

# State of Colorado



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## **Advisory Opinion 14-13**

(Acceptance of Travel from the State)

**SUMMARY:** It would not be a violation of Colorado Constitution Art. XXIX for the Deputy Secretary of State to accept travel expenses from her office to accompany the Secretary of State to the Republican National Lawyer's Association's National Election Law Seminar. In addition, it would not be a violation for staff of the Secretary of State's office to spend 30 hours preparing the Secretary for his speech.

### **I. BACKGROUND**

Deputy Secretary of Suzanne Staiert<sup>1</sup> has submitted a request to the Independent Ethics Commission (the "IEC" or "the Commission") asking two questions: (1) under Article XXIX, may she accept payment from the Secretary of State's office to attend the Republican National Lawyer's Association's ("RNLA") National Election Law Seminar ("Seminar") with Scott Gessler, the Colorado Secretary of State and (2) under Article XXIX, may she and other Secretary of State staff prepare the Secretary for his trip and presentation on state time? The cost for attending the conference includes a registration fee of \$239.00, travel in the amount of approximately \$250.00 and accommodations for one night at \$150.00 if the Deputy Secretary is flying in on the first day of the Seminar (which starts at noon) or \$300.00 if she stays at the hotel for two nights. The Requestor estimates that she and other staff will spend 30 hours of preparation for the Secretary's speech.

The RNLA is a non-profit organization, which receives more than 5% of its funds from

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<sup>1</sup> Deputy Secretary Staiert has waived confidentiality relating to this request.

for-profit entities. Neither Secretary Gessler nor the Deputy Secretary pay membership dues to the organization.

The RNLA has requested that Secretary Gessler speak at its National Election Law Seminar that is being held in Las Vegas this year. According to a letter from the RNLA to Secretary Gessler that was provided to the Commission, the Seminar is a day and a half long session for the purpose of orienting “legal professionals and volunteers to the election law systems utilized in the United States and the manner in which election integrity can be encouraged and protected.”

Additional materials provided to the Commission by the Requestor show there is a “beginner track” and an “advanced election law training” at the Seminar. The latter “emphasizes the lawyering strategies and techniques that can be utilized for protecting the ballot access of a candidate (or referendum committee), protect the integrity of the election day process through ethical and effective accessing of law enforcement and judicial authorities, defense or prosecution of post-election recount administrative and judicial cases, the filling of vacancies in public or political offices, the redrawing or consolidation of election precincts, the administration and counting [of various types] of absentee ballots not normally executed in-precinct, the operations of ballot counting and tabulation equipment, and the organization of non-lawyer volunteers in the provision of election services (such as volunteer assistance in a ballot recount).” The Requestor informed the Commission that a confirmed speaker at the event will be the current Chairman of the Federal Election Commission.

Secretary Gessler’s invitation from the RNLA indicates that he has been invited to address ethics in an election law panel at the Seminar. The Requestor also informed the Commission that the focus of the Secretary’s presentation will be the prosecution of standards of conduct and reporting requirements for partisan gain, including topics such as the abuse of the Grand Jury process, Due Process requirements, First Amendment issues and comparative

analysis of cases from other states. Because the RNLA had not finalized the agenda as of July 7, 2014, Secretary Gessler was unable to provide the Commission with any more information about the specific topics to be addressed at the Seminar.

## **II. JURISDICTION**

The IEC finds that the Deputy Secretary of State of Colorado is a government employee and therefore is subject to the jurisdiction of the Commission. See Colo. Const. Art. XXIX, sec. 2(1) and sec. 3.

## **III. APPLICABLE LAW**

Colorado Constitution, Article XXIX, Section 1 provides in pertinent part that:

(1) The people of the state of Colorado hereby find and declare 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; and

(d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust.

(2) The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary nature should be born by the state or local government.

## **IV. DISCUSSION**

The Deputy Secretary seeks an opinion as to whether state funds may be used to pay for her travel and conference registration fees for the Seminar. The Deputy Secretary also seeks an opinion as to whether state staff time may be used to prepare the Secretary for his speaking presentation at the Seminar. The Deputy Secretary's request does not inquire about gifts and thus, the gift ban provisions of Article XXIX do not apply.

