

State of Colorado



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Advisory Opinion 16-02 (Reimbursement of Travel Expenses by a For Profit Entity)

Summary: It would be a violation of Colorado Constitution Art. XXIX for the Governor of Colorado to accept reimbursement from General Electric of travel expenses incurred by the Governor and his staffer under the circumstances of this request.

I. Background

The Independent Ethics Commission (“IEC” or “Commission”) received a request for advisory opinion, asking whether it would be permissible for the Governor and one staff member to accept reimbursement for airfare and lodging expenses from General Electric (“GE”) to attend the 17th General Electric Oil & Gas Annual Meeting in Florence Italy.

The stated purpose of the conference is to “bring more than 800 industry leaders to enable the sharing of their vision of the macro issues facing our industry.” The Governor was the only elected American official invited to speak.

According to the request, the Governor gave an opening day speech titled “Transform Today’s Challenges into Opportunities”. In addition he participated in discussions with oil and gas industry leaders and regulators and held several meetings with GE executives and the Director of the Department of the Interior’s Bureau of Safety and Environmental Enforcement.

II. Jurisdiction

The IEC finds that the Governor is a “public officer”, and a member of his staff is a “government employee” subject to the jurisdiction of the Commission. CO Const. Art. XXIX (1)(6).

III. Applicable Law

The application portion of Article XXIX, section 3 (the "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, 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

Article XXIX, Section 3(2) of the Colorado Constitution prohibits covered individuals from accepting gifts, including travel expenses, in excess of a threshold amount. Section 3(3)(f) exempts reimbursement for travel expenses incurred in participating on a panel, provided that the reimbursement comes from another state or local government or from non-profit organization that receives less than 5% of its funding from for-profit organizations or entities.

Because the requestor's source of reimbursement is GE, a for-profit corporation, his panel participation exemption of Section 3(3)(f) is not applicable. Therefore, the question of whether the requestor may accept the reimbursement from GE turns on if such reimbursement constitutes a gift to a covered individual.

Additionally, Article XXIX, section 3(3)(e) provides a specific exception to the gift ban provisions for admission to and cost of meals consumed at an event when a covered individual is speaking as part of the program. The Commission has previously determined that this section requires that the individual be listed in the program as a speaker, and that if the public official is speaking over several days at a conference, waiver of the registration fee for the entire conference is permissible. *See*, Advisory Opinion 12-04. However, the Governor is not requesting reimbursement for conference admission fees or the cost of meals consumed at the conference. Rather, the Governor is requesting only that the airfare and lodging be reimbursed.

According to the Governor's legal counsel, the state of Colorado paid for the travel expenses of the Governor and his staffer. The Governor now seeks to have the Commission approve reimbursement for such expenses from GE.

When reviewing a request for payment of travel expenses, the Commission looks to Position Statement 12-01 for guidance. In that opinion the Commission set forth several factors to consider in determining if gifts of travel are gifts to covered individuals. Those factors are:

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 this gift?
5. Is the purpose of the trip primarily educational?

In evaluating this request, the Commission believes the payment of travel expenses in this instance would be a gift to covered individuals. The invitation went to the Governor specifically and not as a designee of the state. Further, the invitation was not *ex officio*; rather it was to the Governor in his individual capacity. While the invitation asks the Governor to speak at the

conference, it does not provide any details, a topic or other information that may relate to his duties as governor or interest of the state.

The reimbursement, therefore, would be a violation of Article XXIX. While the state may have benefitted indirectly from the Governor's presence at the conference, there appears to have been no direct benefit to the state. Neither the written request nor the Governor's legal counsel identified any specific state legislative or administrative issue or agenda that required the Governor's presence at the conference. Rather, the Governor considers the trip a valuable opportunity to interface with other entities engaged in the oil and gas industry.

Given the foregoing, the Commission determines that the reimbursement from GE sought by the Governor is a gift to a covered individual subject to the prohibition of Section 3 of Article XXIX of the Colorado Constitution.

The Commission has previously stated that the public functions of government are properly paid for with public resources. This principle is derived from the underlying purpose of Article XXIX as set forth in Section 1(2): "The people of the state of Colorado also find and declare that there are certain costs associated with holding public office and that to ensure the integrity of the office, such costs of a reasonable and necessary nature should be born by the state or local government."

V. Conclusion

It would be a violation of Colorado Constitution Art. XXIX for the state to accept reimbursement from General Electric under the circumstances described in this request and the expenses incurred for the Governor's participation in the conference are appropriately borne by the state of Colorado.

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