

# State of Colorado



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**Dino Ioannides**, *Executive Director*

## **Advisory Opinion 16-07** (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-related 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 DOR may accept payment of travel, lodging, and meal expenses in excess of \$59 for travel to Berlin, Germany, to attend the 2017 Reconnaissance Tax Stamp Forum (the “Forum”).

The conference is scheduled for January 30 – February 1, 2017. The Executive Director is scheduled to speak during the Forum on Wednesday, February 1. The title of her presentation is “Marijuana Excise Recovery and Track and Trace Programmes in the USA”. The Executive Director’s is requested to provide the Forum with expertise regarding the marijuana “plant tagging” system. The trip is sponsored by Reconnaissance International (“Reconnaissance”).

Reconnaissance’s website indicates it is the “leading global source of business intelligence on holography and on authentication for document security, personal identification and brand protection.” Reconnaissance offers “authoritative information on markets, strategic management and technical issues through publications, newsletters, conferences, executive briefings and consultancy.” Reconnaissance and DOR indicate that Reconnaissance receives less than 5% of its funding from for-profit entities.

### **II. Jurisdiction**

The Executive Director of the Department of Revenue is a public officer subject to the jurisdiction of the Commission for purposes of this request under Colo. Const. Article XXIX §2(6).

### 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) [currently adjusted to \$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.

The exceptions in section 3(3) of Article XXIX indicate the gift ban provisions do not apply if the gift or thing of value is:

\* \* \*

(e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;

(f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities;

\* \* \*

### IV. Discussion

The gift ban does not apply for two reasons: the gift is to a state agency, not a covered individual; and specific exceptions in the Colorado Constitution make the gift ban inapplicable.

#### Gift to a State Agency

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?

These five factors support a finding that the gift in this instance flows to the Department of Revenue and the State of Colorado, not to the individual. The invitation was not directed to a specific individual. The offer was made *ex officio* to a DOR representative of the Taxation Division in that representative's official capacity. Although the invitation was extended to the Taxation Division of the DOR, it will be the Executive Director attending the Forum in her capacity as the Executive Director and in her oversight capacity over both the Marijuana Enforcement Division and the Taxation Division. The travel is therefore related to the public duties of the Executive Director in her regulatory capacity over marijuana regulation and tax enforcement. There is no conflict of interest because Reconnaissance 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 Reconnaissance. Finally, the purpose of the travel and of the Forum is primarily educational in nature. The benefits of participation for the State include an exchange of ideas and policy suggestions from others involved in the issues of marijuana regulation and tax enforcement.

#### Constitutional Gift Ban Exceptions

Section 3(3) of the Article XXIX specifies several exceptions that render the gift ban provisions of Article XXIX inapplicable. In pertinent part, the gift ban does not apply if the gift or thing of value is:

- (e) Admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization before whom the recipient appears to speak or to answer questions as part of a scheduled program;
- (f) Reasonable expenses paid by a nonprofit organization or other state or local government for attendance at a convention, fact-finding mission or trip, or other meeting if the person is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the state or local government, provided that the non-profit organization receives less than five percent (5%) of its funding from for-profit organizations or entities;

The Executive Director is traveling to the Forum, representing the DOR and the State of Colorado, to speak as part of a scheduled program. Expenses are being paid by an organization that receives less than five percent of its funding from for-profit organizations or entities. As such, the gift ban does not apply due to the exceptions enumerated above.

### Gift Ban Provisions Inapplicable

The Commission finds that (1) the gift is to the governmental agency, not to a covered individual; and (2) the Constitutional exceptions in section 3(3)(e) and (f) apply. For both reasons, the gift ban provisions of Article XXIX are inapplicable.

The requester may accept payment for travel, lodging, and meal 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, lodging, meals, and other reasonable expenses related to this request.

The Commission cautions 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 or letter rulings related to their individual circumstances.

### **The Independent Ethics Commission**

William J. Leone, *Chair*  
Bob Bacon, *Vice-Chair*  
April Jones, *Commissioner*  
Matt Smith, *Commissioner*  
Jo Ann Sorensen, *Commissioner*

Dated: December 19, 2016