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Dino Ioannides, *Executive Director*

Advisory Opinion 16-04

(Acceptance of Travel Expenses Paid by a Non-Profit 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, or a designee 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) or another DOR representative that oversees marijuana regulation may accept payment of travel and other expenses in excess of \$59 to travel to Toronto, Canada. The purpose of the travel is to attend a symposium titled *Charting the Future of Canadian Drug Policy II* and to appear on a panel during the event. The symposium, taking place in the context of the annual Canadian Public Health Association Conference, will focus on a public health and human rights approach to drugs, specifically focusing on the components of decriminalization and regulation being integral to a comprehensive public health approach.

The symposium is scheduled for June 17, 2016, and the Executive Director or her representative is scheduled to speak to about Colorado's approach to stakeholder involvement during the rulemaking process, provide an overview of the regulatory system, and share other insights and experiences relevant to regulating marijuana. Other panel speakers include Bill Blair, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, and Ian Culbert, Executive Director of the Canadian Public Health Association. In addition to the symposium, the Executive Director or her representative is invited to meet with officials and other stakeholders on June 16.

The trip is sponsored by the Center for Applied Research in Mental Health and Addictions at Simon Fraser University (SFU). SFU is a public, "community-engaged" teaching and research university with multiple campuses, 30,000 students and 6,500 faculty and staff. The Center for Applied Research in Mental Health and Addictions receives all of its funding from the Open Society Foundation and the Mac AIDS Fund, which are non-profit organizations receiving less than 5% of funding from for-profit sources.

II. Jurisdiction

The Executive Director of the Department of Revenue is a public officer and her designee 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(6) and sec. 2(1).

III. Applicable Law

The applicable 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

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 Executive Director Brohl, it was in her capacity as the Executive Director of the Department of Revenue. In this capacity she or her designee 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 public health.

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 SFU is not an agency that would seek to curry favor from the Executive Director or DOR, since neither is in a position to take action against SFU as a Canadian non-profit public university. 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. Additionally, the gift is from a nonprofit that accepts less than 5% of its funding from for-profit entities and the requestor is scheduled to participate in a panel discussion. Therefore, the requestor may also be exempt from the gift ban pursuant to sec. 3(3)(f).

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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