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Dino Ioannides, *Executive Director*

Advisory Opinion 18-03 (Travel Expenses Paid by Foreign Government)

Summary: It would not be a violation of Article XXIX for the Director of the Colorado High Performance Transportation Enterprise (“HPTE”) to accept travel-related expenses from a foreign government to attend a training course related to public private partnerships in London, UK.

I. Background

Requester is the Director of HPTE. The HPTE is a statutorily-created enterprise (*i.e.*, a government-owned business) that is responsible for financing surface transportation infrastructure projects in the state of Colorado. It is a division of the Colorado Department of Transportation (“CDOT”). Its primary function is procuring public-private partnerships (“P3s”) in order to deliver public infrastructure improvements. Requester has submitted an advisory opinion request to determine whether he may accept an offer of travel and education expenses from the British Embassy to attend a five-day symposium in London entitled the “UK Infrastructure and Projects Authority’s Public Private Partnership and Infrastructure Foundation Course” (“Symposium”). The expenses covered will include course costs, economy class airfare to London, hotel accommodations for six nights, transportation for meetings, and some meals.

The invitation from the British Embassy was made directly to Requester. The invitation asked Requester to participate as part of “a delegation of key decision makers from across US states and cities”. The British Embassy has confirmed that Requester was chosen based on his involvement “in P3 project decision making, which would allow him to fully contribute to the discussions and apply the learned P3 best practice to Colorado’s continuing and forthcoming work. We also were particularly keen to have Colorado involved in the P3 training [W]e wished to build a best practice connection with a state that already has been active with large P3 infrastructure projects.”

The British Embassy’s description of the Symposium reads:

[T]his course is an opportunity to immerse yourself in a five day, in-depth discussion on leveraging private finance in infrastructure development. The course will also provide you with an overview of P3, including areas of demonstrated success as well as the challenges. You will hear from UK experts

who operate globally with experience in delivering projects from design to operation. Additionally, you will be able to engage with official UK counterparts on policy development and regulatory environment, harnessing infrastructure asset development and operation.

II. Jurisdiction

Requester is a “government employee” subject to the Commission’s jurisdiction. Colo. Const. Art. XXIX, § 2(1).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. *See* Colo. Const. art. XXIX, § 5(5).

III. Applicable Law

Section 3(2) of Article XXIX of the Colorado Constitution provides,

No ... government employee, either directly or indirectly as the beneficiary of a gift or thing of value ... 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 [currently adjusted to \$59] in any calendar year, including but not limited to, ... travel ... without the person receiving lawful consideration of equal or greater value in return from the ... government employee who solicited, accepted, or received the gift or other thing of value.

IV. Discussion

The purpose of Article XXIX of the Colorado Constitution is to restrict gifts to public employees and officials acting in their official capacities. Section 3(2) of Article XXIX (“the gift ban”) prohibits gifts to covered individuals. Reimbursement of travel expenses to covered individuals constitutes a prohibited gift unless such reimbursement does not inure to the benefit of the covered individual but rather to the governmental entity, department, agency, or institution that employs the covered individual. *See* Position Statement 12-01 at 5. The Commission employs a five-factor test in determining whether a gift is to a covered individual or to the state. The Commission considers: (1) whether the offer is to a specific individual or to a designee of the state agency; (2) whether the offer of reimbursement is *ex officio*; (3) whether the event is related to the official duties of the covered individual; (4) whether there is an existing or potential conflict of interest or appearance of impropriety; and (5) whether the primary purpose of the travel is educational or business-related. *See* Position Statement 12-01.

Under the first factor, the Commission finds that the offer was made directly from the British Embassy to a specific individual, the Requester. The Commission finds that the offer was made to Requester by virtue of the fact that he has been nationally recognized in the field, and thus, his department has been distinguished by his service. The invitation in this instance is more akin to governmental exchange by peers outlined in Position Statement 12-01 bestowing an institutional

rather than an individual benefit.

Under the second factor, the Commission finds that the offer of reimbursement was *ex officio*, or made by virtue of Requester's specific position as the State Director of the Colorado HTPPE program. Requester explained that HTPPE is well-known for its expertise in facilitating and developing P3 projects in the United States, and the enterprise's input is regularly solicited by other state departments of transportation. Thus, the offer is *ex officio*.

Under the third factor, the Commission finds that the event is related to the official duties of Requester. There is a close nexus between the official functions and expertise of Requester and the subject of the Symposium. Requester was selected specifically for the value he would add to a dialogue on leveraging private finance in infrastructure development and for the value he would bring back to Colorado. That nexus demonstrates that the invitation was institutional in nature.

Under the fourth factor, the Commission finds that there is no existing or potential conflict of interest, or an appearance of impropriety. According to Requester, HTPPE and the UK do not regulate each other, contract with each other, or otherwise engage in business dealings. Requester is not currently in a position to take any official action that would benefit the UK.

Requester does not have authority to contract with private investors—that authority rests with HTPPE's Board of Directors. The Requester does not foresee a potential conflict of any foreign direct investment for HTPPE's infrastructure projects in the future. The Symposium is a government-to-government exchange focused on educating participants about the global experience of UK experts and on policy development and the regulatory environment. The Symposium does not appear to provide an opportunity for undue influence by private investors.

Under the fifth factor, the Commission finds that the purpose of the Symposium is primarily educational in nature, rather than primarily entertainment-related. The conference is an opportunity to share best practice management between governments for leveraging private investment in transportation projects.

The grant from the British Embassy will cover (1) course costs; (2) economy-class airfare; (3) hotel accommodations; (4) group transport for official meetings; and (5) breakfasts at the hotel and lunches at the course venue. All sightseeing and other costs are excluded. The Commission finds that the Symposium is educational in nature.

The Commission finds that the invitation to Requester has been made as an institutional opportunity and potential benefit to HTPPE and is not a gift to Requester under Section 3(2) of Article XXIX. Requester may attend the Symposium, and may accept the British Embassy's offer of a grant to do so.

V. Conclusion

It would not be a violation of Article XXIX for the British Embassy to pay Requester's travel and education expenses to attend the Symposium.

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: September 24, 2018

Commissioner Elizabeth Espinosa Krupa, not participating