

State of Colorado



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Advisory Opinion 17-03 (Revised)

(Government Meeting Space Expenses Paid by a Third Party)

Summary: It would not be a violation of Colorado Constitution Article XXIX for a member of the Colorado General Assembly to serve as a moderator and participant in a question-and-answer format community meeting under the circumstances described in the request. It would generally not be a violation of Colorado Constitution Article XXIX for Requestor to host town hall meetings under the circumstances described in the request, provided that appropriate safeguards are followed.

I. Background

Requestor is a State Representative and member of the Colorado General Assembly. The request explains that citizens of the Boulder/Longmont community, many of whom are residents of the Requestor's district, have been taxed for public rail transportation for several years but still have no public rail transportation available between their communities and Denver. One of the Representative's constituents has offered to pay for conference space in which to hold a community meeting, organized as a public forum, where citizens may ask questions, express their thoughts, and hear from public transportation officials, including representatives of the Regional Transportation District ("RTD") and the City of Longmont.

The Requestor has been invited to moderate the meeting and to participate in the question-and-answer dialogue. The Requestor would be identified as part of the scheduled program when the meeting is promoted.

The conference space rents out at \$163 per hour, and the meeting is expected to run for approximately two hours. The conference venue may supply appetizers to attendees during the meeting. The food is valued at less than \$59 per person. There would be no charge for citizens to attend the meeting.

The constituent offering to pay for the meeting space is not a registered, professional lobbyist. Requestor believes the constituent to be a member of the Colorado Renewable Energy Society. Requestor asserts that the constituent has not spoken to the Requestor this year about any legislation that may be of interest to him or that is pending before the General Assembly. Requestor is not aware of any legislation currently pending before the General Assembly related

to RTD. Requestor states, “It does not appear to me that the constituent is seeking to influence me in my official legislative capacity on any matter pending before the General Assembly...”

Periodically, the Requestor personally hosts town hall meetings in his legislative capacity; meetings which include matters pending before the General Assembly or about which they would like to see legislation. When this occurs, Requestor seeks venues that will not have a cost. In the past, organizations such as the Lyons Chamber of Commerce, the Lyons Economic Development Center, or an individual has offered to provide a venue and snacks for attendees.

Requestor asks (1) whether it is permissible to attend and eat at the community meeting at which he will serve as moderator and participate in the question-and-answer dialogue and (2) whether it is permissible to accept the provision of a venue and snacks for town hall meetings in his official legislative capacity from an individual, who is not a professional lobbyist, or organization, if neither seeks to curry favor related to any matter pending before the General Assembly.¹

II. Jurisdiction

Members of the Colorado General Assembly are subject to the jurisdiction of the Commission under Colo. Const. Article XXIX § 3.

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) [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 exception in § 3(3)(e) of Article XXIX indicates the gift ban does not apply when the gift or thing of value is:

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;

¹ In addition to the constitutional gift ban pertaining to lobbyists, lobbyists are also prohibited from making or promising to make a contribution to or soliciting or promising to solicit a contribution for, a member of the general assembly or candidate for the general assembly, when the general assembly is in regular session. See § 1-45-105.5(1)(a)(I), C.R.S. Some jurisdictions limit contributions from any source during the legislative session. See <http://www.ncsl.org/research/elections-and-campaigns/limits-on-contributions-during-session.aspx>.

IV. Discussion

The Community Meeting

The proposed community meeting will be held in a space paid for by a constituent of the Requestor. The first question is whether the meeting space itself (valued at \$163 per hour) is a gift to the requestor.

There is no indication in the request that the Requestor solicited the meeting space. Rather, the Requestor will serve as a moderator and participate in a question-and-answer discussion in a meeting space to be paid for by a private individual. Moreover, additional civic leaders such as representatives of the RTD and the City of Longmont Department of Transportation will be present. Even if the Requestor declines the invitation to the meeting, the meeting could nonetheless continue with the other civic leaders in attendance and with a different moderator. The Commission finds that the meeting space is a gift to the public, not to the Requestor or any other particular civic leader in attendance.

The second question is whether Requestor may partake of the appetizers offered during the meeting. Section 3(3)(e) of Colo. Const. Article XXIX provides a specific exception to the gift ban in this regard. Specifically, section 3(3)(e) excepts admission to, and the cost of food or beverages consumed at, a reception, meal or meeting by an organization² before whom the recipient appears to speak or to answer questions as part of a scheduled program. Requestor will serve as a named moderator and speaker in a question-and-answer meeting as part of a scheduled program. There would be no violation of the gift ban if the Requestor accepts admission to and partakes of the appetizers offered during the meeting.

Town Halls, Generally

Requestor distinguishes between (1) the specific community meeting discussed above, in which the Requestor will serve as a moderator, and (2) a town hall format, in which Requestor serves as host, in his legislative capacity, to discuss matters of interest to constituents or about which constituents would like to see legislation.

The guidance sought about the second category, town hall meetings, is portrayed generically. In hosting town hall meetings, Requestor states he seeks venues that will not have a cost. Individuals or organizations would provide the venue and sometimes snacks. Requestor asks whether the arrangement is permissible.

The Commission must look at the venue provided to the Requestor. Under section 3(2), providing a venue to a covered individual may be considered to be a gift. If the value of the use of the venue is equal to or less than the gift limit (currently \$59), the Requestor would be able to accept use of the venue. If the value is greater than the gift limit, the Requestor would not be able to accept it unless the gift meets any of the exemptions under section 3(3).

² The Commission interprets the term “organization” in Section 3(3)(e) broadly, to include individuals. *But cf.* Position Statement 10-01 (addressing a different constitutional exception, Section 3(3)(f), which also uses the term “organization”, and applying Section 3(3)(f) in the context of government exchange organizations).

For example, if the Requestor declares the entire amount of the gift of the use of the venue as a campaign contribution, the venue would not be subject to the gift ban as set forth in section 3(3)(a).³ If the venue is provided by a nonprofit organization, that receives less than five percent (5%) of its funding from for-profit organizations or entities, or by a state or local government entity, acceptance would not violate the gift ban as set forth in section 3(3)(f).

The Commission also cautions the Requestor to consider whether acceptance of the venue would create the appearance of impropriety. In Advisory Opinion 09-06 the Commission found that “[a]ppearances of impropriety can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.” Page 8. Article XXIX emphasizes that covered individuals should avoid any conduct that may violate the public trust or appear to violate the public trust. And, while the acceptance of a venue for holding a town hall meeting may be in compliance with one of the exceptions to the gift ban, the recipient may wish to explain or be prepared to explain why the gift of the venue is permissible under Article XXIX.

V. Conclusion

It would not be a violation of Colorado Constitution Article XXIX for Requestor to serve as a moderator (not a host) and participant in a question-and-answer format community meeting under the circumstances described in the request.

It is generally not a violation of Colorado Constitution Article XXIX for Requestor to host town hall meetings if it falls within an exception to the gift ban under Article XXIX, Section 3, under the circumstances described in the 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*
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Dated: April 3, 2017
Revised: May 5, 2017

³ Although the constitutional gift ban in Article XXIX specifically exempts campaign contributions, there are other statutory and constitutional limits on campaign contributions. *See, e.g.*, Colo. Const. Art. XXVIII, § 3.