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Advisory Opinion 19-02

(Acceptance of Travel Expenses Paid for by a Non-Profit Organization)

Summary: It would not be a violation of Article XXIX for District Attorney George Brauchler to accept travel expenses from the American Israel Education Foundation to attend the Educational Seminar in Israel for Southwest Veteran Leaders.

I. Background

George Brauchler (“Requester”) is the district attorney for the 18th Judicial District of Colorado. He submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether he may accept payment of expenses to attend the Educational Seminar in Israel for Southwest Veteran Leaders (“Seminar”). The Seminar is sponsored by the American Israel Education Foundation (“AIEF”), a non-profit organization that receives less than 5% of its funding from for-profit sources. According to its website, one of AIEF’s missions is to “fund[] educational seminars to Israel” for political leaders.

AIEF will cover all travel-related expenses that are part of the official trip, including flights, hotels, tours and meals, for an estimated total cost of \$11,796. The trip—to Tel Aviv, Israel—is focused on “critical policy and security issues affecting both Israel and the United States,” with seminars presented by a range of Israeli veterans and military experts. Requester was invited to participate in the Seminar based on his military experience and current leadership role in state government. AIEF represents that invitees to the Seminar are primarily military veterans who are also government, business, or community leaders.

II. Jurisdiction

The IEC has jurisdiction over “[p]ublic officer[s]”, meaning “any elected officer, including all statewide elected officeholders.” Colo. Const. art. XXIX § 2(6).

Requester is the elected district attorney for the 18th Judicial District of Colorado. A long line of Colorado cases “uniformly describ[e] a Colorado District Attorney as a ‘state public officer’ who ‘belongs to the executive branch.’” *Van De Weghe v. Chambers*, 569 Fed. Appx. 617, 621 (10th Cir. 2014) (collecting cases); *see also People, by and through VanMeveren v. Dist. Ct. in and for Larimer Cty.*, 527 P.2d 50, 52 (Colo. 1974) (“the district attorney is a part of the executive

branch”).

Although elected district attorneys *serve* judicial districts, which are political subdivisions of the state, they are not part of those judicial districts. *See Anderson v. Adams Cty.*, 592 P.2d 3, 4 (Colo. 1978) (“The district attorney is a state officer serving in a particular judicial district, independent of the county government, with authority to hire and fire his own employees.”). Thus, district attorneys “may appear on behalf of the people of the state of Colorado in any judicial district in this state.” § 20-1-102, C.R.S. Accordingly, the IEC finds that Requester is a “public officer” within the meaning of Article XXIX.¹

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 \$65] 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.

Section 3(3)(f) of Article XXIX provides an exception to Section 3(2)’s gift ban for:

Reasonable expenses paid for 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

To fall within the section 3(3)(f) exception, the following elements must be present: (1) expenses must be reasonable; (2) the purpose of attendance must be to deliver a speech, make a presentation, participate on a panel, or represent the state or local government; (3) the entity paying for the trip must be a nonprofit organization (or state or local government) that receives less than 5% of its funding from for-profit organizations or entities. Colo. Const. art. XXIX, § 3(3)(f); *see also* Advisory Opinion 09-08.

The IEC finds that the expenses for the Seminar are reasonable. AIEF has provided an enumerated list of estimated costs, which are not excessive for a week of international travel.

¹ The IEC does not today decide whether the employees of the District Attorney’s Office are “government employees” within the meaning of § 2(1) of Article XXIX, which it views as a different question from whether the elected district attorneys of the state are public officers.

The agenda from last year’s Seminar—which AIEF represents is substantially similar to the agenda it is currently developing for this year’s Seminar—reflects that the Seminar is focused on educational presentations and tours from military veterans and leaders, as well as law enforcement experts. These topics are relevant to Requester’s duties and responsibilities, and other attendees have similar backgrounds and areas of expertise as Requester. *See* Advisory Opinion 12-11.

The IEC also finds that Requester is attending in order to represent the state government, as an elected official of that government. *See* Advisory Opinion 11-01 (finding that “the Treasurer’s elected position is sufficient to establish that he ... [is] representing the State of Colorado.”). Finally, AIEF is a non-profit organization that receives less than 5% of its funding from for-profit organizations or entities. Accordingly, section 3(3)(f) applies.

V. Conclusion

It was not a violation of Article XXIX for AIEF to pay for Requester to attend the Seminar under the section 3(3)(f) exception to Article XXIX.

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 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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