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Dino Ioannides, *Executive Director*

Advisory Opinion 20-01 (Acceptance of Winnings in Raffle)

Summary: It would not be a violation of Article XXIX for Requester to accept winnings from a raffle, as specifically discussed herein.

I. Background

Beth McCann (“Requester”) is the District Attorney for Denver, the Second Judicial District of Colorado. She submitted a request to the Independent Ethics Commission (“IEC” or “Commission”) asking whether she may accept the winnings of a raffle conducted at an event hosted by Colorado Mothers Against Drunk Driving (“MADD”).¹ The raffle was conducted as part of a “Walk like MADD” fundraising event held at Sloan Lake in Denver, Colorado, on August 3, 2019.

Mr. Francis Lanzer, the Colorado State Executive Director for MADD, and Mr. Jeff Trujillo, the Development Officer for MADD, reported the following to Commission staff:

1. MADD is organized as a non-profit corporation.
2. The 2019 Walk like MADD event was open to the public and participants included families of people injured or killed by drunk drivers, MADD staff members, volunteers, law enforcement employees, and others. Many participants were not government employees.
3. The Denver District Attorney’s Office had a team at the event, including employees and their family members.

¹ Commission staff discussed the raffle with Mr. Francis Lanzer, the Colorado State Executive Director of MADD. Mr. Lanzer clarified that, because tickets were not sold to participants and due to licensing requirements for raffles, the appropriate terminology was not “raffle” but “giveaway”. See § 24-21-602 *et seq.*, C.R.S. To harmonize this opinion with the language used in prior opinions, the Commission uses the term “raffle” herein; for purposes of the analysis in this opinion, the Commission does not distinguish the two terms nor address licensing requirements for raffles.

4. Requester has no connection with MADD, other than participating in the walk.
5. The raffle was hosted by MADD. Christy Sports donated a snowboard as the raffle prize.
6. The first notice of the raffle was sent to participants on August 1, 2019, just two days before the walk.
7. MADD sent approximately 1,200 invitations to participate in the raffle. MADD's data indicates that, of the 711 registered participants, 71 raised at least \$100 for the walk. Every raffle participant had one chance to win (*i.e.*, one entry) for every \$100 raised for the fundraiser. In total, there were 466 entries among the 71 raffle participants. Every entry had an equal chance to win. The top fundraiser had 72 entries. Requester had one entry.
8. MADD conducted the raffle on the evening before the walk. MADD announced the results of the raffle the next day at the Walk like MADD event.
9. Requester won the raffle for the snowboard.

Requester's office participates annually in the Walk like MADD event. To participate in the 2019 walk, Requester donated \$100 to MADD. Although MADD organizers emailed prior notice of the raffle, that notice was sent only two days before the event. It is not surprising, therefore, that Requester reports she did not know about the raffle ahead of time. The raffle resulted in the Requester's winning the snowboard but, because Requester does not snowboard, Christy Sports agreed to credit her \$420 to use at a Christy Sports store. Requester has not used the credit and now asks the Commission about the propriety of doing so.

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 district attorney for the Second Judicial District of Colorado. Requester is a “public officer” within the meaning of Article XXIX. *See* Advisory Opinion 19-08.

III. Applicable Law

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

No public officer ... 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 \$65] in any calendar year, including but not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, 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 ... who solicited, accepted or received the gift or other thing of value.

IV. Discussion

The Commission has previously addressed the analysis to be used when a covered individual wins a raffle, lottery, or silent auction. Position Statement 08-01 recognized that Article XXIX was aimed at preventing covered individuals from benefitting from their public employment, and that it would be unfair to penalize government employees and officials for that employment. In its evaluation, the Commission determined that the acceptance of winnings in raffles, lotteries, or silent auctions:

[I]s not a violation of the public trust and is therefore permissible. There may be lawful consideration – to enter a lottery or raffle, one might purchase a ticket in exchange for the opportunity to win; the highest bidder wins the item in a silent auction. In those situations where a ticket was not purchased (e.g., a card put into a fishbowl), a public employee or official has an equal opportunity to win as the other entrants. Therefore, the Commission finds that the acceptance of winnings in raffles, lotteries and silent auctions is permissible, provided that these contests are not rigged in favor of the public employee or official based upon his or her governmental status.

Using this framework in several subsequent opinions, the Commission approved the acceptance of such winnings. *See* Advisory Opinion 09-07 (there is no violation of Article XXIX if government employees accept a cash prize for a paper they authored as part of their regularly assigned duties when the competition for the prize was fair, not rigged, gave no special consideration to government employees, was not based on a motive to influence an official act, and created no conflict of interest or appearance of impropriety); and Advisory Opinion 10-01 (there is no violation of Article XXIX for accepting cash prize winnings for an award when there is no indication that the award was offered to influence an official act and the competition for the award was fair and not rigged in favor of the requestor). *See also* Letter Ruling 15-01 (there was no violation of Article XXIX when two trade organizations held a fishbowl drawing to award prizes donated by vendors, where all participants have an equal chance of winning, no preference was given to one participant over another, not all participants were covered individuals, and there was no intent to influence public decision making).

In this case, Requester participated in a raffle. Her entry was based on having raised \$100 for a charitable fundraising event. The raffle was open to the public, fair, and not rigged in favor of Requester nor of any government employee. Requester is not connected to the donor—other than through participation in the walk—and, as such, the donation was not motivated by an attempt to influence an official act, and no conflict of interest or appearance of impropriety is present.

V. Conclusion

It would not be a violation of Article XXIX for Requester to accept the winnings from a raffle

under the facts of this 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 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

Elizabeth Espinosa Krupa, *Chair*
William Leone, *Vice-Chair*
Selina Baschiera, *Commissioner*
Debra Johnson, *Commissioner*
Yeulin Willett, *Commissioner* (concurring)

Dated: April 28, 2020

Commissioner Willett concurs in the Advisory Opinion

While I am fine with the outcome in this particular case, given the totality of the circumstances, and some follow-up research and questioning, I am left with some lingering concerns as we go forward with raffle-type cases in the future. To me, it is not particularly useful to focus too much on a simple conclusion that the event was "not rigged". It would seem, rather, that the overriding issues in these cases are the cited "appearance of impropriety" and related public perception issues—which we might be better served to more fully address in future matters. In the instant case, I was concerned of at least a tenuous link between the Requester and MADD (being both interested in issues related to driving under the influence and, thus, to each other). Further, there is included in the opinion little information about how the picking of the winner was assuredly fair (my understanding from follow-up was that it was adequately done through some randomized computer system). As the value of the prize, the link between the two parties, and the informality of the event increase, the harder it is to satisfy public perception concerns. I would urge an expansion of the Commission's legal test and more thorough weighing and reporting of these factors in future cases.