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### ***Advisory Opinion 14-17***

(Acceptance of Conference Expenses Paid for by a Non-Profit Organization)

**Summary:** It would not be a violation of Article XXIX of the Colorado Constitution for a County Commissioner, sitting as a Regional Council Member of the El Pomar Foundation to attend a conference put on and paid for by the El Pomar Foundation under the circumstances described in the request, subject to the conditions described in this opinion.

#### **I. Background**

The Colorado Independent Ethics Commission (“IEC or “Commission”) has received a request from a local government official, who also sits as a Regional Council Member for the El Pomar Foundation (“El Pomar”), asking whether the local government official may accept lodging and meals and attend a conference sponsored by El Pomar. The El Pomar Foundation (“El Pomar”) is a non-profit organization that receives less than five percent (5%) of its funding from for-profit organizations or entities. According to its website the El Pomar Foundation “is a general purpose foundation, which means the Trustees approve grants across a broad spectrum of focus areas, including: arts and culture, civic and community initiatives, education, health, and human services. Typically, nonprofit organizations send in an application to the

Foundation.”.... “Since 1937, Trustees of the Foundation have approved more than 12,600 grants totaling more than \$431 million to benefit the state of Colorado. Currently, El Pomar contributes more than \$20 million annually through grants to nonprofit organizations and government equivalents across Colorado.”

## **II. Jurisdiction**

The IEC finds that a local government official is subject to the jurisdiction of the Commission. CO Const. Art. XXIX, Sec. 2 (3) 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.

(3) The prohibitions in subsections (1) and (2) of this section do not apply if the gift or thing of value is:

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities.

## **IV. Discussion**

Section 3 prohibits a public official or employee from soliciting, accepting or receiving any gift or other thing of value worth more than \$50 (now \$53 as adjusted by inflation) in any calendar year, from a person, without that person receiving lawful consideration of equal or greater value in return, unless it falls under a listed exception. Section 3(3)(f) provides an exception for expenses incurred by a covered individual when attending certain conventions, fact-finding missions, and other meetings. This exception is limited to nonprofits that receive less than 5% of their funding from for-profit entities or organizations. In Advisory Opinion 09-08 the Commission set forth the factors for analysis in order to determine whether Section 3(3)(f) exception applies.

### **1. Reasonable Expenses**

The requestor estimates the entire cost to attend the conference to be less than \$200.00. This includes 1 night lodging, at a cost of \$77.00, in Blackhawk, Colorado, and 4 meals at a total estimated cost of \$100.00. The requestor will drive to the conference and none of the travel expenses will be paid by El Pomar. The Commission believes that the overall cost of this conference, given that it covers lodging and meals is not excessive and is reasonable.

### **2. Purpose of Attendance**

The Commission next reviews the purpose for which the local government official will attend the conference. The El Pomar website states, "The Regional Partnerships are comprised of community leaders who form Regional Councils across the state to advise El Pomar's trustees and recommend grants." The local government official will be attending the conference as a representative of the local official's community in order to

advise El Pomar trustees on the needs of that community. The Commission finds this to be an appropriate purpose.

### **3. Nonprofit Entity**

The final criterion that must be met under exception (f) is that the donor of the gift must qualify as a nonprofit entity that receives less than 5% of its funding from for-profit entities or organizations. The Commission finds that the El Pomar Foundation qualifies as a tax exempt nonprofit under section 501(c)(3) of the Internal Revenue Code. The Commission, therefore, believes that this request meets the exception criteria under exception (f), and acceptance of the travel costs would be permissible.

The Commission notes that it is answering only the specific question posed by the Requestor in this opinion and is not addressing any related issues.

## **V. CONCLUSION**

It would not be a violation of Colorado Constitution Art. XXIX for a local government official to attend a conference put on and paid for by the El Pomar Foundation, a nonprofit entity that receives less than 5% of its funding from for-profit sources.

### **The Independent Ethics Commission**

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Dated: September 8, 2014