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Advisory Opinion 14-15

(Acceptance of Travel Expenses Paid By a Third Party)

SUMMARY: Under the circumstances of this request, it would not be a violation of Colorado Constitution Art. XXIX for the Legislative Director for the Office of the Governor to accept travel expenses for a fellowship paid for by the American Council of Young Political Leaders.

I. BACKGROUND

The Office of the Governor for the State of Colorado has submitted a request to the Independent Ethics Commission (“the Commission” or “the IEC”) asking whether Tracee Bentley¹, Director of Legislative Affairs and Strategic Initiatives for the Governor’s Office, may accept payment of travel and other expenses in excess of \$53 to participate as a delegate in the American Council of Young Political Leaders (“ACYPL”). The ACYPL is a 501(c)(3) non-profit and non-partisan organization based in Washington D.C. which receives more than 5 % of its revenue from for-profit organizations. The ACYPL also receives funding from the Office of Citizen Exchanges under the auspices of the United States Department of State. Ms. Bentley has been nominated for consideration to participate in the ACYPL

¹ Ms. Bentley has waived confidentiality relating to this request.

international education exchange program. The purpose of these exchanges is to promote mutual understanding and respect among young people in the U.S and around the world, to expose potential leaders to social and political challenges, and to learn how leaders address current problems. Nominations of delegates are made by Members of Congress, Governors, national and state party organizations and ACYPL alumni.

The ACYPL program focuses on international educational exchanges for young political leaders worldwide. The program provides in-depth exploration of the governance, politics, policy making, bilateral relations, culture, and geographic diversity of the host country. Participants are provided opportunities to strengthen their personal leadership skills and enhance their understanding of international relations. This program gives U.S. participants a chance to travel abroad to cultivate long-lasting relationships among young people who are poised to become tomorrow's global leaders and policy makers.

Successful nominations are young elected leaders and political and policy professionals who currently hold positions of responsibility and demonstrate future leadership.

The ACYPL conducts 25 exchanges annually. On each exchange, the ACYPL sends a bi-partisan delegation of seven to ten young political and policy leaders to countries around the globe. Each delegation consists of an equal number of Democrats, Independents, and Republicans. The exchanges begin in a host country's capital with delegates traveling to one or two additional locations during

the 8 to 14 day program. Delegates are selected on a rolling basis. If Ms. Bentley accepts her nomination, it would remain active for two years. The ACYPL pays for all lodging, meals and international travel.

II. JURISDICTION

The IEC finds that the Director of Legislative Affairs and Strategic Initiatives 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)[now \$53] 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.

IV. DISCUSSION

The Commission believes that this request falls under the criteria contained in Position Statement 08-01 (gifts), in which the Commission stated, at page 8, that the award or prize was not a prohibited gift under certain circumstances:

If a prize is awarded to a public official or employee, then, assuming that the competition was fair, was open to everyone similarly situated, that it was not rigged in favor of the public employee or official, and that there is no evidence that the prize is being given based upon the official's or employee's governmental status, acceptance of a prize is not a breach of the public trust and is therefore permissible. This includes scholarly recognition such as the

Nobel Prize, where the Prize is awarded based upon extraordinary achievement, and not to influence a particular official decision.

The Commission also believes, consistent with Position Statement 08-01, that Article XXIX should be interpreted in a manner that preserves the intent of the electorate “to improve and promote honesty and integrity in government and to assure the public that those in government are held to standards that place the public interest above their private interests.”

Applying the rationale described in Position Statement 08-01 to the request currently before the Commission, the Commission makes the following determinations:

1. Fairness of the Competition:

The Prize is available to individuals throughout the country who are young elected leaders and political and policy professionals who currently hold positions of responsibility and demonstrate future leadership. The individual winners are selected from across the country on a rolling basis. There is no information before the Commission that the prize was rigged, or that the requestor received special consideration.

Therefore, the requirement that the competition be fair appears to be satisfied.

2. Governmental Status of the Recipients:

This particular prize is available to young elected leaders and political and policy professionals who currently hold positions of responsibility. The recipients consist of an equal number of Democrats, Independents, and Republicans. There is no information before the Commission that these particular employees were singled

out because of their specific employment or that the donors had a motive to influence the employees in the performance of an official act. In fact, neither the donors nor the recipients are aware of who received the benefit of the donation or who made the donation. This criterion therefore appears to be satisfied.

3. Other issues:

The Commission has considered whether there is an inherent or potential conflict of interest or appearance of impropriety in this instance. While the ACYPL is a 501(c)(3) non-profit receiving more than 5 % of its revenue from for-profit organizations, the identities of the for-profit donors to the ACYPL and the identities of the recipients of the award are concealed from each other. The Commission finds there is no conflict of interest or appearance of impropriety.

As the Commission stated in Position Statement 08-01, it “believes that government officials and employees should not be prohibited from accepting offers and benefits given to the general public or a class of people under circumstances where others receive the same opportunity. It would be unfair to penalize people because they are in government, any more than they should not be rewarded for being in government.” See, Position Statement 08-01, page 7.

Finally, the Commission believes participation in this program is a benefit that inures to the state of Colorado.

V. CONCLUSION

Under the circumstances of this request, it would not be a violation of Colorado Constitution Art. XXIX for the Director of Legislative Affairs and Strategic Initiatives to accept payment for travel and other expenses for an international exchange program paid for by the American Council of Young Political Leaders.

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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