



Elizabeth Espinosa Krupa, *Chair*
William Leone, *Vice-Chair*
Debra Johnson, *Commissioner*
Yeulin Willett, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: (720) 625-5697
www.colorado.gov/iec

Dino Ioannides, *Executive Director*

Advisory Opinion 19-03 (Travel Expenses Paid for by a Third Party)

Summary: It would not be a violation of Article XXIX for District Attorney George Brauchler to accept travel expenses from Pew Charitable Trusts and the American Bar Association (“ABA”) to attend a technology conference.

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 a conference entitled “Technology and the Future of the State Court Convening” (“the Conference”) in Los Angeles, California.¹

The ABA’s Center for Innovation covered certain travel-related expenses for Requester to attend and participate in the Conference, including airfare, a one-night hotel stay, and airport parking. Requester provided an agenda of the Conference, which broadly addressed modernization of the court system through technology.

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).

In another recent Advisory Opinion issued to this Requester, the IEC conducted an in-depth analysis of its jurisdiction over elected district attorneys. *See* Advisory Op. 19-02. The IEC will not repeat that analysis here, but finds that Requester, as an elected statewide officeholder, is a “public officer” within the meaning of Article XXIX.

¹ Requester submitted this advisory opinion request prior to the conference in question, but the IEC requested more information and did not issue this decision until after the conference had taken place. Accordingly, the IEC discusses the Conference in the past tense.

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.

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; it does not prohibit gifts to a governmental entity, department, agency, or institution that employs the covered individual. Reimbursement of travel expenses constitutes a prohibited gift, unless such reimbursement inures to the benefit of the governmental entity, department, agency, or institution, rather than the covered individual. Therefore, the question presented in this case is whether the benefit of attending the Conference inures to Requester or to the State. *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 primarily educational or business-related. *See* Position Statement 12-01.

Under the first factor, the Commission finds that the offer was made directly from the ABA to Requester, and that the invitation was non-transferable.

Under the second factor, the Commission finds that the offer of travel expenses was *ex officio*, or made by virtue of Requester’s specific position or area of responsibility/expertise. According to Requester, the invitation was made in part based on his recent involvement in pursuing technological innovations in the District Attorney’s Office. Requester explained that he would utilize state funds to reimburse the ABA for travel expenses if the IEC did not approve his advisory opinion request because he believed the Conference was relevant to issues currently facing the 18th Judicial District. The ABA represented that Requester was invited by virtue of his experience and expertise.

Under the third factor, the Commission finds that the Conference is related to the official duties of Requester. As district attorney for the 18th Judicial District, Requester is actively involved in criminal justice reforms, including addressing barriers to access to justice. Pew Charitable

Trusts recommended Requester to the ABA as a participant who would provide a useful perspective to the topics discussed at the Conference. The Conference's focus on utilizing new technologies and processes to improve access to justice provided relevant information that Requester could bring back to Colorado and use to benefit the people he serves.

Under the fourth factor, the Commission finds that there is no existing or potential conflict of interest or appearance of impropriety. Requester has no ability, in his role as district attorney, to take any official action regarding the ABA or Pew Charitable Trusts. Requester does not regulate or make policy decisions regarding either entity. Finally, the invitation conveys no opportunity for undue influence of Requester at the Conference.

Under the fifth factor, the Conference is primarily educational in nature, rather than primarily entertainment-related. The Conference agenda provided by Respondent consists primarily of panels, presentations, and "brainstorming" sessions. It also includes continental breakfasts, a "working lunch," and a dinner. However, those meals appear incidental to the Conference's primary purposes, which are clearly educational.

Although the invitation to the Conference was to Requester as an individual, on balance, these factors weigh in favor of finding that the ABA's offer to pay Requester's travel expenses inured to the benefit of the State and was not a gift to Requester under Section 3(2) of Article XXIX.

V. Conclusion

It was not a violation of Article XXIX for the ABA to pay for Requester to attend the Conference.

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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