covered individuals from accepting payment for travel expenses in excess of \$53 in any calendar year unless it falls under a specific exception. None of the enumerated exceptions to Section 3(2) apply to the facts as described by the Requestor in this case. The travel expenses would not be paid by a state or local government or by a non-profit which receives less than 5% of its funds from for-profit sources. Here, the vendor is a for-profit company that is seeking feedback on its products and services. As an alternative to the in-person advisory board, the company can utilize customer or market surveys to gather this information.

In addition, the Vendor currently does business with the State of Colorado. Both the County Recorder's Office and the individual County Clerk and Recorder are in a position to make procurement decisions regarding the Voting System. The acceptance of expenses from a company that could be competing for state business with other vendors in the future creates an appearance of impropriety. The public could justifiably get the impression that the Vendor is trying to curry favor with the County Clerk's Office. This constitutes a breach of the public trust.

IV. CONCLUSION

It would be a violation of Colorado Constitution Art. XXIX for a government employee to accept travel expenses from a for-profit company with whom the State does business where the employee is in a position to influence procurement decisions and the reward of future contracts.

The Independent Ethics Commission

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Dated: June 9, 2014