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Advisory Opinion 14-23 (Acceptance of Gifts)

Summary: It would not be a violation of Article XXIX for the requester to accept the items under the circumstances of this request.

I. Background

The requester works as a Deputy County Attorney in Montrose County, Colorado. In December 2014, while traveling on County business, the requester was on an overbooked flight from Denver to Montrose. She was required to wait at the airport in Denver for a later flight. As a result, the airline provided the requester with a \$400 travel voucher and two \$7 meal vouchers. The travel voucher was in requester's name and was transferable. Because the county paid for her travel, Requester transferred the voucher to the county. Requester used the two meal vouchers while in the airport waiting for another flight. Because the travel voucher is in excess of the \$53 limit on gifts under Article XXIX, the requester asks the Commission to offer an opinion as to the propriety of the receipt of the voucher from the airline.

II. Jurisdiction

The IEC finds that the requester is a "government employee" 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.

§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. The voucher issued in this instance is not a gift, and therefore not subject to Article XXIX.

The two meal vouchers valued at \$7 each for a total of \$14 are well below the limit outlined in Article XXIX, Section 3(2). Therefore, they are not at issue. The sole remaining issue, then, is the \$400 travel voucher, which, if it is a gift, exceeds the \$53 limit of Article XXIX. In this instance, the Commission finds that the voucher is not a gift and therefore not subject to Article XXIX.

In this instance, the county purchased an airline ticket for the requester to return from Denver to

Montrose on December 5, 2014. In essence, the county entered into a contract with the airline for the travel. Due to the airline overbooking the flight, it was unable to fulfill the contract and provide requester with the seat purchased. As a result, the airline provided the vouchers to cure its breach. In its most basic form, a “gift” is defined as something given without payment in return. While the Commission has previously addressed nuances in the meaning of the term “gift,” the voucher in this instance does not qualify because it was not given without expectation of payment, but was instead given as a result of a contract entered into by both parties and for which ample consideration was given, specifically payment by the county for requester’s seat on the flight, which the airline was unable to provide.

Additionally, the giving of vouchers in circumstances where flights are oversold and airlines cannot accommodate all passengers who purchased a seat is a common industry practice, and is not limited to “government employees” or another small, select pool of recipients. As was noted in Position Statement 08-03:

The Commission, however, does not believe that the voters intended to bar commercial discounts that are made available to a broad group of individuals, where there is no realistic possibility that the offeror is seeking to influence an official act or decision or to reward a government official or employee for any official action.

Further, because requester has transferred the voucher back to the county, which paid for her travel, the Commission finds an additional basis to determine the voucher does not implicate Article XXIX. As the county is not a “government employee” for Article XXIX purposes, it would not appear that the gift ban provisions would apply in this instance, even if the foregoing discussion were inapplicable.

B. The acceptance of the voucher would not result in an appearance of impropriety.

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, there appears to be no circumstance in which an appearance of impropriety would result, nor would public confidence in government be weakened by the issuance of the voucher to the requester or to the county.

V. Conclusion

The Commission believes that acceptance of the meal and travel vouchers under the circumstances of this request does not constitute 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

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