

State of Colorado



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Dino Ioannides, *Executive Director*

Advisory Opinion 19-08 (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 and related expenses from the American Israel Public Affairs Committee to attend the AIPAC Policy Conference, as specifically discussed herein.

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 from the American Israel Public Affairs Committee (“AIPAC”) to attend and be a featured speaker at the AIPAC Policy Conference, which will take place March 1-3, 2020, in Washington, D.C.

AIPAC’s invitation asks that Requester serve as a panelist on the topic “Veterans in Politics”. According to AIPAC, the invitation is based on Requester’s role as a veteran. The AIPAC invitation states, “The Policy Conference is the preeminent national gathering of individuals concerned with the U.S.-Israel relationship, attracting nearly 20,000 pro-Israel activists from all 50 states. These activists attend the Conference to hear from leading lawmakers, senior Israeli officials, top Middle East scholars and political analysts.” The invitation also indicates, “There may be additional opportunities for you [Requester] to participate in exclusive meetings, receptions and events outside of the agreed upon sessions referenced in this invitation.”

AIPAC is a social welfare non-profit organized as a 501(c)(4). Information received from AIPAC indicates, “To the extent AIPAC receives any funding from for-profit corporations or entities (which would be nominal), it represents less than 5% of the non-profit’s funding.”

AIPAC will cover one round-trip coach class airfare ticket to Washington, D.C.; hotel accommodations for up to three nights; conference registration; a per diem of \$40.00 per day on travel days for expenses; a per diem of \$50.00 per non-travel day for expenses; a flat \$40.00 travel allowance to cover any additional transportation related costs not associated with airfare; and (not at issue in this request) a stipend to defray child care costs for dependent children. AIPAC does not offer a speaking honorarium.

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.

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.

Sections 3(3)(e) and 3(3)(f) of Article XXIX provide exceptions to Section 3(2)’s gift ban. Section 3(3)(e)’s exception is for:

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[.]

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 3(3)(e) exception, the Requester must appear at the event to speak or to answer questions as part of a scheduled program. That is the case here, where the Requester will be serving as a named panelist on the topic “Veterans in Politics”. However, the 3(3)(e) exception only permits admission (or, in this case, “conference registration”) and the cost of food or beverages “consumed at” the conference. Colo. Const. art. XXIX, § 3(3)(e). The admission to the AIPAC conference and cost of meals and beverages at that conference—whether provided as part of the conference or paid for with the per diem—fall within the 3(3)(e) exception. For the other expenses covered by AIPAC’s invitation, it is necessary to turn to the 3(3)(f) exception.

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.

Under the 3(3)(f) exception, the IEC finds that the following expenses applicable to this request are reasonable: coach class airfare, hotel accommodations for as many nights as the number of days the “Veterans in Politics” panel convenes, a \$40 per diem on travel days and a \$50 per diem on non-travel days limited to *actual and necessary* expenses, and a flat \$40 travel allowance for *actual and necessary* ground transportation to and from airports. Requester should return any amount of the per diems not utilized for actual and necessary expenses to AIPAC.

The IEC does not find reasonable the costs associated with hotel accommodations beyond those listed above. *Cf.* Advisory Opinion 09-09 (in an event attended by the governor, the IEC ruled that the staff or cabinet members attending the event to assist the governor could not remain at the event beyond the time reasonably necessary to assist the governor). If Requester intends to use lodging in excess of the limits above, he must do so at his own expense.

Requester is not seeking reimbursement for any childcare expenses. As such, the IEC does not address the reasonableness of such expenses for purposes of the instant request.

As for the other elements of the 3(3)(f) exception, the specific purpose of the invitation was to facilitate Requester’s participation on a panel, and AIPAC indicates it is a nonprofit that receives less than 5% of its funding from for-profit organizations or entities.

V. Conclusion

It is not a violation of Article XXIX for AIPAC to pay for or reimburse Requester to attend the Policy Conference under the section 3(3)(e) and (f) exceptions to Article XXIX, as specifically discussed and limited herein.

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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Dated: January 14, 2020