

State of Colorado



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Independent Ethics Commission
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Advisory Opinion 16-01

(Acceptance of Travel Expenses Paid by a Third Party)

Summary: It would not be a violation of Colorado Constitution Article XXIX for the Executive Director of the Department of Revenue, Barbara Brohl, 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 the Executive Director of the Department of Revenue (DOR) may accept payment of travel and other expenses in excess of \$59 to travel to Vienna Austria to attend the 59th session of the United Nations' Commission on Narcotic Drugs conference to discuss the Colorado regulation experience.

The conference is scheduled for March 14-22, 2016, and the Executive Director is scheduled to speak during a side event on March 16. The title of the presentation is "New Realities: Cannabis Policy Innovations in Uruguay, Jamaica, Colorado and Spain". The trip is sponsored by World Office on Latin America (WOLA).

WOLA has 501(c)(3) status as a non-profit entity, receiving approximately 1.5% of its funding from for-profit entities. WOLA's stated drug policy is "WOLA supports drug policy reforms that emphasize the centrality of rights and democracy, public health, genuine citizen security, harm reduction, and evidence-driven policy. WOLA worked closely with regional officials and experts to strengthen a growing network of reform-minded leaders to work collaboratively to press for new drug policies at the international and national level and to evaluate new initiatives to best ensure their success."

The meetings will include individuals involved in some way with narcotics, either legalized and regulated or illegal and criminalized.

The presence the Executive Director is requested due to the agency's experience with marijuana legalization regulation, and enforcement. A goal of this event is to achieve an exchange of policies, ideas and information on the impact of narcotics in a society.

II. Jurisdiction

The Executive Director of the Department of Revenue is a government employee and is subject to the jurisdiction of the Commission for purposes of this request under Colo. Const. Article XXIX, sec. 2(1) and sec.

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 Executive Director has made similar requests to the Commission in the past. Therefore, this opinion is substantially similar to the previous opinions; most recently in 2015.

In Position Statement 12-01 the Commission ruled that the gift ban does not apply if the gift is to a governmental agency, rather than an individual. The initial question, then, is "whether a public benefit is conferred to a governmental entity as distinct from an individual benefit conferred to the covered individual."

The factors to consider in determining if a gift is to a covered individual or to a governmental entity are as follows:

- 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?

Reviewing the Executive Director's request, the Commission finds the gift is to the governmental agency, not to a covered individual. Because of that finding, the gift ban does not apply. In this instance, although the invitation was extended to the named individual, it was in her capacity as the Executive Director of the Department of Revenue. In this capacity she will be representing the state of Colorado. The benefits of participation include an exchange of ideas and policy suggestions from others involved in the issue of marijuana regulation and legalization. The five factors listed above also support the gift of travel in this instance as the benefit appears to flow to the Department of Revenue and the state of Colorado, and not to the individual. The invitation was to the Executive Director in her official capacity. Further, the invitation was made *ex officio* in that the invitation is to the Executive Director of the agency charged with regulating legalized marijuana. The topic of the panel for the specific presentation relates to the publically mandated duties of the Executive Director. There is no conflict of interest since WOLA is not an agency that would seek to curry favor from the Executive Director or DOR, since neither are in a position to take action against WOLA as a non-profit entity. Finally, the conference is an event in which ideas, policies and strategies may be exchanged making it educational in nature.

Because the gift is a benefit to the agency and Colorado, and does not directly benefit the Executive Director in her individual capacity, the gift ban does not apply. The requester 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 of the Colorado Department of Revenue 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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Dated: February 9, 2016