



William Leone, *Chair*
Bob Bacon, *Vice-Chair*
Rosemary Marshall, *Chairperson*
Matt Smith, *Vice-Chairperson*
Bill Pinkham, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: 720-625-5697
www.colorado.gov/ethics commission

Amy C. DeVan, *Executive Director*

Advisory Opinion 15-05

(Acceptance of Travel Expenses Paid by a Third Party)

Summary: It would not be a violation of Colorado Constitution Article XXIX for the Director and Deputy Senior Director of Enforcement for the Colorado Department of Revenue to accept travel expenses paid for by a nonprofit organization under the circumstances of this request.

I. Background

The Colorado Department of Revenue (DOR) has submitted a request to the Independent Ethics Commission (IEC or “Commission”) requesting an opinion asking whether Rom Kammerzell, Deputy Senior Director of Enforcement, and Lewis Koski, Director of Enforcement, may accept payment of travel and other expenses in excess of \$59 to speak at a conference in Washington State. The conference is sponsored by the American Civil Liberties Union (ACLU) and the Washington Office on Latin America (WOLA). Specifically, it is requested that they participate in a workshop on cannabis regulation.

The workshop will be attended by approximately twenty-four people, all of whom are involved in some way with the implementation and regulation of legalized cannabis. Mr. Kammerzell and Mr. Koski will present on marijuana regulation and current policies in Colorado, as well as participate in policy discussions and data analysis. Both organizations are nonprofit and both attest that they receive less than five percent of their funding from for profit sources.

The presence of Mr. Kammerzell and Mr. Koski is requested due to their direct knowledge and experience with marijuana legalization and regulation, as well as their roles within the Colorado

Department of Revenue's Enforcement Division. It is stated that the goal of participation in this conference is to achieve an exchange of policies, ideas, data, cost-benefit analysis, and updates on the impact of marijuana legalization on the overall policy-making functions of the state.

II. Jurisdiction

The Deputy Senior Director of Enforcement and the Director of Enforcement are government employees and are subject to the jurisdiction of the Commission for purposes of this request under Colo. Const. Article XXIX, sec. 2(1) and sec. 3.

III. Applicable Law

The application portion of Article XXIX, section 3 (the "gift ban") reads in relevant part:
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 \$59) 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 notes that this request is nearly identical to others submitted by this agency. Therefore, the logic set forth herein will mirror the rationale in prior opinions on this issue; most recently in 2014.

Before evaluating the propriety of travel expenses to covered individuals, the Commission first distinguishes between a gift to an individual and a gift to a government entity. In Position Statement 12-01 the Commission ruled that the gift ban does not apply if the gift is to a governmental agency. The initial question is "whether a public benefit is conferred to a governmental entity as distinct from an individual benefit conferred to the covered individual."

The Commission also set forth several factors to consider in determining if a gift is to a covered individual or to a governmental entity:

- 1) Is the gift to a specific individual or to the designee of an agency?
- 2) Is the offer made *ex officio*?
- 3) Is the travel related to the public duties of the traveler?
- 4) Is there a potential conflict of interest or appearance of impropriety in acceptance of the gift?
- 5) Is the purpose of the trip primarily educational?

In evaluating this request, the Commission believes that the gift here is to the governmental agency, not specifically to a covered individual, and therefore the gift ban does not apply. In this instance, although the invitation was extended to the two individuals named, it was in their capacities as officials with the Enforcement division for the Department of Revenue, and they will be representing the state of Colorado. The benefits of participation are set forth above, and include an exchange of ideas and policy suggestions from others involved in the issue of marijuana legalization, a topic that continues to present challenges to State government.

The five factors noted above also support the gift of travel in this instance as the benefit appears to flow to the Department and the State, and not to the individuals. The invitations in this instance were sent to Mr. Koski and Mr. Kammerzell in their official capacities. Were the two of them unavailable or unable to attend, alternate members of the Department's senior management could go to the conference in their place, because the subject matter relates directly to the Department's oversight of marijuana legalization in Colorado. Additionally, the offers were made *ex officio* in that the invitations reference the official duties of the requesters as being the purpose for the request. The topic of the panel for the specific workshop mentioned relates to the public duties of the individuals, and there do not appear to be conflicts of interest since the Department of Revenue is not in a position to take direct official action with regard to either of the nonprofit entities extending the invitation, and thus it does not appear they are attempting to

curry favor by inviting the requesters to the event. Finally, the conference is educational in nature and will be of benefit to all attending, including the requesters.

Because the gift here benefits the Department and the State, and does not directly benefit the individuals in their individual capacity, the gift ban does not apply. The requesters may accept payment for travel and other expenses related to attendance at this event.

V. Conclusion

It would not be a violation of Colorado Constitution Article XXIX for the Director and Deputy Senior Director of Enforcement of the Colorado Department of Revenue, or another designee in their place, to accept payment for travel, accommodations, conference fees and other expenses related to this request. The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, 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 related to their individual circumstances.

The Independent Ethics Commission

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