

State of Colorado



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Dino Ioannides, *Executive Director*

Advisory Opinion 16-06 (Acceptance of Gifts)

Summary: It would not be a violation of Article XXIX for the Child Protection Ombudsman to continue to accept the fellowship award under the circumstances of this request.

I. Background

The requester serves as the Ombudsman at the Office of the Child Protection Ombudsman (“Office”). The Office was created pursuant to § 19-3.3-102, C.R.S., and is established in the judicial department as an independent agency for the purpose of ensuring the greatest protections for the children of Colorado.

Prior to her current role, the requester served as the executive director of the Rocky Mountain Children’s Law Center, a 501(c)(3) tax exempt organization, the requestor was awarded a Livingston Fellowship by the Bonfils Stanton Foundation. The Bonfils Stanton Foundation is also a tax exempt nonprofit under section 501(c)(3) of the IRS code. The Bonfils Stanton Foundation derives its financial resources entirely from the earnings on the Foundation's investment assets, which include private and publicly held investments. The Foundation does not engage a lobbyist or participate in the political process. The Foundation is focused on supporting arts and culture in Denver as well as advancing leadership across the nonprofit sector. The Foundation has no connection or participation with local, state or federal child protection agencies.

The Livingston Fellowship Program awards \$25,000.00 to candidates based on exceptional leadership ability, promise for significant and unique contributions to the nonprofit sector, and the potential for the Fellowship experience to enable them to move from “success to significance” as leaders of people, organizations and the nonprofit sector.

During her tenure at the Rocky Mountain Children’s Law Center, the requestor used the award from the fellowship to travel to national children's law centers to observe best practices for child centered legal representation; attend Harvard School of Creative Leadership; study an advanced course in Spanish to facilitate better outreach to Spanish speaking communities, children and families; reach out to experts in the child protection community to learn more about effective advocacy on behalf of children.

The requester now asks about the propriety of continuing to spend fellowship dollars in her current role as the Child Protection Ombudsman. If the request to continue using the fellowship award is approved by the Commission, the requester plans on, among other activities, traveling to and visiting with national and international ombudsman offices to help develop best practices in Colorado; enhance her writing and other communication skills to better convey complex principles to a variety of audience members; study and improve her use of multimedia to better communicate on child maltreatment issues.

II. Jurisdiction

Colo. Const. Art. XXIX gives the Commission jurisdiction over public officers, members of the general assembly, local government officials, government employees, professional lobbyists, and statewide elected officeholders. *See generally*, Colo. Const. Art. XXIX §§ 3, 4, and 6.

The Office of the Child Protection Ombudsman is established in the judicial department but operates as an independent agency. The Ombudsman and related Board have complete autonomy, control, and authority over operations, budget, and personnel decisions related to the office, board, and ombudsman. § 19-3.3-102(1)(a) and (b), C.R.S.

In order to receive an opinion from the Commission that addresses this ethical issue, the requester waived any jurisdictional issues that may exist by virtue of her employment status in the judicial department. Therefore we do not address the jurisdictional question at this time.

III. Discussion

The facts as presented in this request are unique. The requester was given the award while she was employed at a non-profit agency in the private sector. Further, one of the criteria for receiving the award was that the recipient had to be employed by a non-profit agency and demonstrate promise for significant and unique contributions to the non-profit sector. Only because the requester accepted employment in the public sector does the ongoing acceptance of the award become an issue.

This request may be analyzed under the criteria set forth in Position Statement 08-01 (gifts). In that position statement the Commission stated, at page 8, that the acceptance of an award or prize was not prohibited under certain circumstances. If a prize is awarded to a public official or employee, then, assuming that the competition was fair, open to everyone similarly situated, not rigged in favor of the public employee or official, and that there is no evidence that the prize is being given based upon the official's or employee's governmental status, acceptance of a prize is not a breach of the public trust and is therefore permissible.

Based upon the information before the Commission, the requestor was awarded the fellowship because of her exceptional leadership ability and promise for significant and unique contributions to the nonprofit sector, not because of her position as a government employee. There is no indication that this award was given in order to influence a future official act. The information before the Commission is that the competition for the award was fair, and was not rigged in favor of the requestor. The Commission also notes that the award may, at this time, be

construed as a gift to the state since the requestor will use it to enhance her leadership skills in her current position as the Child Protection Ombudsman.¹

IV. Conclusion

The Ombudsman may continue to accept the Livingston Fellowship award, consistent with the facts and discussion above.

The Commission cautions that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission 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: December 19, 2016

¹ Analysis of the instant request bears similarities to prior analyses of the Commission. *See, e.g.*, Advisory Opinions 09-05, 09-08, and 10-01, all of which rely in turn on Position Statement 08-01.