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Advisory Opinion 14-21

(Acceptance of Gifts)

Summary: It would be a violation of Article XXIX for the employees of the Town of Georgetown to accept a gift under the circumstances of this request.

I. Background

Each year the Loveland Ski Area (“LSA”) donates two season passes to Town of Georgetown (or “the Town”) employees, which are distributed by the Town Treasurer to Town employees and their families on a first come first served basis. Town staff in this instance may include but is not limited to police officers, treasurer, road and bridge employees, water/wastewater staff and municipal clerks. The Board of Selectman (Georgetown’s town council) do not use the passes, nor do the Town Administrator or the Town Attorney. LSA is not within the boundaries of the Town of Georgetown, and is instead located approximately fifteen miles away in unincorporated Clear Creek County. LSA does provide buses within the Town for special events including the Hot Rod Hill Climb, the Christmas Market and Ride the Rockies, as well as others.

There is currently no direct relationship between LSA and the Town of Georgetown; LSA is a winter employment source for Town residents and an indirect source of sales tax revenue for the Town due to tourists traveling through or staying in the Town to reach the ski area. Town of Georgetown officials have no authority over LSA and do not make zoning or other decisions

impacting LSA business. However, the Town is undergoing an addition to its wastewater treatment plant, adding in a “dewater unit” which will aid in more efficient processing of waste material. This project will be paid for by, among other things, processing waste from other municipalities and the Loveland Ski Area. It is not clear whether Loveland would gain any benefit in this relationship through a donation to Town employees. At this time, it appears the donation of the tickets is purely a goodwill gesture by LSA toward employees in the neighboring community.

The value of a 2014-2015 season ticket to Loveland Ski Area is \$379 for adults. Regular Season daily lift tickets for adults cost \$63 per day.

II. Jurisdiction

The IEC finds that the requester is a “local government official” and that the employees to whom the tickets are distributed are “government employees” subject to the Commission’s jurisdiction. Colo. 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) states 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, 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.

Additionally, under §24-18-104(1)(b):

A public officer, a member of the general assembly, a local government official, or an employee shall not “[a]ccept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value: (I) Which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties or (II) Which he knows or a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

IV. Discussion

A. Accepting the tickets from LSA would violate Amendment XXIX’s gift ban because the value is over the \$53 limit.

Because the value of the entire gift, even if the tickets are considered individually under the per day rate, is over \$53 it may not be accepted by the Town of Georgetown employees under the gift ban. Article XXIX prohibits any covered local government official or government employee from accepting or receiving a gift over \$53 in value. In Position Statement 09-01 (Gifts from Lobbyists and Organizations Represented by Lobbyists) the Commission analyzed gifts to government officials and decided the value of a gift should not be allocated among officials or employees. “The gift as a whole cannot exceed a value of \$50,” page 7. (*Note*, the gift amount was increased in 2011 to \$53, *see* Position Statement 11-01, Adjustment to the \$50 Gift Limit.) In this instance even if the gift were broken into individual tickets, the value of a daily lift ticket is in excess of \$53, and the season pass certainly also exceeds that amount.

In Advisory Opinion 14-01, Acceptance of Gifts, the Commission considered a question very similar to that posed here, though in a scenario that involved somewhat more involvement

between the gift giving entity and the Requester. In that Opinion, the Commission stated the gift was improper, indicating that “Article XXIX specifically prohibits any covered local government official or government employee from accepting or receiving a gift over \$53 in value.” The Commission also reiterated the opinion detailed in Position Statement 09-01 that the value of the gift as a whole must be taken into consideration, and not the value of the gift if broken into parts.

B. Exceptions to the gift ban do not apply in this case.

A review of Article XXIX indicates that the exceptions to the gift ban do not apply to the facts presented here. The ski passes are not campaign contributions; they are not unsolicited items of trivial value less than fifty dollars; they are not tokens or awards of appreciation like a plaque, wall memento, etc.; they are not informational material; they do not relate to attendance at a conference; and they are not affiliated with compensation. Thus there is no exception that would allow Town of Georgetown employees to accept the passes under the gift ban.

C. The acceptance of the passes could result in an appearance of impropriety.

Even though there is no formal relationship between the Town and LSA, Article XXIX, Section (1)(c) states that public officials and employees shall “avoid conduct that is in violation of the public trust or creates a justifiable impression among members of the public that such trust is being violated.” In Advisory Opinion 09-06 (Service on the Board of a Nonprofit Entity) the Commission found that “[a]ppearances of impropriety can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.” Page 8. Article XXIX emphasizes that public employees should avoid any conduct, which may violate the public trust or appear to violate the public trust. *See also* Advisory Opinion 09-06, page 3 and C.R.S. §24-18-103. In this instance, acceptance of season passes to LSA by the Town for use by Town employees may lead the public to conclude

LSA has received, or its employees may receive, some benefit from Town employees in return.

V. Conclusion

The Commission believes that acceptance of the passes from Loveland Ski Area under the circumstances of this request constitutes a violation of Article XXIX. The Commission cautions public officials and employees that this opinion is based on the specific facts presented here 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

Matt Smith, Vice-Chair

Bob Bacon, Commissioner

William Leone, Commissioner

Bill Pinkham, Commissioner (*Dissenting*)

Commissioner Pinkham Dissents from the Advisory Opinion.

At this time I do not see a business relationship between Loveland Ski Area and the Town of Georgetown that would bar acceptance of the passes as described in this Opinion. In prior Opinions, the Commission has stated the question to be addressed is historically whether there is a business relationship between the entities and I do not see that here. If the Town moves ahead with the wastewater treatment plant and Loveland Ski Area is a customer, then that would change the relationship and I would join in the majority opinion.

Dated: November 20, 2014