Among other things, the Secretary of State is charged by statute with the duty to enforce the provisions of Colorado's elections code, supervise the conduct of congressional vacancies and state wide ballot issues in Colorado, to serve as the chief state election official under the federal law "Help America Vote Act of 2002", to coordinate Colorado's responsibilities under the federal "National Voter Registration Act of 2002", to promulgate rules for the proper administration and enforcement of Colorado's election laws and to review practices and procedures of county clerk and recorders and election officials in the conduct of congressional vacancies and the registration of electors in Colorado. § 1-1-107, C.R.S. With authorization from the Secretary, the Deputy Secretary may act on the Secretary's behalf as deemed necessary regarding all things related to the office. § 24-21-105, C.R.S.

Based on the specific facts presented by the Deputy Secretary to the Commission about the RNLA's 2014 Election Law Seminar, including the confirmed speaking engagement by the current Chairman of the Federal Election Commission, it appears that the use of state resources for the Deputy Secretary's attendance at this event is a legitimate expenditure. The Deputy Secretary informed the Commission that the guidance the Deputy Secretary may receive from the Federal Election Commission Chairman alone may be very valuable in aiding her office reduce its legal expenditures related to election law litigation. Moreover, the description of the event for 2014 as set forth on the RNLA's website to include topics such as ballot access of a candidate (or referendum committee), protecting the integrity of the election day process, the redrawing or consolidation of election precincts and the administration and the counting of absentee ballots all pertain to the statutory duties allotted to the Secretary by statute and via his authorization, the Deputy Secretary.

The Secretary of State Office's decision to pay for the Deputy Secretary's CLE credits also does not cause any ethical concerns as her law license, although not required, appears to be helpful to the Secretary's Office. For example, the Deputy Secretary informed the Commission that on behalf of the Secretary's office, she routinely acts as an Administrative Law

Judge for election related matters, issues declaratory orders and is qualified as an expert witness in various proceedings.

Using 30 hours of state staff time to prepare the Secretary to speak on substantive matters that have affected the Secretary's office, as well as the subject matter contained in the RNLA's invitation, appear to be a legitimate exercise of the Secretary's discretion on the use of resources allocated to his office and not an abuse of the public trust. See § 1-1-107(2)(c), C.R.S. (specifically authorizing the Secretary to hire personnel deemed necessary to carry out the powers and duties allotted the Secretary by statute.) The Secretary is charged with the duty to administer and enforce Colorado's election laws and the topics upon which the Secretary intends to speak relate to these duties. As a result of the Secretary's charge to administer and enforce Colorado's election laws and as the topics upon which the Secretary intends to speak relate to these duties, the Commission finds the use of staff time to help the Secretary prepare for his speaking engagement raises no ethical concerns.

## **V. CONCLUSION**

It would not be an ethical violation for the Deputy Secretary of State to accept travel expenses from her office to attend the Republican National Lawyer's Association's Election Law Seminar under the circumstances of this request. In addition, there is no ethical problem with the use of staff time as outlined above. The Commission cautions public officials and government 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**

Rosemary Marshall, *Chairperson* (dissenting)  
Matt Smith *Vice Chairperson*  
Bob Bacon, *Commissioner*

William J. Leone, *Commissioner*  
Bill Pinkham, *Commissioner*

**Commissioner Marshall dissents in the Advisory Opinion.**

The Secretary of State and the Deputy Secretary of State, through the Secretary's authorization, is charged with the interpretation and enforcement of Colorado's election laws. The Secretary of State also is in charge of an office of employees, who aid the Secretary in the fulfillment of his statutory duties and we have no doubt the Deputy Secretary aids the Secretary in this charge.

The RNLA Election Law Seminar very well may be beneficial to the Deputy Secretary in her work for the State of Colorado. Without having more information, however, regarding the topics to be presented at the RNLA Seminar, we cannot opine whether the Deputy Secretary's attendance at the event, or the use of staff time for the event, cause any ethical concern. For these reasons, we respectfully dissent.

Dated: July 23, 2014